

Certification of Massachusetts Compliance with Clean Air Act Sections 110(a)(1) and (2) State Implementation Plan Requirements for the 2010 Nitrogen Oxides National Ambient Air Quality Standard

June 6, 2014

Summary

This is the Final Certification of the Massachusetts Infrastructure State Implementation Plan (SIP) (Infrastructure SIP Certification)) of the Massachusetts Department of Environmental Protection (MassDEP) to the U.S. Environmental Protection Agency (EPA) that the existing Massachusetts State Implementation Plan adequately meets the basic (or “infrastructure”) requirements of 42 U.S.C. § 7410(a)(1) and (2), (Sections 110(a)(1) and (2) of the Clean Air Act (CAA)) with respect to the National Ambient Air Quality Standard (NAAQS) for nitrogen oxides (NO₂) promulgated by EPA on January 22, 2010 (the 2010 NO₂ NAAQS). EPA revised the primary NAAQS for oxides of nitrogen, as measured by nitrogen dioxide (NO₂) by establishing a new 1-hour standard at a level of 100 parts per billion, based on the 3-year average of the 98th percentile of the yearly distribution of 1-hour daily maximum concentrations, to supplement the existing annual standard. EPA finalized designations in February 2012, designating all of Massachusetts as unclassifiable/attainment for the new NAAQS, based on available monitoring data from the 2008-2010 period.¹ (www.epa.gov/airquality/nitrogenoxides/designations/state.html) EPA’s January 22, 2010 rulemaking also required Massachusetts and other states to establish near-road monitoring networks to better determine NO₂ levels near heavily traveled roadways. Massachusetts expects to begin near-road monitoring in summer 2013.

Background

Pursuant to Sections 110(a)(1) and (2) of the CAA, each State is required to submit a plan to provide for the implementation, maintenance, and enforcement of a newly promulgated or revised NAAQS within 3 years after its promulgation. Section 110(a)(1) provides the procedural and timing requirements for SIPs. Section 110(a)(2) lists the basic elements that all SIPs must contain including emissions inventories, ambient air quality monitoring and data systems, programs for enforcement of control measures, and adequate resources to implement the plan. For the 2010 NO₂ NAAQS, states were required to certify by January 22, 2013 that the state SIP contains the basic (or “infrastructure”) elements that will allow the state to adequately provide for the implementation, maintenance and enforcement of the standard.

¹ 77 Federal Register 9532

If a State determines that its existing SIP is adequate, then the State's SIP submittal may be a certification that the existing SIP contains provisions addressing all requirements of the section 110(a)(2) infrastructure elements as applicable to the 2010 NO₂ NAAQS. MassDEP has determined that its existing SIP adequately provides for the implementation, maintenance and enforcement of the NO₂ NAAQS. Therefore, MassDEP is submitting this Infrastructure SIP Certification that it meets the section 110(a)(2) infrastructure elements related to the 2010 NO₂ NAAQS.

In September 2013, EPA issued non-binding Guidance on Infrastructure State Implementation Plan Elements under Clean Air Act Sections 110(a)(1) and 110(a)(2) (EPA's Guidance). MassDEP has followed EPA's Guidance in developing this Infrastructure SIP Certification.

Previous Infrastructure SIP Certifications

MassDEP previously submitted the following Infrastructure SIP Certifications to EPA in connection with other new or revised NAAQS:

- In December 2007, MassDEP submitted a *Certification of State Implementation Plan Adequacy Regarding Clean Air Act Sections 110(a)(1) and (2)* (the Ozone Certification), certifying that it met the CAA Sections 110(a)(1) and (2) requirements for the 1997 ozone NAAQS. On March 27, 2008 (73 Federal Register 16205), EPA issued a finding that, for the 1997 ozone NAAQS, the Massachusetts SIP is complete, with the exception of the PSD program. (See discussion regarding PSD in Table 1 under *Section 110(a)(2)(C) Program for enforcement of control measures and Section 110(a)(2)(D) Interstate transport.*)
- In April 2008, MassDEP submitted a *Certification of State Implementation Plan Adequacy Regarding Clean Air Act Sections 110(a)(1) and (2) for PM_{2.5}* related to the 1997 PM_{2.5} NAAQS. On October 28, 2008 (73 Fed. Register 62902), EPA issued a finding that, for the 1997 PM_{2.5} NAAQS, the Massachusetts SIP is complete, with the exception of the PSD program.
- In September 2009, MassDEP submitted a *Certification of State Implementation Plan Adequacy Regarding Clean Air Act Sections 110(a)(1) and (2) for PM_{2.5} related to the 2006 PM_{2.5} 24-hour NAAQS.*
- On October 16, 2012, EPA conditionally approved MassDEP's 1997 and 2006 PM_{2.5} NAAQS Certification of Infrastructure SIP pending MassDEP's submission, by September 2013, of: 1) additional documentation to fulfill specific requirements of section 110(a)(2)(A) related to revising Massachusetts regulation 310 CMR 7.00, Air Pollution Control, to include a definition of the term National Ambient Air Quality Standards (NAAQS) and 2) submission of the Massachusetts Conflict of Interest Law as part of the SIP. MassDEP is submitting the Conflict of Interest Law with this Infrastructure SIP Certification

for NO₂ and will submit revisions to 310 CMR 7.00, including the amended definition of NAAQS, as soon as the final revisions are promulgated.

- On December 3, 2012, MassDEP submitted a *Certification of State Implementation Plan Adequacy Regarding Clean Air Act Sections 110(a)(1) and (2) for Lead* related to the 2008 lead NAAQS along with a commitment to fulfill specific requirements of section 110(a)(2)(A) related to: 1) updating the Massachusetts Ambient Air Quality Standards, 310 CMR 6.00, and 2) submission of the Massachusetts Conflict of Interest Law as part of the SIP. EPA has made a finding that the submittal is complete except for the element relating to PSD, but as of May 2014 has not otherwise taken action on this submission.

Infrastructure SIP Elements

The Infrastructure SIP elements required under Section 110(a)(2) and the related Massachusetts statutes and regulations that are already part of the Massachusetts SIP for one or more NAAQS are listed in Table 1. This Infrastructure SIP Certification for the 2010 NO₂ NAAQS is based on the same statutory and legal authority and program elements documented in the Infrastructure SIP Certifications listed above submitted previously to EPA.

Copies of the following documents submitted as part of the December 2007 Ozone Infrastructure SIP Certification are incorporated by reference in this Infrastructure SIP Certification:

- *Section II, Legal Authority*, of the original 1972 Massachusetts SIP for ozone. This is a narrative description of MassDEP's legal authority to adopt rules and regulations to comply with the CAA.
- Legal opinions that address CAA requirements related to state legal authority to implement other federally mandated air pollution control programs; these include:
 - November 12, 1993 and August 2, 1995, Massachusetts Attorney General's legal opinions regarding Title V of the federal Clean Air Act and the Commonwealth's regulations at 310 CMR 7.00: Appendix C: Operating Permit and Compliance Program;
 - November 18, 1998 Massachusetts Attorney General's Supplemental Legal Opinion Regarding Section 129 of the Clean Air Act and the Commonwealth's Regulation at 310 CMR 7.08(2), the Municipal Waste Combustor Regulations;
 - July 9, 2007 MassDEP General Counsel's legal opinion regarding the Commonwealth's authority to adopt the Clean Air Mercury Rule State Plan and accompanying regulations, 310 CMR 7.29 and 310 CMR 7.02.

Concurrently with the submission of this Infrastructure SIP Certification, MassDEP submits for inclusion in its SIP the Massachusetts Conflict of Interest Law, M.G.L. c. 268A, as Amended by c. 93, Acts of 2011, in order to satisfy CAA Section 110(a)(2)(E)(ii), which references CAA section 128, concerning SIP requirements with respect to conflicts of interest.

MassDEP also submits with this 2014 Infrastructure SIP Certification copies of the following statutes and an executive order but is not requesting that they be included in the Massachusetts SIP:

- M.G.L. c. 111, s. 142 A-O. *Massachusetts Pollution Control Laws*, as amended in 2009 and 2010.
- M.G.L. c. 111, s. 2C. *Pollution violations; orders of department of environmental protection*.
- M.G.L. c. 21A, s. 16. *Civil Administrative Penalties*.
- Executive Order No. 145. *Consultation with Cities and Towns on Administrative Mandates* (1978)

Certification

Pursuant to Section 110(a)(1), MassDEP reviewed its existing SIP and the statutory authority and regulations referenced in Table 1, which are currently part of the Massachusetts SIP. MassDEP certifies and documents in this submittal that the existing Massachusetts SIP contains provisions addressing all requirements of the Section 110(a)(2) infrastructure elements as applicable to the 2010 NO₂ NAAQS and adequately provides for the implementation, maintenance and enforcement of that NAAQS.

Table 1
Massachusetts Statutory Authority and Regulations Meeting Clean Air Act
Section 110(a)(1) and (2) SIP requirements for 2010 Nitrogen Oxides NAAQS*

Clean Air Act (CAA) Section	SIP requirement (Each such plan shall...)	Corresponding Massachusetts Statutes and Regulations
110(a)(2)(A) Emission limits and other control measures	... “include enforceable emission limitations and other control measures, means, or techniques (including economic incentives such as fees, marketable permits, and auctions of emissions rights), as well as schedules and timetables for compliance...”	<p>M.G.L. c. 21A, s. 8. <i>Executive Office of Energy and Environmental Affairs Organization of departments; powers, duties and functions.</i> Creates and sets forth the powers and duties of the Executive Office and of the Department of Environmental Protection (MassDEP).**</p> <p>M.G.L. c. 111, s. 142 A-O. These statutes, collectively referred to as the <i>Massachusetts Pollution Control Laws</i>, provide MassDEP with broad authority to prevent pollution or contamination of the atmosphere and to prescribe and establish regulations to prevent pollution or undue contamination of the atmosphere.</p> <p>M.G.L. c. 21A, s. 18. <i>Permit applications and compliance assurance fees; timely action schedules; regulations.</i> Authorizes MassDEP to establish fees applicable to the regulatory programs it administers.</p> <p>MassDEP Regulations:</p> <p>310 CMR 4.00. <i>Timely Action Schedule and Fee Provisions</i></p> <p>310 CMR 6.00. <i>Ambient Air Quality Standards for the Commonwealth of Massachusetts.</i> The regulations at 310 CMR 6.04 set a state primary and secondary annual standard for NO₂ but has not been amended to include the</p>

*CFR refers to the U.S. Code of Federal Regulations; M.G.L. refers to Massachusetts General Laws; CMR refers to the Code of Massachusetts Regulations.

**MassDEP was formerly known as the Department of Environmental Quality Engineering or DEQE, and prior to that as the Bureau of Air Quality Control in the Massachusetts Department of Public Health.

Clean Air Act (CAA) Section	SIP requirement (Each such plan shall...)	Corresponding Massachusetts Statutes and Regulations
		<p>2010 1-hour NO₂ NAAQS. Regardless of the standards in 310 CMR 6.04, all MassDEP regulations that require compliance with an ambient air quality standard require compliance with the NAAQS.</p> <p>In comments submitted on proposed Certifications for the PM_{2.5} and lead NAAQS, EPA questioned whether the Massachusetts constitution prohibits "prospective" or "rolling" incorporation by reference (IBR) and if so, whether any references to the "national ambient air quality standards" in MassDEP's regulations cannot be any more up-to-date than the national regulation in question. To address this issue, in May 2013, MassDEP issued for public review proposed revisions to 310 CMR 7.00, Air Pollution Control, to include the following definition:</p> <p><i><u>National Ambient Air Quality Standards (NAAQS) or Federal Ambient Air Quality Standards</u> means the ambient air quality standards for the criteria pollutants² adopted by the Administrator³ pursuant to the Clean Air Act § 109 (42 U.S.C. §7410) and codified at 40 CFR Part 50 as in effect [date of promulgation].</i></p> <p>MassDEP intends to promulgate this revision to 310 CMR 7.00 as soon as possible and submit it to EPA for inclusion in the Massachusetts SIP.</p> <p>310 CMR 7.00 <i>et.seq. Air Pollution Control.</i> With a few exceptions for regulations that were not required to be included in the federally-enforceable SIPs, all of the regulations in this chapter were submitted to EPA in the 1971 PM /SO₂ SIP, the 1972 Ozone SIP, the 1984 Lead SIP and in multiple subsequent revisions to each of these SIPs. The SIPs and subsequent revisions have been approved by EPA in 40 CFR Part 52, Subpart W.</p>

² The term "criteria pollutants" is defined in 310 CMR 7.00.

³ The term "Administrator" is defined in 310 CMR 7.00.

Clean Air Act (CAA) Section	SIP requirement (Each such plan shall...)	Corresponding Massachusetts Statutes and Regulations
		<p>MassDEP previously submitted to EPA its air pollution control regulations related to minor new source review, RACT requirements, visible emissions and other administrative and technical amendments for approval and incorporation in the Massachusetts SIP. As MassDEP updated these regulations, it did not withdraw previous submittals when submitting subsequent amendments that superseded the previous regulations. On January 18, 2013, MassDEP submitted a letter to EPA withdrawing outdated and obsolete regulation submittals and replacing them with the currently effective version of the regulations for approval and inclusion into the current Massachusetts SIP, so that EPA could meet the requirements of the Consent Order in <i>Sierra Club v. Jackson</i>, NO. 11-2180-RBW (D.D.C.).</p> <p>The regulations more specific to new source review and the control of oxides of nitrogen are found in 310 CMR:</p> <ul style="list-style-type: none"> 7.01. Condition of Air Pollution 7.02. Plan Approval and Emission Limitations 7.03. Plan Approval Exemption: Construction Requirements 7.08. Emission Limits for Municipal Waste Combustors 7.19. Reasonably Available Control Technology (RACT) for Sources of Oxides of Nitrogen 7.26. Industry Performance Standards 7.29. Emission Standards for Power Plants 7.32. Massachusetts Clean Air Interstate Rule (MassCAIR) 7.16. Massachusetts Rideshare Regulation 7.30. Massport/Logan Airport Parking Freeze 7.33. City of Boston/South Boston Parking Freezes 7.36. Transit System Improvements 7.37. High Occupancy Vehicle Lanes 7.38. Metro Boston Tunnel Ventilation System Certification 7.40. Low Emission Vehicle Program 7.45. Massachusetts Green Fleet Programs

Clean Air Act (CAA) Section	SIP requirement (Each such plan shall...)	Corresponding Massachusetts Statutes and Regulations
		<p>Appendix A: Emissions Offsets & Non-Attainment Review Appendix B: Emission Banking, Trading, and Averaging Appendix C: Operating Permit and Compliance Program</p> <p>310 CMR 60.00 <i>Air Pollution Control for Mobile Sources including Motor Vehicle Inspection & Maintenance Program</i></p> <p>M.G.L. c. 21A, s. 18, MassDEP’s fee statute</p> <p>310 CMR 4.00 <i>Timely Action Schedule and Fee Provisions</i></p>
110(a)(2)(B) Ambient Air quality monitoring/ data system	<p>... “provide for establishment and operation of appropriate devices, methods, systems, and procedures necessary to (i) monitor, compile, and analyze data on ambient air quality, and (ii) upon request, make such data available to the Administrator.”</p>	<p>M.G.L. c. 111, s. 142B-D. Gives MassDEP the authority to maintain and operate air sampling stations and devices, and to require, for the purpose of conducting a continuing inventory of air pollution sources of emissions, any person to register with MassDEP and provide emissions information.</p> <p>MassDEP Regulations: 310 CMR 7.12. Source Registration. 310 CMR 7.13. Stack Testing. 310 CMR 7.14. Monitoring Devices and Reports. 310 CMR 7.00: Appendix A. Emissions Offsets and Nonattainment Review.</p> <p>MassDEP collects and reports ambient air quality data for NAAQS pollutants. These data are reviewed, validated and submitted to the EPA air quality system (AQS) no later than 90 days after the end of a calendar quarter. 310 CMR 7.00: Appendix C. Operating Permit and Compliance Program.</p> <p>In 1980, MassDEP submitted to EPA pursuant to 40 CFR 52.1120(c)(36), a comprehensive air quality monitoring plan to meet the requirements of 40 CFR part 58. MassDEP submits annually to EPA an Ambient Air Monitoring Network Plan. It submitted its most recent Air Monitoring Network Plan to</p>

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		<p>EPA in August 2013. http://www.mass.gov/eea/agencies/massdep/air/reports/annual-ambient-air-quality-monitoring-network-plan.html#4</p> <p>MassDEP operates eleven NO2 monitors in locations throughout the State, including a near-road monitor that began operating in 2013.</p>
110(a)(2)(C) Program for enforcement of control measures	<p>... “include a program to provide for the enforcement of the measures described in subparagraph (A), and regulation of the modification and construction of any stationary source within the areas covered by the plan as necessary to assure that national ambient air quality standards are achieved, including a permit program as required in parts C and D;”</p>	<p>M.G.L. c. 111, s. 2C. <i>Pollution violations; orders of department of environmental protection.</i> Authorizes MassDEP to issue orders enforcing air pollution control regulations. MassDEP submits a copy of this statutory section with this final Infrastructure SIP Certification.</p> <p>M.G.L. c. 111, s. 142A–O. <i>Massachusetts Pollution Control Laws.</i> Authorizes MassDEP to adopt regulations to control pollution or contamination of the atmosphere, and enforce such regulations and issue penalties.</p> <p>M.G.L. c. 21A, s. 16. <i>Civil Administrative Penalties.</i> Authorizes MassDEP to assess penalties for failure to comply with laws or regulations.</p> <p>MassDEP Regulations: 310 CMR 5.00. Administrative Penalties. 310 CMR 7.02. Plan Approval and Emission Limitations. 310 CMR 7.03. Plan Approval Exemption: Construction Requirements 310 CMR 7.08(2). Incinerators. 310 CMR 7.26. Industry Performance Standards 310 CMR 7.52. Enforcement Provisions. Neither M.G.L. c.21A, s.16. nor this regulation prevent MassDEP from enforcing any violation of an applicable standard or limit that occurs during startup, shutdown or malfunction at a facility. 310 CMR 7.00: Appendix A: Emissions Offsets and Nonattainment Review.</p>

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		<p>310 CMR 7.00: Appendix B: Emission Banking, Trading, and Averaging 310 CMR 7.00: Appendix C: Operating Permit and Compliance Program.</p> <p>Massachusetts does not have a PSD program regulation. For the 1997 ozone NAAQS, the 1997 and 2006 PM2.5 NAAQS, and the 2008 Lead NAAQS Certifications, EPA found that Massachusetts failed to submit a SIP addressing Section 110(a)(2)(C) (the Part C PSD permit program), but that this requirement has already been addressed in a Federal Implementation Plan (FIP) that remains in place and that the finding, therefore, did not trigger any additional FIP obligation.</p> <p>On April 4, 2011, MassDEP accepted full delegation of the Federal PSD program, 40 CFR 52.21, pursuant to the terms and conditions of a delegation agreement between MassDEP and EPA and the requirements of the Clean Air Act. As set forth in the delegation agreement, MassDEP will implement the PSD program in accordance with the federal regulations.</p> <p>The Federal PSD program includes the applicability threshold for greenhouse gases that was required under EPA’s Tailoring Rule and includes notification requirements to affected state and local agencies.</p> <p>EPA may establish a short-term PSD increment, significant impact level, significant emission rate, and/or significant monitoring level for the 2010 1-hour NO2 NAAQS. If that occurs, MassDEP will follow EPA’s requirements. In the interim, MassDEP will continue to apply the significant impact levels and other PSD requirements recommended in EPA’s June 29, 2010 “Guidance Concerning the Implementation of the 1-hour NO2 NAAQS for the Prevention of Significant Deterioration Program.”</p>
110(a)(2)(D) Interstate	... “contain adequate provisions - (i) prohibiting, consistent with the provisions	Massachusetts sources do not significantly contribute to non-attainment or maintenance areas in other states, as all surrounding areas are designated by

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transport	of this title, any source or other type of emissions activity within the State from emitting any air pollutant in amounts which will - (I) contribute significantly to nonattainment in, or interfere with maintenance by, any other State with respect to any such national primary or secondary ambient air quality standard, or (II) interfere with measures required to be included in the applicable implementation plan for any other State under part C to prevent significant deterioration of air quality or to protect visibility, (ii) insuring compliance with the applicable; requirements of sections 126 and 115 (relating to interstate and international pollution abatement);”	<p>EPA as “unclassifiable/attainment.” (www.epa.gov/airquality/nitrogenoxides/designations/state.html)</p> <p>No source or sources within Massachusetts are the subject of an active finding under section 126 of the Clean Air Act with respect to the 2010 NO₂ standard.</p> <p>There are no final findings under section 115 of the Clean Air Act against Massachusetts with respect to the 2010 NO₂ standard</p> <p>MassDEP is addressing visibility pursuant to its Regional Haze SIP, which was approved by EPA effective October 21, 2013.</p> <p>See discussion of PSD above under <i>CAA Section 110(a)(2)(C) Program for enforcement of control measures.</i></p>
110(a)(2)(E) Adequate resources	... “provide (i) necessary assurances that the State (or, except where the Administrator deems inappropriate, the general purpose local government or governments, or a regional agency designated by the State or general purpose local governments for such purpose) will have adequate personnel, funding, and authority under State (and, as appropriate, local) law to carry out such implementation plan (and is not prohibited by any provision of Federal or State law from carrying out such implementation plan or portion thereof), (ii) requirements	<p>M.G.L. c. 21A, s. 8. <i>Organization of departments; powers, duties and functions.</i> Sets forth the powers and duties of MassDEP.</p> <p>Provides that in no event shall MassDEP authorize implementation of any plan, strategy or technology less protective of the environment than required by any applicable federal statute.</p> <p>M.G.L. c. 111, s. 142A-O. Provides MassDEP with sufficient authority to carry out the implementation plan.</p> <p>M.G.L. c. 111, s. 142E. <i>Air Pollution, preventing and controlling.</i> Provides that all departments, agencies, commissions, authorities and political subdivisions shall be subject to rules and regulations adopted by the department of environmental protection.</p>

Clean Air Act (CAA) Section	SIP requirement (Each such plan shall...)	Corresponding Massachusetts Statutes and Regulations
	that the State comply with the requirements respecting State boards under section 128, and (iii) necessary assurances that, where the State has relied on a local or regional government, agency, or instrumentality for the implementation of any plan provision, the State has responsibility for ensuring adequate implementation of such plan provision;”	<p>The first Massachusetts SIP submitted in 1971 addressed NAAQS for oxides of sulfur and particulate matter provided assurances of adequate personnel and funding to carry out implementation of that SIP. The commitments to funding and personnel have been updated in subsequent SIP submissions related to PM and ozone and in the 1984 Massachusetts Lead SIP. MassDEP currently has adequate personnel and funding to implement the existing SIP. It expects to have adequate personnel and funding for implementation during the 5-year period following submission of this Infrastructure SIP Certification and in future years.</p> <p>MassDEP is the sole authority implementing the SIP and does not rely on local or regional governments or agencies to carry out this responsibility. No State board or body approves air permits or enforcement orders. Heads of Executive Agencies with authority to approve air permits or enforcement orders are prohibited from involvement in matters in which their private interests conflict or appear to conflict with their public duties or responsibilities under M.G.L. c. 268A, The Conflict of Interest Law As Amended by c.93, Acts of 2011. MassDEP submitted a copy of this statute to EPA with the Infrastructure SIP Certification for inclusion in the Massachusetts SIP.</p>
110(a)(2)(F) Stationary source emissions monitoring and reporting	... “require, as may be prescribed by the Administrator - (i) the installation, maintenance, and replacement of equipment, and the implementation of other necessary steps, by owners or operators of stationary sources to monitor emissions from such sources, (ii) periodic reports on the nature and amounts of emissions and emissions-related data from	M.G.L. c. 111, s. 142A-D. Gives MassDEP the authority to maintain and operate air sampling stations and devices and to require, for the purpose of conducting a continuing inventory of air pollution sources of emissions, any person to register with MassDEP and provide emissions information. M.G.L. c. 111, § 142B states: “ Notwithstanding the provisions of any law to the contrary, any information, record, or particular part thereof, other than emission data submitted to the department pursuant to this section, shall, upon request, be kept confidential and not considered to be a public record...”

Clean Air Act (CAA) Section	SIP requirement (Each such plan shall...)	Corresponding Massachusetts Statutes and Regulations
	such sources, and (iii) correlation of such reports by the State agency with any emission limitations or standards established pursuant to this Act, which reports shall be available at reasonable times for public inspection;”	<p>MassDEP Regulations: 310 CMR 7.12. Source Registration. 310 CMR 7.13. Stack Testing. 310 CMR 7.14. Monitoring Devices and Reports.</p> <p>M.G.L. c. 66, s. 1. <i>Public inspection and copies of records; presumption; exceptions.</i></p> <p>310 CMR 3.00. <i>Access to and Confidentiality of Department Records and Files.</i> Assures public access to MassDEP’s reports to the extent allowed by statute.</p>
110(a)(2)(G) Emergency power	... “provide for authority comparable to that in section 303 and adequate contingency plans to implement such authority;”	<p>M.G.L. c. 111, s. 2B-C. <i>Air Pollution Emergencies.</i> Authorizes the Commissioner of MassDEP to determine that a condition or impending condition of the atmosphere in the Commonwealth constitutes a present or reasonably imminent danger to health, and to declare an air pollution emergency and cause the fact to be made known to the public.</p> <p>MassDEP Regulations: 310 CMR 8.00. <i>Prevention & Abatement of Air Pollution Episodes and Air Pollution Incident Emergencies.</i> Prevents ambient air concentrations of pollutants subject to a NAAQS from reaching levels that would constitute significant harm to public health, consistent with the significant harm levels and procedures for state emergency episode plans established by EPA in 40 CFR Part 51.150.</p> <p>310 CMR 8.00. <i>Prevention & Abatement of Air Pollution Episodes & Emergencies.</i> Procedures are consistent with the significant harm levels as indicated in 40 CFR Part 51.151.</p>

110(a)(2)(H) Future SIP revisions	<p>... “provide for revision of such plan - (i) from time to time as may be necessary to take account of revisions of such national primary or secondary ambient air quality standard or the availability of improved or more expeditious methods of attaining such standard, and (ii) except as provided in paragraph (3)(C), whenever the Administrator finds on the basis of information available to the Administrator that the plan is substantially inadequate to attain the national ambient air quality standard which it implements or to otherwise comply with any additional requirements established under this Act;”</p>	<p>M.G.L. c. 111, s. 142A-N. These statutes allow MassDEP to amend its air pollution control regulations from time to time. The specific sections cited below demonstrate that MassDEP has authority to amend the Massachusetts SIP as needed.</p> <p><u>Section 142A:</u> “The department of environmental protection, referred to in this section and in sections one hundred and forty-two B through one hundred and forty-two M, inclusive, as the department may from time to time adopt regulations, pursuant to this section and sections one hundred and forty-two B through one hundred and forty-two M, inclusive, to prevent pollution or contamination of the atmosphere.”</p> <p><u>Section 142D:</u> “From time to time the department shall review the ambient air quality standards and plan for implementation, maintenance and attainment of such standards adopted pursuant to this section and, after public hearings, shall amend such standards and implementation plan so as to minimize the economic cost of such standards and plan for implementation, provided, however, that such standards shall not be less than the minimum federal standards.”</p>
110(a)(2)(I) Nonattainment area plans	<p>...” in the case of a plan or plan revision for an area designated as a nonattainment area, meet the applicable requirements of part D of this subchapter (relating to non attainment areas).”</p>	<p>In February 2012, EPA designated Massachusetts as unclassifiable/attainment for the 2010 NO₂ NAAQS. Therefore, CAA section 110(a)(2)(I) does not apply to Massachusetts.</p>
110(a)(2)(J) Consultation with government officials	<p>... “meet the applicable requirements of section 121 (relating to consultation)</p>	<p>M.G.L. c. 21A, s. 8. <i>Organization of departments; powers, duties and functions.</i></p> <p>M.G.L. c. 111, s. 142E. <i>Air Pollution, preventing and controlling.</i> Provides that all departments, agencies, commissions, authorities and political subdivisions shall be subject to rules and regulations adopted by MassDEP.</p>

		<p>M.G.L. c. 30A. <i>Massachusetts Administrative Procedures Act.</i> Requires MassDEP to provide notice and public comment and hearing prior to adoption of regulations.</p> <p>Executive Order No. 145, adopted in 1978, requires MassDEP to provide notice to the Local Government Advisory Committee to solicit input on the impact of proposed regulations on local government. MassDEP submitted a copy of Executive Order No. 145 with the Infrastructure SIP Certification.</p> <p>Massachusetts SIP Steering Committee, established pursuant to the Clean Air Amendments of 1990, provides for consultation with government officials and other stakeholders interested in air quality issues.</p> <p>The 1972 Massachusetts Plan for the Implementation, Maintenance, and Enforcement of National Primary and Secondary Ambient Air Quality Standards (the 1972 SIP), documents the requirements for MassDEP to consult with other government officials. Section VII of the 1972 SIP, entitled <i>“Intergovernmental and Inter-Agency Cooperation”</i> provides that Massachusetts will cooperate with adjoining and other states to address interstate air quality control, citing NESCAUM (the New England Staff for Coordinating Air Use Management)⁴ as an example of interstate cooperation. Since the submission of the 1972 SIP, MassDEP has maintained active membership in NESCAUM, a forum for consultation with air program officials of other northeast states. Interstate consultation became a federal statutory requirement through the creation of the Ozone Transport Region (OTR) pursuant to the 1990 Clean Air Act Amendments. Massachusetts is within the OTR and actively participates in the Ozone Transport Commission, which coordinates interstate air quality planning among the OTR states.</p> <p>Section VII (c) of the 1972 SIP also discusses the existence of six air quality</p>
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⁴ NESCAUM is now the Northeast States for Coordinated Air Use Management and includes the states of New York and New Jersey.

		<p>control regions within Massachusetts, and the role of the Bureau of Air Quality Control (at that time within the Department of Public Health) in administering, overseeing and coordinating inter-district cooperation. The role of municipally operated air pollution control programs within the six air quality control regions in implementing the air program is discussed in detail in Section VII, <i>Resources</i>.</p> <p>Section VII (d) of the 1972 SIP lists the state statutes that require the cooperation and/or assistance in the control of air pollution by other state agencies.</p> <p>Section II of the 1972 SIP, “<i>Legal Authority</i>” lists the statutes that provide MassDEP with the legal authority to carry out the plan. The statutes cited also provide that cities or towns may apply to MassDEP to form air pollution control districts. The powers, duties, and rights of MassDEP in the exercise of air pollution control in such districts are addressed in M.G.L. c. 21A, s. 8. And M.G.L. c. 111, s. 142E cited above.</p> <p>On September 1, 1977, MassDEP submitted to EPA a Memorandum of Understanding signed by the Massachusetts air and transportation agencies related to Section 109(a)(2)(J) requirements concerning the integration of air quality considerations into the transportation planning and development process. That MOU remains in effect.</p> <p>Executive Order No. 145, adopted in 1978, requires state agencies, including MassDEP, to provide notice to the Local Government Advisory Committee soliciting input on the impact of proposed regulations on local government. MassDEP submitted a copy of Executive Order No. 145 with the Infrastructure SIP Certification.</p> <p>MassDEP has the responsibility for overall coordination of SIP planning and is the lead compliance and enforcement agency related to all matters incorporated into SIPs. These responsibilities were outlined in a July 9, 1993</p>
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		<p>letter from Governor William F. Weld to EPA Region 1. The letter designates MassDEP as the lead agency for stationary and area sources and the lead for programs related to motor vehicle fuels, vehicle inspection and maintenance, and ridesharing. The letter designates the Executive Office of Transportation and Construction (EOTC)⁵ as the lead agency in SIP planning for all transportation initiatives in consultation with Metropolitan Planning Organizations, which include representation of locally-elected officials through membership on transit authority advisory boards and regional planning commissions. The letter states that MassDEP must approve all actions incorporated into the SIP. For enforcement of transportation initiatives, MassDEP may rely on other state and local agencies including the State Police, the Registry of Motor Vehicles, the Massachusetts Highway Department, and local law enforcement and public health officials.</p> <p>Massachusetts does not have a SIP-approved state transportation conformity rule. However, consistent with section 176 of the CAA and 40 CFR 93 relative to conformity determinations, including provisions for consultation as required by section 176(c)(4) and 40 CFR 93.105, MassDEP and the Massachusetts Department of Transportation consult with local, regional, and federal agencies to ensure that transportation plans, programs, projects, and federal actions are consistent with the SIP.</p>
110(a)(2)(J) Public notification	... “meet the applicable requirements of section 127 to notify the public during any calendar [year] on a regular basis of instances or areas in which any national primary ambient air quality standard is exceeded or was exceeded during any portion of the preceding calendar year ... and to enhance public awareness of the measures which can be taken to prevent	<p>MassDEP provides a daily air quality forecast to inform the public about concentrations of fine particulate matter and ozone (during the ozone season) in the ambient air. It provides real-time air quality data for NAAQS pollutants that is accessible to the public on MassDEP’s website. It also participates in EPA’s AIRNOW program which notifies the public of air quality through EPA’s website, alerts and press releases.</p>

⁵ The EOTC is now the Massachusetts Department of Transportation.

	such standards from being exceeded.”	
110(a)(2)(J) PSD and visibility Protection	... “meet the applicable requirements of part C (relating to prevention of significant deterioration of air quality and visibility protection);”	<p>See discussion of PSD and visibility above under <i>CAA Section 110(a)(2)(C) Program for enforcement of control measures.</i></p> <p>With respect to visibility, this element does not need to be addressed pursuant to EPA’s I-SIP guidance, which states that there are no new visibility protection requirements as a result of a revised NAAQS.</p>
110(a)(2)(K) Air quality modeling/data	... “provide for - (i) the performance of such air quality modeling as the Administrator may prescribe for the purpose of predicting the effect on ambient air quality of any emissions of any air pollutant for which the Administrator has established a national ambient air quality standard, and (ii) the submission, upon request, of data related to such air quality modeling to the Administrator;”	<p>M.G.L. c. 111, s. 142B-D. These statutes give MassDEP the authority to maintain and operate air sampling stations and devices and to require any person to register with MassDEP and provide emissions information.</p> <p>MassDEP Regulations: 310 CMR 7.02. Plan Approval and Emission Limitations; 7.02(7) Mitigation of air pollution allows MassDEP to require modeling analyses. 310 CMR 7.12. Source Registration. Required of facilities that have the potential to emit pollutants at prescribed thresholds, 310 CMR 7.13. Stack Testing. 310 CMR 7.14. Monitoring Devices and Reports. 310 CMR 7.00: Appendix A - Emissions Offsets and Nonattainment Review requires the submittal of air quality modeling to demonstrate the impacts of new and modified major sources.</p> <p>M.G.L. c. 66: s. 1. Public inspection and copies of records; presumption; exceptions.</p> <p>310 CMR 3.00. <i>Access to and Confidentiality of Department Records and Files.</i> Assures public access to MassDEP’s reports to the extent allowed by statute.</p>
110(a)(2)(L) Permitting fees	... “require the owner or operator of each major stationary source to pay to the permitting authority, as a condition of any	M.G.L. c. 21A, s. 18. This statute authorizes MassDEP to promulgate regulations establishing fees.

	<p>permit required under this Act, a fee sufficient to cover - (i) the reasonable costs of reviewing and acting upon any application for such a permit, and (ii) if the owner or operator receives a permit for such source, the reasonable costs of implementing and enforcing the terms and conditions of any such permit (not including any court costs or other costs associated with any enforcement action), until such fee requirement is superseded with respect to such sources by the Administrator's approval of a fee program under title V;”</p>	<p>310 CMR 4.00. <i>Timely Action Schedule and Fee Provisions.</i> These regulations set permit and compliance fees, including fees for Operating Permits (CAA Title V).</p>
<p>110(a)(2)(M) Consultation/ Participation by affected local entities</p>	<p>... “provide for consultation and participation by local political subdivisions affected by the plan.”</p>	<p>M.G.L. c. 30A. <i>Massachusetts Administrative Procedures Act</i> requires MassDEP to provide notice and public comment and hearing prior to adoption of any regulations.</p> <p>Executive Order No. 145 requires MassDEP to provide notice to the Local Government Advisory Committee to solicit input on the impact of the plan and proposed regulations on local government. MassDEP submitted a copy of Executive Order No. 145 with the Infrastructure SIP Certification.</p> <p>As noted in the discussion under (110)(a)(2)(J) - Consultation with Government Officials, the 1972 SIP includes provisions that relate to consultation with local political subdivisions. Section VII (c) of the 1972 SIP discusses six air quality control regions within Massachusetts, and the role of the Bureau of Air Quality Control (at that time within the Department of Public Health) in administering, overseeing and coordinating inter-district cooperation. The role of municipally operated air pollution control programs within the six air quality control regions in implementing the air program is</p>

		<p>discussed in detail in Section VII, <i>Resources</i>.</p> <p>Section VII (d) of the 1972 SIP lists the state statutes that require the cooperation and/or assistance in the control of air pollution by other state agencies.</p> <p>Section II of the 1972 SIP, “<i>Legal Authority</i>” lists the statutes that provide MassDEP with the legal authority to carry out the plan. The statutes cited also provide that cities or towns may apply to MassDEP to form air pollution control districts. The powers, duties, and rights of MassDEP in the exercise of air pollution control in such districts are spelled out in the statutes referenced in the I-SIP.</p> <p>MassDEP consults with local political subdivisions through the SIP Steering Committee, which was created pursuant to the 1990 Clean Air Amendments. The following constituencies are represented on the Massachusetts SIP Steering Committee: local and regional governmental entities, business and industry, and environmental groups and academia. The Committee provides a forum for consultation and participation by affected local entities in the development of SIPs and air quality regulations.</p> <p>Additionally, as a matter of policy when adopting air regulations, MassDEP conducts stakeholder outreach, including meetings to elicit stakeholder feedback before proposing regulations for formal public review and comment. Local entities affected by regulations or SIP revisions are provided opportunities to consult with MassDEP through the stakeholder outreach process.</p> <p>M.G.L. c. 30A, Administrative Procedures, provides that MassDEP must provide public notice in accordance with Chapter 30A prior to the adoption, amendment, or repeal of any regulation. Leaders of political subdivisions have the opportunity to review such notices and to participate in the public process required by Chapter 30A. MassDEP also must comply with EPA</p>
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		requirements related to public notice of SIP revisions, which puts local political subdivisions on notice of changes that may affect them.
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