



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R08-OAR-2016-0521; FRL-9955-31-Region 8]

Approval and Disapproval and Promulgation of Air Quality Implementation Plans; Interstate Transport for Wyoming

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing action on the portions of six submissions from the State of Wyoming that are intended to demonstrate that the State Implementation Plan (SIP) meets certain interstate transport requirements of the Clean Air Act (Act or CAA). These submissions address the 2006 and 2012 fine particulate matter (PM_{2.5}) National Ambient Air Quality Standards (NAAQS), 2008 ozone NAAQS, 2008 lead (Pb) NAAQS, 2010 sulfur dioxide (SO₂) NAAQS and 2010 nitrogen dioxide (NO₂) NAAQS. The interstate transport requirements under the CAA consist of four elements: significant contribution to nonattainment (prong 1) and interference with maintenance (prong 2) of the NAAQS in other states; and interference with measures required to be included in the plan for other states to prevent significant deterioration of air quality (prong 3) or to protect visibility (prong 4). Specifically, the EPA is proposing to approve interstate transport prongs 1 and 2 for the 2008 Pb and 2010 NO₂ NAAQS, and proposing to approve prong 1 and disapprove prong 2 for the 2008 ozone NAAQS. The EPA is also proposing to approve interstate transport prong 4 for the 2008 Pb and 2010 SO₂ NAAQS, and proposing to disapprove prong 4 for the 2006 PM_{2.5},

2008 ozone, 2010 NO₂ and 2012 PM_{2.5} NAAQS.

DATES: Comments must be received on or before **[Insert date 30 days after publication in the Federal Register]**.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R08-OAR-2016-0521 at <http://www.regulations.gov>. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from www.regulations.gov. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (i.e., on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <http://www2.epa.gov/dockets/commenting-epa-dockets>.

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SUPPLEMENTARY INFORMATION:

I. General Information

What should I consider as I prepare my comments for EPA?

1. Submitting Confidential Business Information (CBI). Do not submit CBI to EPA through

<http://www.regulations.gov> or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information on a disk or CD ROM that you mail to the EPA, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. Tips for preparing your comments. When submitting comments, remember to:

- Identify the rulemaking by docket number and other identifying information (subject heading, Federal Register volume, date, and page number);
- Follow directions and organize your comments;
- Explain why you agree or disagree;
- Suggest alternatives and substitute language for your requested changes;
- Describe any assumptions and provide any technical information and/or data that you used;
- If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced;
- Provide specific examples to illustrate your concerns, and suggest alternatives;
- Explain your views as clearly as possible, avoiding the use of profanity or personal threats; and
- Make sure to submit your comments by the comment period deadline identified.

II. Background

On September 21, 2006, the EPA revised the primary 24-hour NAAQS for PM_{2.5} to 35 micrograms per cubic meter ($\mu\text{g}/\text{m}^3$). 71 FR 61144 (Oct. 17, 2006). On March 12, 2008, the EPA revised the levels of the primary and secondary 8-hour ozone standards to 0.075 parts per million (ppm). 73 FR 16436 (Mar. 27, 2008). On October 15, 2008, the EPA revised the level of the primary and secondary Pb NAAQS to 0.15 $\mu\text{g}/\text{m}^3$. 73 FR 66964 (Nov. 12, 2008). On January 22, 2010, the EPA promulgated a new 1-hour primary NAAQS for NO₂ at a level of 100 parts per billion (ppb) while retaining the annual standard of 53 ppb. 75 FR 6474 (Feb. 9, 2010). The secondary NO₂ NAAQS remains unchanged at 53 ppb. On June 2, 2010, the EPA promulgated a revised primary 1-hour SO₂ standard at 75 ppb. 75 FR 35520 (June 22, 2010). Finally, on December 14, 2012, the EPA promulgated a revised annual PM_{2.5} standard by lowering the level to 12.0 $\mu\text{g}/\text{m}^3$ and retaining the 24-hour PM_{2.5} standard at a level of 35 $\mu\text{g}/\text{m}^3$. 78 FR 3086 (Jan. 15, 2013).

Pursuant to section 110(a)(1) of the CAA, states are required to submit SIPs meeting the applicable requirements of section 110(a)(2) within three years after promulgation of a new or revised NAAQS or within such shorter period as the EPA may prescribe. Section 110(a)(2) requires states to address structural SIP elements such as requirements for monitoring, basic program requirements, and legal authority that are designed to provide for implementation, maintenance and enforcement of the NAAQS. The SIP submission required by these provisions is referred to as the “infrastructure” SIP. Section 110(a) imposes the obligation upon states to make a SIP submission to the EPA for a new or revised NAAQS, but the contents of individual state submissions may vary depending upon the facts and circumstances.

CAA Section 110(a)(2)(D)(i)(I) requires SIPs to include provisions prohibiting any

source or other type of emissions activity in one state from emitting any air pollutant in amounts that will contribute significantly to nonattainment, or interfere with maintenance, of the NAAQS in another state. The two provisions of this section are referred to as prong 1 (significant contribution to nonattainment) and prong 2 (interfere with maintenance). Section 110(a)(2)(D)(i)(II) requires SIPs to contain adequate provisions to prohibit emissions that will 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 (prong 3) or to protect visibility (prong 4).

The Wyoming Department of Environmental Quality (Department or WDEQ) submitted the following: a certification of Wyoming's infrastructure SIP for the 2006 PM_{2.5} NAAQS on August 19, 2011; a certification of Wyoming's infrastructure SIP for the 2008 Pb SIP on October 12, 2011; a certification of Wyoming's infrastructure SIP for the 2008 ozone NAAQS on February 6, 2014; a certification of Wyoming's infrastructure SIP for the 2010 NO₂ NAAQS on January 24, 2014; a certification of Wyoming's infrastructure SIP for the 2010 SO₂ NAAQS on March 6, 2015; and a certification of Wyoming's infrastructure SIP for the 2012 PM_{2.5} on June 24, 2016.

Each of these infrastructure certifications addressed all of the infrastructure elements including section 110(a)(2)(D)(i)(I), referred to as infrastructure element (D).¹ In this action, we are only addressing element (D) prongs 1, 2 and 4 for the 2008 Pb certification, 2008 ozone certification and 2010 NO₂ certification, and prong 4 from the 2010 SO₂ and 2006 and 2012

¹ For discussion of other infrastructure elements, see EPA's "Guidance on Infrastructure State Implementation Plan (SIP) Elements under Clean Air Act Sections 110(a)(1) and (2)," September 13, 2013.

PM_{2.5} certifications. All other infrastructure elements from these certifications, including element (D) prong 3 (prevent significant deterioration of air quality), have been or will be addressed in separate actions.

III. Evaluation of Significant Contribution to Nonattainment and Interference with Maintenance of the NAAQS

2008 Ozone NAAQS

In its February 6, 2014 infrastructure submittal for the 2008 ozone NAAQS, WDEQ addressed 110(a)(2)(D)(i)(I) prongs 1 and 2 by presenting ambient monitoring and wind rose data, among other information,² to determine that emissions from Wyoming do not significantly contribute to nonattainment or interfere with maintenance of the 2008 ozone NAAQS in any other state. WDEQ focused its analysis on nearby designated nonattainment areas, and in particular, on a nonattainment area in and around Denver, Colorado.³ Specifically, WDEQ pointed to the attaining ozone data at a Cheyenne, Wyoming monitor, which is the monitor in Wyoming that is geographically located closest to the Denver, Colorado 2008 ozone nonattainment area. WDEQ also provided wind rose data in Cheyenne, Wyoming, which showed that prevailing winds in Cheyenne came from the west and northwest, which WDEQ asserts indicates the transport of air pollutants is away from the Denver nonattainment area, which is located 30 miles south of the southeastern Wyoming border. WDEQ concludes that the combination of low ozone monitor values in Cheyenne, Wyoming, and prevailing winds

² The State also provided census data and geographic information to support their assertion regarding prongs 1 and 2 in the February 6, 2014 submittal.

³ The Denver area, including 7 full counties and 2 partial counties, was designated as a marginal nonattainment area in a final action dated May 21, 2012. See 77 FR 30110.

provided evidence that emissions from Wyoming do not significantly influence air quality in the Denver ozone nonattainment area. WDEQ also noted that downwind states Kansas, Nebraska, North Dakota and South Dakota did not contain nonattainment areas to which Wyoming could significantly contribute. Accordingly, WDEQ concludes that emissions from Wyoming do not contribute to nonattainment or interfere with maintenance for the 2008 ozone NAAQS in any other state.

WDEQ's approach to evaluating its compliance with the CAA section 110(a)(2)(D)(i)(I) as to the 2008 ozone NAAQS is incomplete for two reasons. First, transported emissions may cause an area to measure exceedances of the standard even if that area is not formally designated nonattainment by the EPA. While WDEQ considered its potential impact to the Denver nonattainment area based on general wind patterns, the State did not provide analysis showing that it did not contribute to ozone levels in the Denver nonattainment area on the particular days with measured exceedances. Moreover, while the State considered whether there were designated nonattainment areas in four of several nearby states, WDEQ did not evaluate whether it contributed to ozone levels elsewhere in Colorado or in other nearby states (e.g., in Utah) on the days with measured exceedances, whether or not those exceedances occurred in designated nonattainment areas. The EPA has routinely interpreted the obligation to prohibit emissions that "significantly contribute to nonattainment" of the NAAQS in downwind states to be independent of formal designations because exceedances can happen in any area.⁴ Thus, WDEQ did not fully

⁴ See, e.g., Clean Air Interstate Rule, 70 FR 25162, 25265 (May 12, 2005) ("As to impacts, CAA section 110(a)(2)(D) refers only to prevention of 'nonattainment' in other States, not to prevention of nonattainment in designated nonattainment areas or any similar formulation requiring that designations for downwind nonattainment

evaluate whether emissions from the State significantly contribute to nonattainment in other states as required by prong 1 of element (D).

Second, WDEQ's submission does not provide any technical analysis demonstrating that the SIP contains adequate provisions prohibiting emissions that will interfere with maintenance of the 2008 ozone NAAQS in any other state (prong 2). In remanding the Clean Air Interstate Rule (CAIR) to the EPA in *North Carolina v. EPA*, the D.C. Circuit explained that the regulating authority must give the "interfere with maintenance" clause of section 110(a)(2)(D)(i)(I) "independent significance" by evaluating the impact of upwind state emissions on downwind areas that, while currently in attainment, are at risk of future nonattainment, considering historic variability.⁵ Wyoming does not give the "interfere with maintenance" clause of section 110(a)(2)(D)(i)(I) independent significance because its analysis did not evaluate the potential impact of Wyoming emissions on areas that are currently measuring clean data, but that may have issues maintaining that air quality.

The EPA developed technical information and a related analysis to assist states with meeting section 110(a)(2)(D)(i)(I) requirements for the 2008 ozone NAAQS, and used this technical analysis to support the recently finalized Cross-State Air Pollution Rule Update for the

areas must first have occurred."); Cross-State Air Pollution Rule, 76 FR 48208, 48211 (Aug. 8, 2011) (evaluating nonattainment and maintenance concerns based on modeled projections); Brief for Respondents U.S. Environmental Protection Agency at 23-24, *EME Homer City Generation, L.P. v. EPA*, Case No. 11-1302 (D.C. Cir. Jan. 16, 2015), ECF No. 1532516 (defending the EPA's identification of air quality problems in CSAPR independent of area designations). Cf. Final Response to Petition from New Jersey Regarding SO₂ Emissions From the Portland Generating Station, 76 FR 69052 (Nov. 7, 2011) (finding facility in violation of the prohibitions of CAA section 110(a)(2)(D)(i)(I) with respect to the 2010 SO₂ NAAQS prior to issuance of designations for that standard).⁵ 531 F.3d 896, 910-11 (D.C. Cir. 2008) (holding that the EPA must give "independent significance" to each prong of CAA section 110(a)(2)(D)(i)(I)).

2008 Ozone NAAQS (“CSAPR Update”).⁶ As explained below, this analysis supports the conclusions of WDEQ’s analysis for prong 1 and contradicts the conclusions of WDEQ’s analysis regarding prong 2.

In the technical analysis supporting the CSAPR Update, the EPA used detailed air quality analyses to determine where projected nonattainment or maintenance areas would be and whether emissions from an eastern state contribute to downwind air quality problems at those projected nonattainment or maintenance receptors.⁷ Specifically, the EPA determined whether a state’s contributing emissions were at or above a specific threshold (i.e., one percent of the ozone NAAQS). If a state’s contribution did not exceed the one percent threshold, the state was not considered “linked” to identified downwind nonattainment and maintenance receptors and was therefore not considered to significantly contribute to nonattainment or interfere with maintenance of the standard in those downwind areas. If a state’s contribution was equal to or exceeded the one percent threshold, that state was considered “linked” to the downwind nonattainment or maintenance receptor(s) and the state’s emissions were further evaluated, taking into account both air quality and cost considerations, to determine what, if any, emissions reductions might be necessary to address the state’s obligation pursuant to CAA section 110(a)(2)(D)(i)(I).

As discussed in the CSAPR Update, the air quality modeling contained in the EPA’s technical analysis (1) identified locations in the U.S. where the EPA anticipates nonattainment or

⁶ 81 FR 74504 (Oct. 26, 2016).

⁷ For purposes of the CSAPR Update, “eastern” states refer to all contiguous states east of the Rocky Mountains, specifically not including: Montana, Wyoming, Colorado and New Mexico.

maintenance issues in 2017 for the 2008 ozone NAAQS (these are identified as nonattainment and maintenance receptors), and (2) quantified the projected contributions from emissions from upwind states to downwind ozone concentrations at the receptors in 2017. *See* CSAPR Update at 81 FR 74526. This modeling used the Comprehensive Air Quality Model with Extensions (CAMx version 6.11) to model the 2011 base year, and the 2017 future base case emissions scenarios to identify projected nonattainment and maintenance sites with respect to the 2008 8-hour ozone NAAQS in 2017. The EPA used nationwide state-level ozone source apportionment modeling (the CAMx Ozone Source Apportionment Technology/Anthropogenic Precursor Culpability Analysis technique) to quantify the contribution of 2017 base case nitrogen oxides (NO_x) and volatile organic compounds (VOC) emissions from all sources in each state to the 2017 projected receptors. The air quality model runs were performed for a modeling domain that covers the 48 contiguous states in the U.S. and adjacent portions of Canada and Mexico. *Id.* at 81 FR 74526 through 74527. The updated modeling data released to support the final CSAPR Update are the most up-to-date information the EPA has developed to inform our analysis of upwind state linkages to downwind air quality problems for the 2008 ozone NAAQS. *See* “Air Quality Modeling Final Rule Technical Support Document for the Final CSAPR Update” in the docket for this action for more details regarding the EPA’s modeling analysis.

Consistent with the framework established in the original CSAPR rulemaking, the EPA’s technical analysis in support of the CSAPR Update applied a threshold of one percent of the 2008 ozone NAAQS of 75 ppb (0.75 ppb) to identify linkages between upwind states and the downwind nonattainment and maintenance receptors. *See* CSAPR Update at 81 FR 74518 through 74519. The EPA considered eastern states whose contributions to a specific receptor

meet or exceed the threshold “linked” to that receptor and we analyzed these states further to determine if emissions reductions might be required from each state to address the downwind air quality problem. The EPA determined that one percent was an appropriate threshold to use in that analysis because there were important, even if relatively small, contributions to identified nonattainment and maintenance receptors from multiple upwind states. In response to commenters who advocated a higher or lower threshold than one percent, the EPA compiled the contribution modeling results for the CSAPR Update to analyze the impact of different possible thresholds for the eastern United States. The EPA’s analysis showed that the one percent threshold captures a high percentage of the total pollution transport affecting downwind states. The EPA’s analysis further showed that the application of a lower threshold would result in relatively modest increases in the overall percentage of ozone transport pollution captured, while the use of higher thresholds would result in a relatively large reduction in the overall percentage of ozone pollution transport captured relative to the levels captured at one percent at the majority of the receptors. *Id.*; *See also* Air Quality Modeling Final Rule Technical Support Document for the Final CSAPR Update, Appendix F, Analysis of Contribution Thresholds. This approach is consistent with the use of a one percent threshold to identify those states “linked” to air quality problems with respect to the 1997 ozone NAAQS in the original CSAPR rulemaking, wherein the EPA noted that there are adverse health impacts associated with ambient ozone even at low levels. 76 FR 48208, 48236 through 48237 (August 8, 2011).

As to western states, the EPA noted in the CSAPR Update that there may be geographically specific factors to consider in evaluating interstate transport, and given the near-term 2017 implementation timeframe, the EPA focused the final CSAPR Update on eastern

states. *See* CSAPR Update at 81 FR 74523. Consistent with our statements in the CSAPR Update, the EPA intends to address western states, like Wyoming, on a case-by-case basis.

The EPA's air quality modeling as updated for the final CSAPR Update projects that for the Western U.S. (outside of California), there are no nonattainment receptors and only three maintenance receptors located in the Denver, Colorado area. Wyoming emissions are projected to contribute above one percent of the NAAQS at one of these receptors (the "Douglas County maintenance receptor"; see Table 1, below). The modeling also shows that multiple upwind states would collectively contribute to the projected Douglas County maintenance receptor in Colorado. The EPA found that the contribution to ozone concentrations from all states upwind of the Douglas County maintenance receptor in Colorado is about 9.7 percent.⁸ Thus, the collective contribution of emissions from upwind states represents a large portion of the ozone concentrations at the projected Douglas County maintenance receptor in Colorado.

As noted, the Agency has historically found that the one percent threshold is appropriate for identifying interstate transport linkages for states collectively contributing to downwind ozone nonattainment or maintenance problems because that threshold captures a high percentage of the total pollution transport affecting downwind receptors. The EPA believes contribution from an individual state equal to or above one percent of the NAAQS could be considered significant where the collective contribution of emissions from one or more upwind states is responsible for a considerable portion of the downwind air quality problem regardless of where the receptor is geographically located. In this case, three states contributing to the Douglas

⁸ Please see the spreadsheet titled "Final CSAPR Update – Ozone Design Values & Contributions," in the docket for this action.

County maintenance receptor, including Wyoming, contribute emissions greater than or equal to one percent of the 2008 ozone NAAQS. Given these data, the EPA is proposing to find that the one percent threshold is also appropriate to determine the linkage from Wyoming to the Douglas County maintenance receptor in Colorado with respect to the 2008 ozone NAAQS.

The EPA is not necessarily determining that one percent of the NAAQS is always an appropriate threshold for identifying interstate transport linkages for all states in the West. For example, the EPA recently evaluated the impact of emissions from Arizona on two projected nonattainment receptors identified in California and concluded that even though Arizona's modeled contribution was greater than one percent of the 2008 ozone NAAQS, Arizona did not significantly contribute to nonattainment or interfere with maintenance at those receptors. *See* Proposed Rule, 81 FR 15202 (March 22, 2016); Final Rule, 81 FR 31513 (May 19, 2016). The EPA evaluated the nature of the ozone nonattainment problem at the California receptors and determined that, unlike the receptors identified in the East and unlike the Douglas County maintenance receptor to which Wyoming contributes, only one state - Arizona - contributed above the one percent threshold to the California receptors and that the total contribution from all states linked to the receptors was negligible. *See* 81 FR at 15203. Considering this information, along with emissions inventories and emissions projections showing Arizona emissions decreasing over time, the EPA determined that Arizona had satisfied the requirements of section 110(a)(2)(D)(i)(I) with respect to the 2008 ozone NAAQS. *Id.* Accordingly, where the facts and circumstances support a different conclusion, the EPA has not directly applied the one percent threshold to identify states which may significantly contribute to nonattainment or interfere with maintenance of the 2008 ozone NAAQS in other states.

Likewise, the EPA is not determining that because Wyoming contributes above the one percent threshold, it is necessarily making a significant contribution that warrants further reductions in emissions. As noted above, the one percent threshold identifies a state as “linked,” prompting further inquiry into whether the contributions are significant and whether there are cost-effective controls that can be employed. That inquiry with regard to Wyoming’s SIP submittal is provided below.

In summary, Table 1 shows the air quality modeling results from the final modeling in support of the CSAPR Update. The modeling indicates that Wyoming contributes emissions above the one percent threshold of 0.75 ppb with respect to the Douglas County maintenance receptor in the Denver, Colorado area.

Table 1. Maintenance Receptor with Wyoming contribution modeled above 1%

Monitor I.D.	State	County	Wyoming Modeled Contribution
80350004	Colorado	Douglas	1.18 ppb

Wyoming’s largest contribution to any projected downwind maintenance-only site is 1.18 ppb, which is approximately 1.57% of the 2008 ozone NAAQS of 75 ppb. Thus, the final modeling in support of the CSAPR Update indicates that the contributions from Wyoming are above the one percent threshold of 0.75 ppb with respect to the Douglas County maintenance receptor in the Denver, Colorado area, and the State’s emissions require further evaluation, taking into account both air quality and cost considerations, to determine what, if any, emissions reductions might be necessary to address the State’s emission reduction obligation pursuant to 110(a)(2)(D)(i)(I). However, WDEQ in its SIP submittal neither identified nor included any

ozone or ozone precursor emission reduction measures that the EPA could evaluate to determine whether the state has fully addressed these transport impacts. Accordingly, the EPA cannot conclude that Wyoming's SIP contains sufficient provisions to prohibit emissions that will interfere with maintenance of the 2008 ozone NAAQS in the Denver, Colorado area.

WDEQ's analysis regarding prong 1 is also incomplete as previously described, but the EPA's modeling indicates that Wyoming does not contribute above the one percent threshold to any nonattainment receptors. As discussed above, while the EPA is not necessarily determining that one percent of the NAAQS is always an appropriate threshold for identifying interstate transport linkages for all states in the West, this low level of contribution suggests that Wyoming does not contribute significantly to nonattainment of the 2008 ozone NAAQS in any other state. Thus, the EPA is proposing that the Wyoming SIP meets the 110(a)(2)(D)(i) prong 1 requirement for the 2008 ozone NAAQS.

Based on WDEQ's SIP submittal and the EPA's most recent modeling, the EPA proposes to approve prong 1 and disapprove the prong 2 portion of the February 6, 2014, 2008 ozone NAAQS infrastructure submittal. The EPA is soliciting public comments on this proposed action and will consider public comments received during the comment period.

2008 Pb NAAQS

WDEQ's analysis of potential interstate transport for the 2008 Pb NAAQS discussed the lack of sources with significant Pb emissions near the State's borders. As noted in our October 14, 2011 Infrastructure Guidance Memo, there is a sharp decrease in Pb concentrations, at least in the coarse fraction, as the distance from a Pb source increases. *See* "Guidance on Infrastructure SIP Elements Required Under Sections 110(a)(1) and (2) for the 2008 Lead (Pb)

National Ambient Air Quality Standards (NAAQS).” October 14, 2011 at 8. For this reason, the EPA found that the requirements of subsection 110(a)(2)(D)(i)(I) (prongs 1 and 2) could be satisfied through a state’s assessment as to whether or not emissions from Pb sources located in close proximity to their state borders have emissions that impact the neighboring state such that they contribute significantly to nonattainment or interfere with maintenance in that state. *Id.* at 8. In that guidance document, the EPA further specified that any source appeared unlikely to contribute significantly to nonattainment unless it was located less than two miles from a state border and emitted at least 0.5 tons per year of Pb. WDEQ’s 110(a)(2)(D)(i)(I) analysis noted that there are no Pb sources within two miles of the State’s borders. The EPA concurs with the Department’s analysis and conclusion that no Wyoming sources have the combination of Pb emission levels and proximity to nearby nonattainment or maintenance areas to contribute significantly to nonattainment in or interfere with maintenance by other states for this NAAQS. Since Wyoming’s SIP is therefore adequate to ensure that such impacts do not occur, the EPA is proposing to approve WDEQ’s submittal with regard to the requirements of section 110(a)(2)(D)(i) prongs 1 and 2 for the 2008 Pb NAAQS.

2010 NO₂ NAAQS

Wyoming’s 2010 NO₂ transport analysis for elements 1 and 2 of section 110(a)(2)(D)(i) describes how all NO₂ monitors within the State and elsewhere in the U.S. showed no violations of the NO₂ NAAQS. WDEQ asserted that because the entire country had been designated unclassifiable/attainment for the 2010 NO₂ NAAQS, Wyoming sources do not contribute significantly to nonattainment or interfere with

maintenance of the NAAQS in other states. The Department's analysis is available in the docket for this action.

The EPA does not agree with the Wyoming's reliance on area designations for purposes of determining whether the State has met the requirements of section 110(a)(2)(D)(i)(I) with respect to the 2010 NO₂ NAAQS. As noted above, the EPA has routinely interpreted the obligation to prohibit emissions that significantly contribute to nonattainment or interfere with maintenance of the NAAQS in downwind states to be independent of formal designations because exceedances can happen in any area. However, for the reasons explained below, the EPA concurs with the conclusion that emissions from the state do not significantly contribute to nonattainment or interfere with maintenance of the 2010 NO₂ NAAQS in any other state.

Due to the State's limited technical analysis, the EPA evaluated NO₂ monitoring data from Wyoming and surrounding states in reaching its conclusion. The EPA notes that the highest monitored NO₂ design values in each state bordering or near Wyoming are significantly below the NAAQS (see Table 2).⁹ The EPA has determined that this information supports the State's contention that it does not significantly contribute to nonattainment or interfere with maintenance of the NO₂ NAAQS. As shown in Table 2, the maximum design values in states bordering Wyoming are well below the 2010 NO₂ NAAQS. As the states near Wyoming are not only attaining, but also maintaining the NAAQS, there are no areas to which Wyoming could significantly contribute to nonattainment or interfere with maintenance of the 2010 NO₂ NAAQS.

⁹ There is not an NO₂ design value presented for Nebraska, as none is available in EPA's Air Trends or AirData websites.

Table 2. Highest Monitored 2010 NO₂ NAAQS Design Values

State	2013-2015 Design Value	% of NAAQS (100 ppb)
Colorado	72 ppb	72%
Idaho	43 ppb	43%
Montana	29 ppb ¹⁰	29%
South Dakota	37 ppb	37%
Utah	65 ppb	65%

* Source: <https://www.epa.gov/air-trends/air-quality-design-values>

In addition to the monitored levels of NO₂ in states near Wyoming being well below the NAAQS, Wyoming's highest official design value from 2013-2015 was also significantly below this NAAQS - 49 ppb, compared to the NAAQS level of 100 ppb.¹¹

Based on all of these factors, EPA concurs with the State's conclusion that Wyoming does not contribute significantly to nonattainment or interfere with maintenance of the 2010 NO₂ NAAQS in other states. The EPA is therefore proposing to determine that Wyoming's SIP includes adequate provisions to prohibit sources or other emission activities within the State from emitting NO₂ in amounts that will contribute significantly to nonattainment in or interfere with maintenance by any other state with respect to the NO₂ NAAQS.

IV. Evaluation of Interference with Measures to Protect Visibility

State Submissions

In Wyoming's 2008 ozone, 2010 SO₂, 2010 NO₂ and 2012 PM_{2.5} NAAQS infrastructure certifications, the Department pointed to both its Regional Haze SIP and Wyoming Air Quality Standards and Regulations (WAQSR) Chapter 9, Section 2, "Visibility," to certify that the State meets the visibility requirements of section 110(a)(2)(D)(i)(II) (prong 4). As explained below,

¹⁰ The design values for Montana and Utah were derived using EPA's AirData website at https://www3.epa.gov/airdata/ad_rep_mon.html. These are not official design values.

¹¹ <https://www.epa.gov/air-trends/air-quality-design-values>.

this information is relevant in determining whether Wyoming's SIP will achieve the emission reductions that the Western Regional Air Partnership (WRAP) states mutually agreed are necessary to avoid interstate visibility impacts in Class I areas. *See* "Guidance on Infrastructure State Implementation Plan (SIP) Elements under Clean Air Act Sections 110(a)(1) and (2)," September 13, 2013, ("2013 Guidance") at 34.

WDEQ addressed visibility for the 2008 Pb NAAQS by pointing to the lack of significant sources of Pb in Wyoming near the State's border. *Id.* at 33. The State did not point to any visibility-related state regulations in its 2006 PM_{2.5} certification, but generally indicated that they met this requirement.

Wyoming's Regional Haze SIP

As stated in the EPA's 2013 Guidance, "[o]ne way in which prong 4 may be satisfied for any relevant NAAQS is through an air agency's confirmation in its infrastructure SIP submission that it has an approved regional haze SIP that fully meets the requirements of 40 CFR 51.308 or 51.309. 40 CFR 51.308 and 51.309 specifically require that a state participating in a regional planning process include all measures needed to achieve its apportionment of emission reduction obligations agreed upon through that process." *Id.* at 33.

On January 12, 2011 and April 19, 2012, Wyoming submitted to the EPA SIP revisions to address the requirements of the regional haze program. The EPA approved Wyoming's April 19, 2012 submittal and partially approved Wyoming's January 12, 2011 submittal in a final action published December 12, 2012. 77 FR 73926. This included EPA approval of Wyoming's BART alternative for SO₂, which relied on the State's participation in the backstop SO₂ trading

program under 40 CFR 51.309.¹² In a separate action, the EPA partially approved and partially disapproved the remainder of Wyoming's January 12, 2011 SIP revision. 79 FR 5032 (Jan. 30, 2014). In that action, the EPA disapproved the following portions of the submittal: Wyoming's NO_x Best Available Retrofit Technology (BART) determinations for five units at three facilities; the State's reasonable progress goals; monitoring, recordkeeping and reporting requirements; portions of the long term strategy, and; the provisions necessary to review reasonably attributable visibility improvement. *Id.* at 5038. The EPA also promulgated a final federal implementation plan (FIP) to address these deficiencies. *Id.*

EPA's Assessment

The 2013 Guidance states that section 110(a)(2)(D)(i)(II)'s prong 4 requirements can be satisfied by approved SIP provisions that the EPA has found to adequately address a state's contribution to visibility impairment in other states. The EPA interprets prong 4 to be pollutant-specific, such that the infrastructure SIP submission need only address the potential for interference with protection of visibility caused by the pollutant (including precursors) to which the new or revised NAAQS applies. *See* 2013 Guidance at 33.

The 2013 Guidance lays out two ways in which a state's infrastructure SIP submittal may satisfy prong 4. As explained above, one way is through a state's confirmation in its infrastructure SIP submittal that it has an EPA approved regional haze SIP in place. Alternatively, in the absence of a fully approved regional haze SIP, a state can make a demonstration in its infrastructure SIP submittal that emissions within its jurisdiction do not

¹² Wyoming's "Western Backstop Sulfur Dioxide Trading Program" can be found in Wyoming Air Quality Standards and Regulations (WAQSR) Chapter 14, Section 2.

interfere with other states' plans to protect visibility. Such a submittal should point to measures in the state's SIP that limit visibility-impairing pollutants and ensure that the resulting reductions conform to any mutually agreed emission reductions under the relevant regional haze regional planning organization (RPO) process.¹³

WDEQ worked through its RPO, the WRAP, to develop strategies to address regional haze. To help states in establishing reasonable progress goals for improving visibility in Class I areas, the WRAP modeled future visibility conditions based on the mutually agreed emissions reductions from each state. The WRAP states then relied on this modeling in setting their respective reasonable progress goals. As a result, we consider emissions reductions from measures in Wyoming's SIP that conform with the level of emission reductions the State agreed to include in the WRAP modeling to meet the visibility requirement of CAA section 110(a)(2)(D)(i)(II).

With regard to the 2010 SO₂ NAAQS, the EPA proposes to find that the State's implementation of the Western Backstop Sulfur Dioxide Trading Program and the agreed upon SO₂ reductions achieved through that program sufficient to meet the requirements of prong 4.¹⁴ Under 40 CFR 51.309, certain states, including Wyoming, can satisfy their SO₂ BART requirements by adopting an alternative program consisting of SO₂ emission milestones and a backstop trading program. *See* 40 CFR 51.309. Wyoming Air Quality Standards and Regulations

¹³ *See id.* at 34, and also 76 *Fed. Reg.* 22036 (April 20, 2011) containing EPA's approval of the visibility requirement of 110(a)(2)(D)(i)(II) based on a demonstration by Colorado that did not rely on the Colorado Regional Haze SIP.

¹⁴ Specifically, the State is required to reach its "emissions milestone" for this program by keeping its SO₂ emissions below 141,849 tons/SO₂ in 2018 and each year thereafter.

(WAQSR) Chapter 14, section 2 implements the backstop trading program provisions and the EPA has approved the State's rules, including the SO₂ reduction milestones, as satisfying its regional haze SO₂ obligations. 77 FR 73926 (Dec. 12, 2012). Wyoming's SIP thus contains measures requiring reductions of SO₂ consistent with what the State agreed to achieve under the WRAP process in order to protect visibility. As a result, the EPA is proposing to approve 110(a)(2)(D)(i)(II) prong 4 for the 2010 SO₂ NAAQS.

The EPA is also proposing to approve Wyoming's prong 4 SIP submittal for the 2008 Pb NAAQS. The EPA has found that significant impacts from Pb emissions from stationary sources are expected to be limited to short distances from the source. The State noted that it does not have any major sources of Pb located near any bordering state. Further, when evaluating the extent to which Pb could impact visibility, the EPA has found Pb-related visibility impacts insignificant (*e.g.*, less than 0.10 percent). *See* 2013 Guidance, at 33. The EPA proposes to approve prong 4 for the 2008 Pb NAAQS based on Wyoming's conclusion that it does not have any significant sources of lead emissions near another state's border and that it, therefore, does not have emissions of Pb that would interfere with the requirements of section 110(a)(2)(D)(i)(II) with respect to visibility.

The EPA is proposing to disapprove Wyoming's prong 4 infrastructure SIP submittals for the 2006 PM_{2.5}, 2008 ozone, 2010 NO₂, and 2012 PM_{2.5} NAAQS. The EPA's disapproval of Wyoming's NO_x BART determination in our January 30, 2014 final rulemaking included the specific disapproval of the NO_x control measures the State submitted for PacifiCorp Dave Johnston Unit 3, PacifiCorp Wyodak Unit 1, and Basin Electric Laramie River Units 1, 2 and 3. *See* 79 FR 5038.

As noted, Wyoming referenced both its Regional Haze SIP and WAQSR Chapter 9, Section 2 as justification for the approvability of prong 4 for the 2008 ozone, 2010 NO₂ and 2012 PM_{2.5} NAAQS. Because the Department did not provide an alternative demonstration that its SIP contains measures to limit NO_x emissions in accordance with the emission reductions it agreed to under the WRAP,¹⁵ the EPA's disapproval of portions of Wyoming's NO_x BART determination means that Wyoming's SIP does not include measures needed to ensure that its emissions will not interfere with other states' plans to protect visibility from the effects of NAAQS pollutants impacted by NO_x. Specifically, NO_x is a precursor of PM_{2.5} and ozone, and is also a term which refers to both NO (nitrogen oxide) and NO₂. The EPA is therefore proposing to disapprove prong 4 of Wyoming's infrastructure certifications with regard to the 2006 PM_{2.5}, 2008 ozone, 2010 NO₂ and 2012 PM_{2.5} NAAQS.

If the EPA disapproves an infrastructure SIP submission for prong 4, as we are proposing for the 2006 PM_{2.5}, 2008 ozone, 2010 NO₂ and 2012 PM_{2.5} NAAQS, a FIP obligation will be created. However, as noted previously, the EPA has promulgated a FIP for Wyoming that corrects all regional haze SIP deficiencies. 79 FR 5032. Therefore, there will be no additional practical consequences from the disapproval for WDEQ, the sources within its jurisdiction, or the EPA, and the EPA will not be required to take further action with respect to these prong 4 disapprovals, if finalized, because the FIP already in place would satisfy the requirements with respect to prong 4. *See* 2013 Guidance at 34-35. Additionally, since the infrastructure SIP submission is not required in response to a SIP call under CAA section 110(k)(5), mandatory

¹⁵ The Visibility section of WAQSR Chapter 9, Section 2 does not address NO_x emissions reductions.

sanctions under CAA section 179 would not apply because the deficiencies are not with respect to a submission that is required under CAA title I part D. *Id.*

V. Proposed Action

The EPA is proposing to approve CAA section 110(a)(2)(D)(i)(I) prongs 1, 2 and 4 for the 2008 Pb NAAQS, prong 1 for the 2008 ozone NAAQS, and prong 4 for the 2010 SO₂ NAAQS, as shown in Table 3, below. The EPA is also proposing to disapprove prong 4 for the 2006 PM_{2.5}, 2008 ozone, 2010 NO₂ and 2012 PM_{2.5} NAAQS, and prong 2 for the 2008 ozone NAAQS, as shown in Table 4. The EPA is soliciting public comments on this proposed action and will consider public comments received during the comment period.

Table 3. List of Wyoming Interstate Transport Prongs that the EPA is Proposing to Approve

Proposed Approval
<u>February 6, 2014 submittal - 2008 Ozone NAAQS:</u> (D)(i)(I) prong 1.
<u>October 12, 2011 submittal - 2008 Pb NAAQS:</u> (D)(i)(I) prongs 1 and 2, (D)(i)(II) prong 4.
<u>January 24, 2014 submittal- 2010 NO₂ NAAQS:</u> (D)(i)(I) prongs 1 and 2.
<u>March 6, 2015 submittal – 2010 SO₂ NAAQS:</u> (D)(i)(II) prong 4.

Table 4. List of Wyoming Interstate Transport Prongs that the EPA is Proposing to Disapprove

Proposed Disapproval
<u>August 19, 2011 submittal – 2006 PM_{2.5} NAAQS:</u> (D)(i)(II) prong 4.
<u>February 6, 2014 submittal - 2008 Ozone NAAQS:</u> (D)(i)(I) prong 2, (D)(i)(II) prong 4.
<u>January 24, 2014 submittal- 2010 NO₂ NAAQS:</u> (D)(i)(II) prong 4.
<u>June 24, 2016 submittal – 2012 PM_{2.5} NAAQS:</u>

(D)(i)(II) prong 4.

VI. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA's role is to approve state actions, provided that they meet the criteria of the Clean Air Act. Accordingly, this proposed action merely proposes approval of some state law as meeting federal requirements and proposes disapproval of other state law because it does not meet federal requirements; this proposed action does not propose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);

- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Does not provide the EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP does not apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the proposed rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by Reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: November 9, 2016.

Shaun L. McGrath,
Regional Administrator,
Region 8.

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