



**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

**[EPA-R08-OAR-2019-0419; FRL-10002-37-Region 8]**

**Promulgation of State Implementation Plan Revisions; Infrastructure Requirements for the 2015 Ozone National Ambient Air Quality Standards; Wyoming**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** On October 1, 2015, the Environmental Protection Agency (EPA) promulgated the 2015 ozone NAAQS, revising the standard to 0.070 parts per million. Whenever a new or revised National Ambient Air Quality Standard (NAAQS) is promulgated, the Clean Air Act (CAA or Act) requires each state to submit a State Implementation Plan (SIP) revision for the implementation, maintenance and enforcement of the new standard. This submission is commonly referred to as an infrastructure SIP. In this action we are proposing to act on multiple elements of the Wyoming infrastructure SIP submission with respect to infrastructure requirements for the 2015 ozone NAAQS, which was submitted to the EPA on January 3, 2019.

**DATES:** Written comments must be received on or before **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R08-OAR-2019-0419, to the Federal Rulemaking Portal: <https://www.regulations.gov>. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from [www.regulations.gov](https://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>.

*Docket:* All documents in the docket are listed in the [www.regulations.gov](http://www.regulations.gov) index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in [www.regulations.gov](http://www.regulations.gov) or in hard copy at the Air and Radiation Division, Environmental Protection Agency (EPA), Region 8, 1595 Wynkoop Street, Denver, Colorado 80202-1129. The EPA requests that if at all possible, you contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section to view the hard copy of the docket. You may view the hard copy of the docket Monday through Friday, 8:00 a.m. to 4:00 p.m., excluding federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Clayton Bean, (303) 312-6143, [bean.clayton@epa.gov](mailto:bean.clayton@epa.gov). Mail can be directed to the Air and Radiation Division, U.S. EPA, Region 8, Mail-code 8ARD-QP, 1595 Wynkoop Street, Denver, Colorado, 80202-1129.

**SUPPLEMENTARY INFORMATION:** Throughout this document, “reviewing authority,” “we,” “us,” and “our” refer to the EPA.

## **I. Background**

On March 12, 2008, the EPA promulgated a new NAAQS for ozone, revising the levels of the primary and secondary 8-hour ozone standards from 0.08 parts per million (ppm) to 0.075 ppm (73 FR 16436). More recently, on October 1, 2015, the EPA promulgated and revised the NAAQS for ozone, further strengthening the primary and secondary 8-hour standards to 0.070 ppm (80 FR 65292) (referred to as the “2015 ozone NAAQS”). This revision triggered the CAA requirement for states to submit SIPs addressing basic infrastructure elements required to implement, maintain and enforce the 2015 ozone NAAQS. *See* CAA section 110(a)(1) and (2); see also “Guidance on Infrastructure State Implementation Plan (SIP) Elements under Clean Air Act Sections 110(a)(1) and (2),” September 13, 2013 (2013 Memo).

### **What Infrastructure Elements are Required Under Sections 110(a)(1) and (2)?**

CAA section 110(a)(1) provides the procedural and timing requirements for SIP submissions after a new or revised NAAQS is promulgated. Section 110(a)(2) lists specific elements the SIP must contain or satisfy. These infrastructure elements include requirements such as modeling, monitoring and emissions inventories, which are designed to ensure attainment and maintenance of the NAAQS. The elements that are the subject of this action are listed below.

- 110(a)(2)(A): Emission limits and other control measures.
- 110(a)(2)(B): Ambient air quality monitoring/data system.
- 110(a)(2)(C): Program for enforcement of control measures.
- 110(a)(2)(D): Interstate transport.
- 110(a)(2)(E): Adequate resources and authority, conflict of interest, and oversight of local governments and regional agencies.

- 110(a)(2)(F): Stationary source monitoring and reporting.
- 110(a)(2)(G): Emergency powers.
- 110(a)(2)(H): Future SIP revisions.
- 110(a)(2)(J): Consultation with government officials; public notification; and PSD and visibility protection.
- 110(a)(2)(K): Air quality modeling/data.
- 110(a)(2)(L): Permitting fees.
- 110(a)(2)(M): Consultation/participation by affected local entities.

A detailed discussion of each of these elements is contained in section III. The EPA's Evaluation of the State Submittal.

### **How Did Wyoming Address the Infrastructure Elements of Sections 110(a)(1) and (2)?**

The Wyoming 2015 ozone NAAQS infrastructure SIP submission demonstrates how the State, where applicable, has plans in place that meet the requirements of section 110 for the 2015 ozone NAAQS. The State submittal is available within the electronic docket for today's proposed action at [www.regulations.gov](http://www.regulations.gov).

The Wyoming Department of Environmental Quality (WDEQ) submitted a certification of Wyoming's infrastructure SIP for the 2015 ozone NAAQS on January 3, 2019. The submission references the Wyoming Air Quality Standards and Regulations (WAQSR) and Wyoming Statutes. The statutes referenced in this submittal are publicly available at <http://sosswy.state.wy.us/Rules/default.aspx> and <http://legisweb.state.wy.us/LSOWEB/wyStatues.aspx>. Wyoming's approved SIP can be found at CFR 52.2620.

## **II. EPA's Approach to Review of Infrastructure SIP Submissions**

Due to ambiguity in some of the language of CAA section 110(a)(2), the EPA believes that it is appropriate to interpret these provisions in the specific context of acting on infrastructure SIP submissions. The EPA has previously provided comprehensive guidance on the application of these provisions through a guidance document for infrastructure SIP submissions and through regional actions on infrastructure submissions.<sup>1</sup> Unless otherwise noted below, we are following that existing approach in acting on this submission. In addition, in the context of acting on such infrastructure submissions, the EPA evaluates the submitting state's SIP for facial compliance with statutory and regulatory requirements, not for the state's implementation of its SIP.<sup>2</sup> The EPA has other authority to address any issues concerning a state's implementation of the rules, regulations, consent orders, etc. that comprise its SIP.<sup>3</sup>

### **III. The EPA's Evaluation of the State Submittal**

**(a) Emission limits and other control measures:** Section 110(a)(2)(A) requires SIPs to 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 as may be necessary or appropriate to meet the applicable requirements of the Act.

The State's submission and the EPA's analysis: The State's submission for the 2015 ozone NAAQS infrastructure requirements cites three non-regulatory documents (*e.g.*, Control Strategy, Source Surveillance, and Compliance Schedule) which were approved by the EPA (37

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<sup>1</sup> The EPA explains and elaborates on these ambiguities and its approach to address them in its 2013 Memo (available at [https://www3.epa.gov/airquality/urbanair/sipstatus/docs/Guidance\\_on\\_Infrastructure\\_SIP\\_Elements\\_Multipollutant\\_FINAL\\_Sept\\_2013.pdf](https://www3.epa.gov/airquality/urbanair/sipstatus/docs/Guidance_on_Infrastructure_SIP_Elements_Multipollutant_FINAL_Sept_2013.pdf)), as well as in numerous agency actions, including EPA's prior action on South Dakota's infrastructure SIP to address 1997 and 2006 PM<sub>2.5</sub>, 2008 Lead, 2008 Ozone, and 2010 NO<sub>2</sub> NAAQS (79 FR 71040, (December 1, 2014)).

<sup>2</sup> See *Montana Environmental Information Center v. EPA*, 902 F.3d 971 (9th Cir. 2018).

<sup>3</sup> *Id.*

FR 10842, May 31, 1972). The State's submissions also cite regulatory documents included in Chapters 1, 3, 4, 8, 10 and 13 of the WAQSR that have been approved into the SIP. The approved state air quality regulations within the WAQSR and cited in Wyoming's certifications provide enforceable emission limitations, and other control measures, means of techniques, and schedules for compliance, and other related matters necessary to meet the requirements of the CAA section 110(a)(2)(A) for the 2015 ozone NAAQS subject to the following clarification.

First, this infrastructure element does not require the submittal of regulations or emission limitations developed specifically for attaining the 2015 ozone NAAQS. Second, the EPA does not consider SIP requirements triggered by the nonattainment area mandates in part D of Title I of the CAA to be governed by the submission deadline of CAA section 110(a)(1). Accordingly, Wyoming's submission (contained within this docket) listing provisions and enforceable control measures within its SIP which regulate ozone and its precursors through various programs, including Wyoming's stationary source permit program, suffices to meet the requirements of section 110(a)(2)(A) for the 2015 ozone NAAQS.

**(b) Ambient air quality monitoring/data system:** Section 110(a)(2)(B) requires SIPs to 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.”

(i) State's submission: Wyoming references the following non-regulatory documents as the provisions for air quality episode monitoring, data compilation and reporting, public availability of information and annual network reviews:

- Air Quality Surveillance Document, approved by the EPA (37 FR 10842, May 31, 1972).
- Air Quality Surveillance Network Document, approved by the EPA (47 FR 5892, February 9, 1982).

- Implementation Plan for Lead, approved by the EPA (49 FR 39843, October 11, 1984).
- Wyoming Ambient Air Monitoring Annual Network Plan, submitted to the EPA on June 26, 2018, approved, except for Section 5.1 – Permitted Industrial Monitors, by the EPA on October 23, 2018.
- Wyoming Ambient Air Monitoring Annual Network Plan, approved by the EPA on November 7, 2017.

Wyoming also included a Performance Partnership Agreement (PPA) with the EPA as Appendix A of the state's submission. The PPA contains a work plan that addresses the state's commitment to maintain an ambient monitoring network in accordance with 40 CFR part 58 and to submit air quality data to the Air Quality System (AQS) database.

(ii) The EPA's analysis: In accordance with 40 CFR 58.10, Wyoming submits an annual monitoring network plan (AMNP) to the EPA, summarizing the State's monitoring efforts to ensure full compliance with the NAAQS. Following Wyoming's SIP submittal, the State submitted its 2019 AMNP to the EPA on June 28, 2019, which was subsequently approved by the EPA on October 11, 2019 (Wyoming's 2019 AMNP and EPA's approval letter are available within the docket). Additionally, Wyoming submits monitoring data to the AQS database in accordance with 40 CFR 58.16. Accordingly, we find that Wyoming's SIP and practices are adequate for the ambient air quality monitoring and data system requirements for the 2015 ozone NAAQS, and, therefore, propose to approve the submission for this element.

**(c) CAA § 110(a)(2)(C): Program for Enforcement of Control Measures:** CAA section 110(a)(2)(C) requires each state to have a program that provides for the following three sub-elements: enforcement; state-wide regulation of new and modified minor sources and minor modifications of major sources; and preconstruction permitting of major sources and major

modifications in areas designated attainment or unclassifiable for the 2015 ozone NAAQS as required by CAA title I part C (*i.e.*, the major source PSD program).

(i) State's submission: The Wyoming submission refers to the following regulatory and non-regulatory documents which address and provide for meeting all requirements of CAA section 110(a)(2)(C):

- WAQSR Chapter 6, Section 2, Permit requirements for construction, modification and operation.
- WAQSR Chapter 6, Section 4, Prevention of significant deterioration.
- WAQSR Chapter 6, Section 13, Nonattainment permit requirements.
- Legal Authority Document; approved by the EPA (37 FR 10832, May 31, 1972).
- Source Surveillance Document; approved by the EPA (37 FR 10832, May 31, 1972).
- Review of New Sources and Modifications Document; approved by the EPA (37 FR 10832, May 31, 1972).

The submission also notes that the PSD program as approved by the EPA covers all regulated pollutants, including greenhouse gases (GHGs).

(ii) The EPA's analysis: With regard to the sub-element requirement to have a program providing for enforcement of all SIP measures, we are proposing to find that Wyoming's Rule (02) II, Legal Authority Document, which the EPA approved into the Wyoming SIP,<sup>4</sup> shows the State has the authority to enforce applicable laws, regulations and standards; to seek injunctive relief; and to prevent construction, modification, or operation of any stationary source at any

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<sup>4</sup> See 40 CFR 52.2620(e), Rule No. (02) II; 41 FR 36652 (Aug. 31, 1976) (approving Wyoming's revisions to its SIP).

location where emissions from such source will prevent the attainment or maintenance of a national standard or interfere with PSD requirements.

Turning to the second sub-element of the state-wide regulation of new and modified minor sources and minor modifications of major sources, Wyoming has a SIP-approved minor NSR program, adopted under section 110(a)(2)(C) of the Act. The minor NSR program is found in Chapter 6, Section 2 of the WAQSR. The EPA previously approved Wyoming's minor NSR program into the SIP (at that time as Chapter 1, Section 21), and over the years, the EPA has subsequently approved revisions to this program as consistent with the CAA and Federal minor NSR requirements codified at 40 CFR 51.160 through 40 CFR 51.164. The State and the EPA have relied on the State's existing minor NSR program to assure that new and modified sources not captured by the major NSR permitting program do not interfere with attainment and maintenance of the NAAQS. We propose to determine that this program regulates construction of new and modified minor sources of ozone precursors for purposes of the 2015 ozone NAAQS.

Lastly, to generally meet the requirements of CAA section 110(a)(2)(C) with regard to the sub-element of preconstruction permitting of major sources and major modifications in areas designated attainment or unclassifiable for the subject NAAQS as required by CAA title I part C, a state is required to have PSD, NNSR and minor NSR permitting programs adequate to implement the 2015 ozone NAAQS.

With respect to Elements (C) and (J), the EPA interprets the CAA to require each state to make an infrastructure SIP submission for a new or revised NAAQS demonstrating that the air agency has a complete PSD permitting program meeting the current requirements for all regulated NSR pollutants. The requirements of Element D(i)(II) prong 3 may also be satisfied by demonstrating the air agency has a complete PSD permitting program that applies to all regulated

NSR pollutants. Wyoming has shown that it currently has a PSD program in place that covers all regulated NSR pollutants, including GHGs.

On July 25, 2011 (76 FR 44265), we approved a revision to the Wyoming PSD program that addressed the PSD requirements of the Phase 2 Ozone Implementation Rule promulgated on November 29, 2005 (70 FR 71612). We most recently approved revisions to Wyoming's PSD program on September 20, 2018 (84 FR 18991), in which Wyoming incorporated the 2015 ozone NAAQS into their SIP in Chapter 2, Section 6 (Ambient Standards for Ozone). Wyoming's SIP approved PSD program is codified in WAQSR Chapter 6, to include Sections 2, 4 and 13. As a result, the approved Wyoming PSD program meets the current requirements for ozone.

With respect to GHGs, on June 23, 2014, the United States Supreme Court addressed the application of PSD permitting requirements to GHG emissions. *Utility Air Regulatory Group v. Environmental Protection Agency*, 134 S.Ct. 2427 (2014). The Supreme Court held that the EPA may not treat GHGs as an air pollutant for purposes of determining whether a source is a major source required to obtain a PSD permit. The Court also held that the EPA could continue to require that PSD permits, otherwise required based on emissions of pollutants other than GHGs, (anyway sources) contain limitations on GHG emissions based on the application of Best Available Control Technology (BACT).

In accordance with the Supreme Court decision, on April 10, 2015, the U.S. Court of Appeals for the District of Columbia Circuit (the D.C. Circuit) in *Coalition for Responsible Regulation v. EPA*, 606 F. App'x. 6, at \*7-8 (D.C. Cir. April 10, 2015), issued an amended judgment vacating the regulations that implemented Step 2 of the EPA's PSD and Title V Greenhouse Gas Tailoring Rule, but not the regulations that implement Step 1 of that rule. Step 1 of the Tailoring Rule covers sources that are required to obtain a PSD permit based on emissions

of pollutants other than GHGs. Step 2 applied to sources that emitted only GHGs above the thresholds triggering the requirement to obtain a PSD permit. The amended judgment preserves, without the need for additional rulemaking by the EPA, the application of the BACT requirement to GHG emissions from Step 1 or “anyway sources.”<sup>5</sup> With respect to Step 2 sources, the D.C. Circuit’s amended judgment vacated the regulations at issue in the litigation, including 40 CFR 51.166(b)(48)(v), “to the extent they require a stationary source to obtain a PSD permit if greenhouse gases are the only pollutant (i) that the source emits or has the potential to emit above the applicable major source thresholds, or (ii) for which there is a significant emission increase from a modification.” The EPA subsequently revised our PSD regulations to remove the vacated provisions. 80 FR 50199 (Aug. 19, 2015).

At present, the EPA has determined that Wyoming’s SIP is sufficient to satisfy Elements (C), (D)(i)(II) prong 3 and (J) with respect to GHGs. This is because the PSD permitting program previously approved by the EPA into the SIP continues to require that PSD permits issued to “anyway sources” contain limitations on GHG emissions based on the application of BACT. The approved Wyoming PSD permitting program still contains some provisions regarding Step 2 sources that are no longer necessary in light of the Supreme Court decision and D.C. Circuit’s amended judgment. Nevertheless, the presence of these provisions in the previously-approved plan does not render the infrastructure SIP submission inadequate to satisfy Elements (C), (D)(i)(II) prong 3 and (J). The SIP contains the PSD requirements for applying the BACT requirement to greenhouse gas emissions from “anyway sources” that are necessary at this time. The application of those requirements is not impeded by the presence of other previously-approved provisions regarding the permitting of Step 2 sources. Accordingly, the Supreme Court

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<sup>5</sup> See 77 FR 41066 (July 12, 2012) (rulemaking for definition of “anyway” sources).

decision and subsequent D.C. Circuit judgment do not prevent the EPA's approval of Wyoming's infrastructure SIP as to the requirements of Elements (C), (D)(i)(II) prong 3, and (J).

Finally, we evaluate the PSD program with respect to current requirements for PM<sub>2.5</sub>. In particular, on May 16, 2008, the EPA promulgated the rule, “Implementation of the New Source Review Program for Particulate Matter Less Than 2.5 Micrometers (PM<sub>2.5</sub>)” (73 FR 28321) (2008 Implementation Rule). On October 20, 2010 the EPA promulgated the rule, “Prevention of Significant Deterioration (PSD) for Particulate Matter Less Than 2.5 Micrometers (PM<sub>2.5</sub>) Increments, Significant Impact Levels (SILs) and Significant Monitoring Concentration (SMC)” (75 FR 64864). The EPA regards adoption of these PM<sub>2.5</sub> rules as a necessary requirement when assessing a PSD program for the purposes of Element (C).

On January 4, 2013, the U.S. Court of Appeals, in *Natural Resources Defense Council v. EPA*, 706 F.3d 428 (D.C. Cir. 2013), issued a judgment that remanded the EPA's 2007 and 2008 rules implementing the 1997 PM<sub>2.5</sub> NAAQS. The court ordered the EPA to “repromulgate these rules pursuant to Subpart 4 consistent with this opinion.” *Id.* at 437. Subpart 4 of part D, Title 1 of the CAA establishes additional provisions for particulate matter nonattainment areas.

The 2008 Implementation Rule addressed by *Natural Resources Defense Council*, “Implementation of New Source Review (NSR) Program for Particulate Matter Less Than 2.5 Micrometers (PM<sub>2.5</sub>)” (73 FR 28321, May 16, 2008), promulgated NSR requirements for implementation of PM<sub>2.5</sub> in nonattainment areas (nonattainment NSR) and attainment/unclassifiable areas (PSD). As the requirements of Subpart 4 only pertain to nonattainment areas, the EPA does not consider the portions of the 2008 Implementation Rule that address requirements for PM<sub>2.5</sub> attainment and unclassifiable areas to be affected by the

court's opinion. Moreover, the EPA does not anticipate the need to revise any PSD requirements promulgated in the 2008 Implementation Rule in order to comply with the court's decision.

Accordingly, the EPA's proposed approval of Wyoming's infrastructure SIP as to Elements (C), (D)(i)(II) prong 3, and (J) with respect to the PSD requirements promulgated by the 2008 Ozone Implementation rule does not conflict with the court's opinion.

The court's decision with respect to the NNSR requirements promulgated by the 2008 Implementation Rule also does not affect the EPA's action on the present infrastructure action. The EPA interprets the Act to exclude nonattainment area requirements, including requirements associated with a NNSR program, from infrastructure SIP submissions due three years after adoption or revision of a NAAQS. Instead, these elements are typically referred to as nonattainment SIP or attainment plan elements, which would be due by the dates statutorily prescribed under subpart 2 through 5 under part D, extending as far as 10 years following designations for some elements.

The second PSD requirement for PM<sub>2.5</sub> is contained in the EPA's October 20, 2010 rule, "Prevention of Significant Deterioration (PSD) for Particulate Matter Less Than 2.5 Micrometers (PM<sub>2.5</sub>)—Increments, Significant Impact Levels (SILs) and Significant Monitoring Concentration (SMC)" (75 FR 64864). The EPA regards adoption of the PM<sub>2.5</sub> increments as a necessary requirement when assessing a PSD program for the purposes of Element (C). On July 25, 2011 (76 FR 44265), the EPA approved SIP revisions that revised Wyoming's PSD program which incorporated the 2008 Implementation Rule. The EPA approved revisions to reflect the 2010 PM<sub>2.5</sub> Increment Rule on December 6, 2013 (78 FR 73445). Therefore, Wyoming's SIP approved PSD program meets current requirements for PM<sub>2.5</sub>.

Therefore, the EPA is proposing to approve Wyoming's infrastructure SIP for the 2015 ozone NAAQS with respect to the requirement in section 110(a)(2)(C) to include a PSD permitting program in the SIP that covers the requirements for all regulated NSR pollutants as required by part C of the Act.

The State has a SIP-approved minor NSR program, adopted under section 110(a)(2)(C) of the Act. The minor NSR program is found in Chapter 6, Section 2 of the WAQSR. The EPA previously approved Wyoming's minor NSR program into the SIP (at that time as Chapter 1, Section 21), and has subsequently approved revisions to the program, and at those times there were no objections to the provisions of this program. (See, for example, 47 FR 5892, February 9, 1982). Since then, the State and the EPA have relied on the State's existing minor NSR program to assure that new and modified sources not captured by the major NSR permitting program do not interfere with attainment and maintenance of the NAAQS.

Therefore, based on the foregoing, the EPA is proposing to approve Wyoming's infrastructure SIP for the 2015 ozone NAAQS with respect to the general requirement in section 110(a)(2)(C) to include a program in the SIP that regulates the enforcement of control measures in the SIP, and the modification and construction of any stationary source as necessary to assure that the NAAQS are achieved.

**(d) Interstate Transport:** CAA section 110(a)(2)(D)(i) consists of four separate elements, or “prongs.” CAA section 110(a)(2)(D)(i)(I) requires SIPs to contain adequate provisions prohibiting emissions which will contribute significantly to nonattainment of the NAAQS in any other state (prong 1), and adequate provisions prohibiting emissions which will interfere with maintenance of the NAAQS by any other state (prong 2). CAA section 110(a)(2)(D)(i)(II) requires SIPs to contain adequate provisions prohibiting emissions which will interfere with any

other state's required measures to prevent significant deterioration of its air quality (prong 3), and adequate provisions prohibiting emissions which will interfere with any other state's required measures to protect visibility (prong 4). This proposed action will not address the prongs 1 and 2 portions of the Wyoming 2015 ozone infrastructure SIP. We will act on these portions of Wyoming's infrastructure SIP in a separate rulemaking action.

The prong 3 (PSD) requirement of CAA section 110(a)(2)(D)(II) may be met for all NAAQS by a state's confirmation in an infrastructure SIP submission that new major sources and major modifications in the state are subject to a comprehensive EPA-approved PSD permitting program in the SIP that applies to all regulated NSR pollutants and that satisfies the requirements of the EPA's PSD implementation rule(s).<sup>6</sup>

To meet the prong 4 (visibility) requirement of CAA section 110(a)(2)(D)(i)(II) under the 2015 ozone NAAQS, a SIP must address the potential for interference with visibility protection caused by ozone, including precursors. An approved regional haze SIP that fully meets the regional haze requirements in 40 CFR 51.308 satisfies the 110(a)(2)(D)(i)(II) requirement for visibility protection as it ensures that emissions from the state will not interfere with measures required to be included in other state SIPs to protect visibility. In the absence of a fully approved regional haze SIP, a state can still make a demonstration that satisfies the visibility requirement section of 110(a)(2)(D)(i)(II).<sup>7</sup>

CAA section 110(a)(2)(D)(ii) requires SIPs to include provisions ensuring compliance with the applicable requirements of CAA sections 126 and 115 (relating to interstate and international pollution abatement). CAA section 126 requires notification to neighboring states

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<sup>6</sup> See 2013 Memo.

<sup>7</sup> See 2013 Memo. In addition, the EPA approved the visibility requirement of 110(a)(2)(D)(i) for the 1997 Ozone and PM<sub>2.5</sub> NAAQS for Colorado before taking action on the State's regional haze SIP. 76 FR 22036 (April 20, 2011).

of potential impacts from a new or modified major stationary source and specifies how a state may petition the EPA when a major source or group of stationary sources in a state is thought to contribute to certain pollution problems in another state. CAA section 115 governs the process for addressing air pollutants emitted in the United States that cause or contribute to air pollution that may reasonably be anticipated to endanger public health or welfare in a foreign country.

(i) State's submission: To address prong 3 (PSD) for the 2015 ozone NAAQS, Wyoming references relevant portions of the Wyoming SIP. Specifically, the State references WAQSR Chapter 6, sections 4 (Prevention of significant deterioration), 2 (Permit requirements for construction, modification, and operation) and 13 (Nonattainment permit requirements). On the basis of these SIP-approved provisions, Wyoming concludes that its SIP is sufficient to meet the prong 3 requirements of CAA section 110(a)(2)(D)(i)(II).

To address prong 4 (visibility) for the 2015 ozone NAAQS, Wyoming's January 3, 2019 submission pointed to both its regional haze SIP and WAQSR Chapter 9, Section 2, "Visibility," to certify that the State meets the prong 4 requirements of section 110(a)(2)(D)(i)(II). As explained below, 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.<sup>8</sup>

To address CAA section 110(a)(2)(D)(ii), Wyoming states that no sources within the State are the subject of an active finding under CAA section 126, and that there are no final findings under CAA section 115 against Wyoming with respect to the 2015 8-hour ozone NAAQS. For these reasons, Wyoming asserts that its infrastructure SIP meets the requirements of CAA section 110(a)(2)(D)(ii) for the 2015 8-hour ozone NAAQS.

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<sup>8</sup> See 2013 Memo at 34.

(ii) The EPA's analysis:

*Prong 3: Interference with PSD measures*

As noted, the PSD portion of section 110(a)(2)(D)(i)(II) may be met by a state's confirmation in an infrastructure SIP submission that new major sources and major modifications in the state are subject to a comprehensive EPA-approved PSD permitting program in the SIP that applies to all regulated NSR pollutants and that satisfies the requirements of the EPA's PSD implementation rule(s).<sup>9</sup> As discussed in Section III.(c)(ii) of this proposed action, Wyoming has such a program, and the EPA is therefore proposing to approve Wyoming's SIP for the 2015 ozone NAAQS with respect to the requirement in section 110(a)(2)(C) to include a permit program in the SIP as required by part C of the CAA.

As stated in the 2013 Memo, in-state sources not subject to PSD for any one or more of the pollutants subject to regulation under the CAA because they are in a nonattainment area for a NAAQS related to those particular pollutants may also have the potential to interfere with PSD in an attainment or unclassifiable area of another state. One way a state may satisfy prong 3 with respect to these sources is by citing EPA-approved nonattainment new source review (NNSR) provisions addressing any pollutants for which the state has designated nonattainment areas. Wyoming has a SIP-approved NNSR program that ensures regulation of major sources and major modifications in nonattainment areas.<sup>10</sup>

As Wyoming's SIP meets PSD requirements for all regulated NSR pollutants, and contains a fully approved NNSR program, the EPA is proposing to approve the infrastructure SIP submission as meeting the applicable requirements of prong 3 of section 110(a)(2)(D)(i) for the 2015 ozone NAAQS.

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<sup>9</sup> See 2013 Memo at 31.

<sup>10</sup> See WAQSR Chapter 6, Section 13, and also 81 FR 35273, June 2, 2016.

*Prong 4: Interference with measures to protect visibility*

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 the EPA's approval of Wyoming's best available retrofit technology (BART) alternative for SO<sub>2</sub>, which relied on the State's participation in the backstop SO<sub>2</sub> trading program under 40 CFR 51.309.<sup>11</sup> 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<sub>x</sub> 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 FIP to address these deficiencies. *Id.*

The 2013 Memo 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 Memo at 33.

The 2013 Memo 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

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<sup>11</sup> Wyoming's "Western Backstop Sulfur Dioxide Trading Program" can be found in Wyoming Air Quality Standards and Regulations (WAQSR) Chapter 14, Section 2.

infrastructure SIP submittal that it has an EPA-approved regional haze SIP in place. This approval option is not available in this case due to the disapproval and FIP of portions of the Wyoming Regional Haze SIP, as discussed previously. 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 interfere with other states' plans to protect visibility. Such a submittal should point to measures in the 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.<sup>12</sup>

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. If the emissions reductions from measures in Wyoming's SIP were to conform with the level of emission reductions the State agreed to include in the WRAP modeling, this would be sufficient for the Wyoming SIP to meet the prong 4 visibility requirement of CAA section 110(a)(2)(D)(i)(II). However, the EPA cannot rely on the emissions reductions from sources subject to BART and reasonable progress that are in the FIP rather than the Wyoming SIP. For this reason, the emission reductions in the Wyoming SIP are less than those included in the WRAP modeling, and therefore the EPA does not consider the State's participation in the RPO process as satisfying the prong 4 requirements.

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<sup>12</sup> 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.

The EPA is proposing to disapprove Wyoming's prong 4 infrastructure SIP for the 2015 ozone NAAQS. The EPA's disapproval of Wyoming's NO<sub>x</sub> BART determination in our January 30, 2014 final rulemaking included the specific disapproval of the NO<sub>x</sub> 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). The EPA recently updated the BART determination and associated emission limits for Laramie River Units 1, 2 and 3 for the Wyoming regional haze FIP. (*See* 84 FR 22711). However, because this BART determination remains in the FIP rather than in Wyoming's SIP, the EPA cannot rely on any of these emissions reductions for the purposes of finding that the Wyoming SIP satisfies the requirements of prong 4.

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 2015 ozone NAAQS. Because the WDEQ did not provide an alternative demonstration that its SIP contains measures to limit NO<sub>x</sub> emissions in accordance with the emission reductions it agreed to under the WRAP,<sup>13</sup> the EPA's disapproval of portions of Wyoming's NO<sub>x</sub> 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<sub>x</sub>. Specifically, NO<sub>x</sub> is a precursor of ozone, and is also a term which refers to both nitrogen oxide (NO) and nitrogen dioxide (NO<sub>2</sub>). The EPA is therefore proposing to disapprove prong 4 of Wyoming's infrastructure SIP with regard to the 2015 ozone NAAQS.

If the EPA disapproves an infrastructure SIP for prong 4, as we are proposing, a FIP obligation will be created. However, as noted previously, the EPA has promulgated a FIP for

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<sup>13</sup> The Visibility section of WAQSR Chapter 9, Section 2 does not address NO<sub>x</sub> emissions reductions.

Wyoming that corrects all regional haze SIP deficiencies (79 FR 5032, January 30, 2014).

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 Memo at 34-35). Additionally, since the infrastructure SIP submission is not required under part D of title I or in response to a SIP call under CAA section 110(k)(5), mandatory sanctions under CAA section 179 would not apply.

*110(a)(2)(D)(ii): Interstate and international transport provisions*

In the EPA's assessment of CAA section 110(a)(2)(D)(ii), we reviewed the information presented by Wyoming in its 2015 Ozone infrastructure SIP submission, as well as relevant portions of the EPA-approved Wyoming SIP. As required by 40 CFR 51.166(q)(2)(iv), Wyoming's SIP-approved PSD program requires major new or modified sources to provide notice to states whose air quality may be impacted by the emissions of sources subject to PSD.<sup>14</sup> This suffices to meet the notice requirement of section 126(a). Wyoming also has no pending obligations under sections 126(c) or 115(b) of the CAA. Therefore, the Wyoming SIP currently meets the requirements of those sections. For these reasons, the EPA is proposing to find that the Wyoming SIP meets the requirements of CAA section 110(a)(2)(D)(ii) for the 2015 ozone NAAQS.

**(e) Adequate resources:** Section 110(a)(2)(E)(i) requires states to provide necessary assurances that the state will have adequate personnel, funding, and authority under state law to carry out the SIP (and is not prohibited by any provision of federal or state law from carrying out the SIP or

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<sup>14</sup> See WAQSR Chapter 6, Section 2.

portion thereof). Section 110(a)(2)(E)(ii) requires each state to comply with the requirements respecting state boards under CAA section 128. Section 110(a)(2)(E)(iii) requires states to “provide necessary assurances that, where the State has relied on a local or regional government, agency, or instrumentality for the implementation of any [SIP] provision, the State has responsibility for ensuring adequate implementation of such [SIP] provision.”

The State’s submission and the EPA’s analysis:

*Sub-elements (i) and (iii): Adequate personnel, funding, and legal authority under state law to carry out its SIP, and related issues.*

The provisions contained in Articles 1 and 2 of the Wyoming Environmental Quality Act (WEQA) (Chapter 11, Title 35 of the Wyoming Statutes) give the State adequate authority to carry out its SIP obligations with respect to the 2015 ozone NAAQS.

With respect to funding, the State receives sections 103 and 105 grant funds through its PPA along with required state matching funds to provide the funding necessary to carry out Wyoming’s SIP requirements. Wyoming’s PPA (available within this docket) with the EPA documents resources needed to carry out agreed upon environmental program goals, measures, and commitments, including developing and implementing appropriate SIPs for all areas of the State. Annually, states update these grant commitments based on current SIP requirements, air quality planning, and applicable requirements related to the NAAQS. Furthermore, WAQSR Chapter 6, Section 2(a)(v), Permit for construction, modification, operation, requires the owner and operator of each new major source or major modification to pay a fee sufficient to cover the cost of reviewing and acting on permit applications. Collectively, these rules and commitments provide evidence that the WDEQ has adequate personnel (see non-regulatory document,

Resource Document, cited in Wyoming's certifications), funding and legal authority to carry out the State's Implementation Plan and related issues.

With respect to section 110(a)(2)(E)(iii), the State does not rely upon any other local or regional government, agency, or instrumentality for implementation of the SIP. Therefore, we propose to approve Wyoming's SIP as meeting the requirements of section 110(a)(2)(E)(i) and (E)(iii) for the 2015 ozone NAAQS.

*Sub-element (ii): State boards.*

Section 110(a)(2)(E)(ii) requires each state's SIP to contain provisions that comply with the requirements of section 128 of the CAA. Section 128 requires SIPs to contain two explicit requirements: (i) That any board or body which approves permits or enforcements orders under the CAA shall have at least a majority of members who represent the public interest and do not derive a significant portion of their income from persons subject to such permits and enforcement orders; and (ii) that any potential conflicts of interest by members of such board or body or the head of an executive agency with similar powers be adequately disclosed.”

On May 31, 2016, the EPA received a submission from the State of Wyoming to address the requirements of section 128 by adopting revisions to Chapter 1, Section 16 of the WDEQ's General Rules of Practice and Procedure. The Wyoming Environmental Quality Council approved these revisions on March 2, 2016. These rules address board composition and conflict of interest requirements of section 128(a)(1) and (2). We approved this new rule language as meeting the requirements of section 128 for the reasons explained in more detail in the notice proposing our approval.<sup>15</sup>

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<sup>15</sup> EPA's proposed rule notice (81 FR 78536, Nov. 8, 2016) and EPA's final rule notice (82 FR 18992 Apr. 25, 2017).

Based on our prior approval of Wyoming's section 128 submission, we propose to approve Wyoming's infrastructure SIP with respect to the requirements of Section 110(a)(2)(E)(ii) for 2015 ozone NAAQS.

**(f) Stationary source monitoring system:** Section 110(a)(2)(F) requires the SIP to require, as may be prescribed by the EPA: (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 such sources; and (iii) Correlation of such reports by the state agency with any emission limitations or standards established pursuant to the Act, which reports shall be available at reasonable times for public inspection.

The State's submission and the EPA's analysis: Wyoming's SIP approved monitoring provision cited by Wyoming in its certifications (WAQSR Chapter 6, Section 2, Permit requirements for construction, modification, and operation), pertains to its program of periodic emission testing and plant inspections of stationary sources, and related testing requirements and protocols (including periodic reporting) to assure compliance with emissions limits. WAQSR Chapter 7, Section 2 (Continuous Monitoring requirements for existing sources) requires certain sources to install and maintain continuous emission monitors to assure compliance with emission limitations. Furthermore, WAQSR Chapter 8, Section 5 (Ozone nonattainment emission inventory rule) pertains to facilities or sources operating in ozone nonattainment area(s) and requires each emission inventory to include specific reporting and recordkeeping requirements.

Furthermore, Wyoming is required to submit emissions data to the EPA for purposes of the National Emissions Inventory (NEI), as detailed above. Wyoming made its last update to the NEI in January 17, 2019. The EPA compiles the emissions data, supplementing it where

necessary, and releases it to the general public through the website

<http://www.epa.gov/ttn/chief/eiinformation.html>.

Based on the analysis above, we propose to approve Wyoming's SIP as meeting the requirements of CAA section 110(a)(2)(F) for the 2015 ozone NAAQS.

**(g) Emergency powers:** Section 110(a)(2)(G) of the CAA requires infrastructure SIPs to “provide for authority comparable to that in [CAA Section 303] and adequate contingency plans to implement such authority.”

Under CAA section 303, the Administrator has authority to immediately restrain an air pollution source that presents an imminent and substantial endangerment to public health or welfare, or the environment. If such action may not practicably assure prompt protection, then the Administrator has authority to issue temporary administrative orders to protect the public health or welfare, or the environment, and such orders can be extended if the EPA subsequently files a civil suit.

The State's submission and the EPA's analysis: Wyoming's SIP certification with regard to the section 110(a)(2)(G) requirements cite the EPA approved provisions (WAQSR Chapter 12, Section 2, Air pollution emergency episodes) which establish a basis for the Division to issue notices to the public relating to levels of air pollution from “alerts,” “warnings,” and “emergencies” to prevent “a substantial threat to the health of persons” if “such [pollution] levels are sustained or exceeded” in places that are attaining or have attained such pollution levels. Sections 35-11-115(a) and (b) of the WEQA also provides the Director power to issue emergency orders “to reduce or discontinue immediately the actions causing the condition of pollution” and institute “a civil action for immediate injunctive relief to halt any activity” presenting an “immediate and substantial danger to human or animal health or safety.”

Furthermore, as stated in Wyoming's 2015 ozone certification, WEQA Section 35-11-901(a) authorizes the WDEQ to seek a penalty or injunction from a court of competent jurisdiction for “[a]ny person who violates, or any director, officer or agent of a corporate permittee who willfully and knowingly authorizes, orders or carries out the violation of any provision of this act, or any rule, regulation, standard or permit adopted hereunder or who violates any determination or order of the council pursuant to this act or any rule, regulation, standard permit, license or variance ....”

While no single Wyoming statute mirrors the authorities of CAA section 303, we propose to find that the combination of WEQA and WAQSR provisions previously discussed provide for authority comparable to section 303. Section 303 authorizes the Administrator to immediately bring suit to restrain and issue emergency orders when necessary, and to take prompt administrative action against any person causing or contributing to air pollution that presents an imminent and substantial endangerment to public health or welfare, or the environment.

Therefore, we propose that Wyoming's SIP submittals sufficiently meet the authority requirement of CAA section 110(a)(2)(G) because they demonstrate that Wyoming has authority comparable to CAA section 303.

States must also have adequate contingency plans adopted into their SIP to implement the air agency's emergency episode authority (as previously discussed). The requirements for contingency plans are set forth in 40 CFR part 51, subpart H. Wyoming currently has two regions classified as priority II for particulate matter: Cheyenne Intrastate and Casper Intrastate. *See* 40 CFR 52.2621; *see also* 37 FR 10842. None of the State's regions have been classified as a priority I region for any pollutant. *Id.* Wyoming's Emergency Episode Plan and air pollution emergency rules (WAQSR Chapter 12, Section 2, Air pollution emergency episodes) address

PM<sub>10</sub> and SO<sub>2</sub>; establish stages of episode criteria; provide for public a proclamation whenever any episode stage has been determined to exist; and specify emission control actions to be taken at each episode stage. EPA approved Wyoming's Emergency Episode Plan and air pollution emergency rules on May 31, 1972 (37 FR 10842).

Based on the above analysis, we propose approval of Wyoming's SIP as meeting the requirements of CAA section 110(a)(2)(G) for the 2015 ozone NAAQS.

**(h) Future SIP revisions:** Section 110(a)(2)(H) requires that SIPs 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 SIP is substantially inadequate to attain the NAAQS which it implements or to otherwise comply with any additional requirements under this [Act].

The State's submission and the EPA's analysis: The general provisions in section 35-11-109 and the particular provision in section 35-11-202 of the Wyoming Statutes, gives the Director sufficient authority to revise the SIP as specified by CAA section 110(a)(2)(H). Therefore, we propose to approve Wyoming's SIP as meeting the requirements of CAA section 110(a)(2)(H) for the 2015 ozone NAAQS.

**(i) CAA § 110(a)(2)(I): Nonattainment Area Plan Revision Under Part D:** There are two elements identified in CAA section 110(a)(2) not governed by the three-year submission deadline of CAA section 110(a)(1) because SIPs incorporating necessary local nonattainment area controls are due on nonattainment area plan schedules pursuant to section 172 and the various pollutant-specific subparts 2 through 5 of part D. These are submissions required by: (i)

CAA section 110(a)(2)(C) to the extent that subsection refers to a permit program as required in part D, title I of the CAA; and (ii) section 110(a)(2)(I) which pertain to the nonattainment planning requirements of part D, title I of the CAA. As a result, this action does not address CAA section 110(a)(2)(C) with respect to NNSR or CAA section 110(a)(2)(I).

**(j) CAA § 110(a)(2)(J): Consultation with government officials, public notification, PSD and visibility protection:** CAA section 110(a)(2)(J) requires states to provide a process for consultation with local governments and Federal Land Managers (FLMs) pursuant to CAA section 121. CAA section 110(a)(2)(J) further requires states to notify the public if NAAQS are exceeded in an area and to enhance public awareness of measures that can be taken to prevent exceedances pursuant to CAA section 127. Lastly, CAA section 110(a)(2)(J) requires states to meet applicable requirements of part C, title I of the CAA related to prevention of significant deterioration and visibility protection.

(i) State's submission: The Wyoming submission references the following laws and regulations relating to consultation with identified officials on certain air agency actions: public notification; prevention of significant deterioration; and visibility protection:

- Consultation SIP Document, approved by the EPA (44 FR 38473, July 2, 1979);
- Public Notification of Air Quality SIP Document, approved by the EPA (44 FR 38473, July 2, 1979);
- Wyoming SIP for Class I Visibility Protection SIP Document, approved by the EPA (54 FR 6912, February 15, 1989);
- WAQSR, Section 28, Visibility;
- WAQSR, Section 28, Visibility, Chapter 6, Section 4, Prevention of significant deterioration; and

- WAQSR, Section 28, Visibility, Chapter 9, Section 2, Visibility.

(ii) The EPA's analysis: Wyoming has demonstrated that it has the authority and rules in place to provide a process of consultation with general purpose local governments, designated organizations of elected officials of local governments and any FLM having authority over federal land to which the SIP applies, consistent with the requirements of CAA section 121 (*see* (44 FR 38473, July 2, 1979); and Wyoming's non-regulatory document, Intergovernmental Cooperation (37 FR 10842, May 31, 1972). Moreover, the non-regulatory document, Public Notification of Air Quality, approved by the EPA on July 2, 1979 (44 FR 38473), meets the general requirements of CAA section 127 to notify the public when the NAAQS have been exceeded.

Addressing the requirement in CAA section 110(a)(2)(J) that the SIP meet the applicable requirements of part C, title I of the CAA, we have evaluated this requirement in the context of CAA section 110(a)(2)(C). The EPA most recently approved revisions to Wyoming's PSD program on October 12, 2016 (81 FR 70362), updating the program for current Federal requirements. Therefore, we are proposing to approve the Wyoming SIP as meeting the requirements of CAA section 110(a)(2)(J) with respect to PSD for the 2015 ozone NAAQS.

With regard to applicable visibility protection requirements, the EPA recognizes that states are subject to visibility and regional haze program requirements under part C of the Act. In the event of the establishment of a new NAAQS, however, the visibility and regional haze program requirements under part C do not change. Consequently, we find that there is no new applicable requirement relating to visibility triggered under CAA section 110(a)(2)(J) when a new NAAQS becomes effective.

Based on the above analysis, we are proposing to approve the Wyoming SIP as meeting the requirements of CAA section 110(a)(2)(J) for the 2015 ozone NAAQS.

**(k) CAA § 110(a)(2)(K): Air Quality and Modeling/Data:** CAA section 110(a)(2)(K) requires that SIPs provide for (i) the performance of 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 NAAQS, and (ii) the submission, upon request, of data related to such air quality modeling to the Administrator.

The EPA's requirements for air quality modeling for criteria pollutants are found in 40 CFR part 51, Appendix W, Guideline on Air Quality Models. On January 17, 2017 (82 FR 5182), the EPA revised Appendix W, effective February 16, 2017. The Federal Register notice stated: "For all regulatory applications covered under the Guideline, except for transportation conformity, the changes to the appendix A preferred models and revisions to the requirements and recommendations of the Guideline must be integrated into the regulatory processes of respective reviewing authorities and followed by applicants by no later than January 17, 2018."

(i) State's submission: The Wyoming submission refers to the following rules and regulations that provide for NAAQS pollutant air quality modeling and the submission of such data to the EPA:

- WAQSR, chapter 6, section 2, Permit requirements for construction, modification, and operation; and
- WAQSR, chapter 6, section 4, Prevention of significant deterioration.

(ii) The EPA's analysis: Wyoming's PSD program requires that estimates of ambient air concentrations are based on applicable air quality models specified in appendix W of 40 CFR part 51, and that modification or substitution of a model specified in appendix W must be

approved by the Administrator (see WAQSR Chapter 6, Section 2(b)(iv)). Section 14 of Chapter 6, as last approved by the EPA on September 28, 2018 (83 FR 47564), specifies an incorporation by reference date of July 1, 2017 for all references to the CFR, including appendices, throughout Chapter 6. Thus, Wyoming's approved PSD program applies the recent revisions to Appendix W described above.

Additionally, WAQSR Chapter 6, Section 2(f)(iv) authorizes the AQD Administrator to impose any reasonable conditions upon an approval to construct, modify or operate, including modeling "to determine the effect which emissions from a source may have, or is having, on air quality in any area which may be affected by emissions from such source." Additionally, WEQA 35-11-1101(b) and Wyoming's PPA with the EPA provide Wyoming the authority to submit air quality modeling data to the Administrator. As a result, the SIP provides for such air quality modeling as the Administrator has prescribed.

Based on the above information, we are proposing to approve the Wyoming SIP as meeting the requirements of CAA section 110(a)(2)(K) for the 2015 ozone NAAQS.

**(I) CAA § 110(a)(2)(L): Permitting Fees:** CAA section 110(a)(2)(L) directs SIPs to require each major stationary source to pay permitting fees to cover the cost of reviewing, approving, implementing and enforcing a permit.

(i) State's submission: The Wyoming submission refers to the SIP, and the following WAQSR, and WEQA regulations as authority to require each major stationary source to pay permitting fees to cover the cost of reviewing, approving, implementing and enforcing a permit:

- WAQSR, Chapter 6, Section 2; and
- WEQA, Section 35-11-211(a).

(ii) The EPA's analysis: The WAQSR Chapter 6 regulations, approved by the EPA on August 27, 2004 (69 FR 44965), provide for construction, modification, operation, and operating requirements, and include permit fee assessment provisions. Additionally, the WEQA regulations require that permit fees cover the direct and indirect costs of reviewing, acting upon, implementing and enforcing a permit; therefore, the EPA is proposing that Wyoming has satisfied the requirements of CAA section 110(a)(2)(L) for the 2015 ozone NAAQS.

**(m) CAA § 110(a)(2)(M): Consultation/Participation by Affected Local Entities:** CAA section 110(a)(2)(M) requires states to provide for consultation and participation in SIP development by local political subdivisions affected by the SIP.

(i) State's submission: Wyoming cited the following non-regulatory document, Intergovernmental Cooperation Document, approved by the EPA on May 31, 1972 (37 FR 10842) as state approved regulations that meet the requirements to provide for consultation and participation with local political subdivisions during SIP development.

(ii) The EPA's analysis: The document cited by Wyoming confers power to WDEQ to "advise, consult, and cooperate with agencies of the United States, and political subdivisions of this state and industries and other effective groups in this state in furtherance of the proposals of this act." Therefore, we find that Wyoming's submittal meets the requirements of CAA Section 110(a)(2)(M) for the 2015 ozone NAAQS.

#### **IV. Proposed Action**

In today's rulemaking, we are proposing approval for multiple elements of the infrastructure SIP requirements for the 2015 ozone NAAQS for Wyoming's infrastructure SIP submittal. Our proposed actions by element of section 110(a)(2) are contained in Table 1 below.

The EPA is proposing to approve Wyoming’s January 3, 2019 SIP submission for the following CAA section 110(a)(2) infrastructure elements for the 2015 ozone NAAQS: (A), (B), (C), (D)(i)(II) Prong 3 Interstate transport - prevention of significant deterioration, (D)(ii), (E), (F), (G), (H), (J), (K), (L), and (M). The EPA is not taking action at this time on (D)(i)(I) Prong 1 Interstate transport - significant contribution, and (D)(i)(I) Prong 2 Interstate transport - interference with maintenance; we intend to address (D)(i)(I) Prongs 1 and 2 in a separate, future action. The EPA is also proposing to disapprove (D)(i)(II) Prong 4 Interstate transport - visibility. As noted, finalization of the prong 4 disapproval would not have additional practical consequences for the State or the EPA because the FIP already in place would satisfy the prong 4 requirements for this NAAQS.

**TABLE 1: INFRASTRUCTURE ELEMENTS THAT THE EPA IS PROPOSING TO ACT ON**

In the table below, the key is as follows:

A - *Approve*.

D - *Disapprove*.

NA - *No Action*. We intend to address the element in a separate rulemaking action.

<b>2015 Ozone NAAQS Infrastructure SIP Elements</b>	<b>Wyoming</b>
(A): Emission Limits and Other Control Measures	A
(B): Ambient Air Quality Monitoring/Data System	A
(C): Program for Enforcement of Control Measures	A
(D)(i)(I): Prong 1 Interstate Transport - significant contribution	NA
(D)(i)(I): Prong 2 Interstate Transport - interference with maintenance	NA
(D)(i)(II): Prong 3 Interstate Transport - prevention of significant deterioration	A

(D)(i)(II): Prong 4 Interstate Transport - visibility	D
(D)(ii): Interstate and International Pollution Abatement	A
(E): Adequate Resources	A
(F): Stationary Source Monitoring System	A
(G): Emergency Episodes	A
(H): Future SIP revisions	A
(J): Consultation with Government Officials, Public Notification, PSD and Visibility Protection	A
(K): Air Quality and Modeling/Data	A
(L): Permitting Fees	A
(M): Consultation/Participation by Affected Local Entities	A

**V. 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 choices, provided that they meet the criteria of the CAA. Accordingly, this action merely proposes to approve state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this 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);

- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866;
- 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 CAA; 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 is not approved to 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, Greenhouse gases, 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 26, 2019.

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Gregory Sopkin,  
Regional Administrator,  
EPA Region 8.