



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R08-OAR-2019-0418; FRL-12875-01-R8]

Air Quality State Implementation Plans; Approval and Promulgations: Montana:

Infrastructure Requirements for the 2015 Ozone National Ambient Air Quality Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve elements of a state implementation plan (SIP) submission from Montana regarding the infrastructure requirements of the Clean Air Act (CAA) for the 2015 ozone National Ambient Air Quality Standards (NAAQS). The infrastructure requirements are designed to ensure that the structural components of each state's air quality management program are adequate to meet the state's responsibilities under the CAA. Additionally, EPA is proposing to approve Montana's request to update their SIP, to incorporate the most current version of the "Guideline on Air Quality Models." The EPA is taking this action pursuant to the CAA.

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-2019-0418 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 <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

<https://www2.epa.gov/dockets/commenting-epa-dockets>.

Docket: All documents in the docket are listed in the <https://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 electronically in <https://www.regulations.gov>. Please email or call the person listed in the **FOR FURTHER INFORMATION CONTACT** section if you need to make alternative arrangements for access to the docket.

FOR FURTHER INFORMATION CONTACT: Amrita Singh, Air and Radiation Division, EPA, Region 8, Mailcode 8ARD-IO, 1595 Wynkoop Street, Denver, Colorado, 80202-1129, telephone number: (303) 312-6103, email address: singh.amrita@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document wherever “we,” “us,” or “our” is used, we mean the EPA.

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I. What is the background of this SIP submission?

Whenever EPA promulgates a new or revised NAAQS, CAA section 110(a)(1) requires states to make SIP submissions to provide for the implementation, maintenance, and enforcement

of the NAAQS. This type of SIP submission is commonly referred to as an “infrastructure SIP.” These submissions must meet the various requirements of CAA section 110(a)(2), as applicable. EPA has previously provided states with direction¹ on the application of these CAA provisions and through regional actions on infrastructure submissions. 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, EPA evaluates the submitting state’s SIP for factual compliance with statutory and regulatory requirements, not for the state’s implementation of its SIP. EPA has other authority to address any issues concerning a state’s implementation of the rules, regulations, consent orders, etc. that comprise its SIP.

The Montana Department of Environmental Quality (MDEQ) submitted the following revisions to its infrastructure SIP (ISIP):

- 2015 Ozone ISIP submitted on October 1, 2018, and
- Revisions to appendix W submitted on December 28, 2022.

II. What infrastructure elements are required under section 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 emission inventories, which are designed to ensure attainment and maintenance of the NAAQS. The elements that are subject to this action are listed below:

- Section 110(a)(2)(A): Emission limits and other control measures.
- Section 110(a)(2)(B): Ambient air quality monitoring/data system.
- Section 110(a)(2)(C): Program for enforcement of control measures/minor new source review (NSR)/prevention of significant deterioration (PSD).
- Section 110(a)(2)(D): Interstate transport.

¹ Available at:

https://www3.epa.gov/airquality/urbanair/sipstatus/docs/Guidance_on_Infrastructure_SIP_Elements_Multipollutant_FINAL_Sept_2013.pdf. Hereinafter referred to as the “EPA 2013 Guidance.”

- Section 110(a)(2)(E): Adequate resources and authority, conflict of interest, and oversight of local governments and regional agencies.
- Section 110(a)(2)(F): Stationary source monitoring and reporting.
- Section 110(a)(2)(G): Emergency powers.
- Section 110(a)(2)(H): Future SIP revisions.
- Section 110(a)(2)(I): Plan revisions for nonattainment areas (under part D);
- Section 110(a)(2)(J): Consultation with government officials; public notification; and PSD and visibility protection.
- Section 110(a)(2)(K): Air quality modeling/data.
- Section 110(a)(2)(L): Permitting fees.
- Section 110(a)(2)(M): Consultation/participation by affected local entities.

III. EPA’s analysis of this SIP submission

Montana provided a detailed synopsis of how various components of its SIP meet each of the applicable requirements in section 110(a)(2) for the 2015 ozone NAAQS. The following review evaluates the SIP’s submission.

Section 110(a)(2)(A)—Emission Limits and Other Control Measures

This section requires SIPs to include enforceable emission limits and other control measures, means or techniques, schedules for compliance, and other related matters. EPA has long interpreted emission limits and control measures for attaining the standards as being due when nonattainment planning requirements are due.² In the context of an infrastructure SIP, EPA is not evaluating the existing SIP provisions for this purpose. Instead, EPA is only evaluating whether the State’s SIP has basic structural provisions for the implementation of the NAAQS.

The Montana Code Annotated (MCA) 75-2-112 gives MDEQ the authority to “adopt, amend, and repeal rules for the administration, implementation, and enforcement of this chapter.

² See, e.g., EPA’s final rule on “National Ambient Air Quality Standards for Lead.” 73 FR 66964 at 67034.

Montana implements a statewide program for permitting major and minor stationary sources of air pollution, including sources of ozone precursors. Specific control measures adopted in Montana Board of Environmental Review (BER) Orders, along with multiple SIP-approved state air quality regulations within the Administrative Rules of Montana (ARM) and cited in Montana's certifications, provide enforceable emission limitations and other control measures, means of techniques, schedules for compliance, and other related matters necessary to meet the requirements of CAA section 110(a)(2)(A) for the 2015 ozone NAAQS. Montana's certifications generally list provisions and enforceable control measures within its SIP which regulate pollutants through various programs, including its stationary permitting program which requires sources to demonstrate that emissions will not cause or contribute to violation of any NAAQS (ARM 17.8.749). In the case of Montana, this meets the requirements of section 110(a)(2)(A) for the 2015 ozone NAAQS.

Section 110(a)(2)(B)—Ambient Air Quality Monitoring/Data System

This section requires SIPs to provide for establishing and operating ambient air quality monitors, collecting, and analyzing ambient air quality data, and upon request, to make these data available to EPA. Submission of annual monitoring network plans (AMNP) consistent with EPA's ambient air monitoring regulations at 40 CFR 58.10 is one way of satisfying requirements to provide EPA information regarding air quality monitoring activities.³ EPA's review of a state's annual monitoring plan includes EPA's determination that the state: (i) monitors air quality at appropriate locations throughout the state using EPA-approved Federal Reference Methods or Federal Equivalent Method monitors; (ii) submits data to EPA's Air Quality System in a timely manner; and, (iii) provides EPA Regional offices with prior notification of any planned changes to monitoring sites or the network plan.

³ EPA 2013 Guidance.

A comprehensive AMNP, was submitted to EPA by Montana on July 1, 2018, and subsequently approved by the EPA.⁴ Montana's SIP-approved regulations provide for the design and operation of its monitoring network, reporting of data obtained from the monitors, and annual network review including notification to the EPA of any changes, and public notification of exceedance of NAAQS. As described in the submission, Montana operates a comprehensive monitoring network, including ozone monitoring, compiles and analyzes collected data, and submits the data to the EPA's Air Quality System on a quarterly basis.

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

Section 110(a)(2)(C)—Program for Enforcement of Control Measures/Minor NSR/PSD

Section 110(a)(2)(C) requires states to have a plan that includes a program providing for enforcement of all SIP measures, regulation of minor sources and minor modifications, and the regulation of the modification and construction of each stationary source, including a program to meet the Prevention of Significant Deterioration (PSD) of air quality. This section requires SIPs to set forth a program providing for enforcement of all SIP measures, and the regulation of construction of new and modified stationary sources to meet the NSR requirements under PSD and Nonattainment NSR (NNSR) programs. Part C of the CAA (sections 160-169B) addresses PSD, while part D of the CAA (sections 171-193) addresses NSR requirements. A state must also provide for the regulation of minor source and minor modifications (minor NSR).⁵ The NNSR requirements of section 110(a)(2)(C) are generally outside the scope of infrastructure SIPs. The EPA is not evaluating nonattainment-related provisions, such as the NNSR program required by Part D of the CAA. The EPA is evaluating the State's PSD program as required by Part C of the CAA and the State's minor NSR programs as required by 110(a)(2)(C).

⁴ The July 1st, 2018 AMNP is referenced in this action because it reflects the version available and under consideration at the time of the October 1, 2018 SIP submittal by the State of Montana. Accordingly, EPA's evaluation is based on the information contained in the 2018 plan, which is included in this docket for this action. See "Montana AMNP Approval 2018". EPA has reviewed and approved subsequent AMNP's submitted by the State of Montana in the years since 2018.

⁵ See EPA's 2013 Guidance on Infrastructure SIP elements

PSD Requirements

With respect to Element (C), each state is required 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 pollutants⁶. The requirements for Element (J) in relation to a comprehensive PSD Permitting Program are the same as the requirements with respect to Element (C).⁷

Montana's submission has shown that it has a PSD program⁸ in place that covers all regulated NSR pollutants.

Minor NSR

The State has adopted a minor NSR program⁹ in the approved SIP, which is adopted under section 110(a)(2)(C) of the CAA. The minor NSR program was originally approved by EPA on March 22, 1972. Since approval of the minor NSR program, the State and EPA have relied on the program to assure that new and modified sources not captured by the major NSR permitting programs do not interfere with attainment and maintenance of the NAAQS.

Montana's minor NSR program, as approved in the SIP, covers the construction and modification of regulated NSR pollutants, including PM_{2.5}, lead, and ozone and its precursors.

The Montana submission refers to the following state rules and regulations which are SIP-approved, that address and provide for meeting all provisions and requirements of CAA section 110(A)(2)(C).

- 75-2-111, MCA.
- 75-2-112, MCA.

⁶ In accordance with EPA's 2013 Guidance on Infrastructure SIP Elements, the NSR pollutants include the criteria pollutants – carbon monoxide, nitrogen dioxide, sulfur dioxide, ozone, particulate matter (PM 2.5 and PM10), and lead.

⁷ The "Prong 3" requirements of Element D(i)(II) may be satisfied in part by demonstrating that the air agency has a complete PSD permitting program that correctly addresses all regulated NSR pollutants. Our explanation of how the state has satisfied the Prong 3 requirement is below.

⁸ See ARM 17.8.801 and ARM 17.8.818.

⁹ See 79 FR 69374. MDEQ issues permits for minor sources of air pollution under ARM, Subchapter 07, Permit Construction and Operation of Air Containment Sources, 17.8.743.

- ARM 17.8.130.
- ARM 17.8.801 *et seq.*
- ARM 17.8.901 *et seq.*
- ARM 17.8.10001 *et seq.*

The EPA is proposing to approve Montana’s infrastructure SIP for the 2015 ozone NAAQS, with respect to the general requirements in section 110(a)(2)(C) to include a program in the SIP that regulates the enforcement, modification, and construction of any stationary sources as necessary to assure the NAAQS are achieved.

Section 110(a)(2)(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 that will contribute significantly to nonattainment of the NAAQS in any other state (prong 1), and adequate provisions prohibiting emissions that 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 that 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 others state’s required measures to protect visibility (prong 4). Under section 110(a)(2)(D)(i)(I) of the CAA, the EPA and states must give independent consideration to both the prong 1 “significant contribution to nonattainment” requirement and the prong 2 “interference with maintenance” requirement when evaluating downwind air quality problems under section 110(a)(2)(D)(i)(I).¹⁰ For more information on Montana and EPA’s analysis of prongs 1 and 2 for this NAAQS, see our proposed approval of the CAA section 110(a)(2)(D)(i)(I) portion of Montana’s October 1, 2018 ISIP.¹¹

¹⁰ See *North Carolina v. EPA*, 531 F.3d 896, 909-911 (2008).

¹¹ 87 FR 6095, February 3, 2022.

The EPA took final action on the prong 1 and prong 2 requirements of the CAA section 110(a)(2)(D)(i)(I) for the 2015 ozone NAAQS for Montana on April 12, 2022 (87 FR 21578). In that rulemaking, the EPA determined that Montana's SIP contains adequate provisions to prohibit emissions that will significantly contribute to nonattainment or interfere with maintenance of the 2015 ozone NAAQS in any other state.¹² The prong 3 (PSD) requirement of the CAA section 110(a)(2)(D)(i)(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).¹³ EPA is proposing approval of prong 3 in this rulemaking.

To meet the prong 4 (visibility) requirement of the 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).¹⁴ EPA will consider Montana's visibility provisions through a future rulemaking.

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

¹² Since this time, EPA has conducted updated modeling which continues to demonstrate that Montana does not significantly contribute to nonattainment or interfere with the maintenance of the 2015 ozone NAAQS in any other state.

¹³ See 2013 Memo.

¹⁴ See 2013 Memo. In addition, the EPA approved the visibility requirement of 110(a)(2)(D)(i) for the 1997 Ozone and PM_{2.5} 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.

To address CAA section 110(a)(2)(D)(ii), Montana states that its SIP-approved PSD program (specifically, ARM 17.8.826(2)(d)) requires the MDEQ to notify potentially affected states, Tribes, and federal land managers (FLMs) of its intent to approve or disapprove a PSD permit application. Montana also states that nothing in its SIP precludes the state from ensuring compliance with CAA sections 126 and 115 with respect to the 2015 ozone NAAQS. Montana asserts that no sources within the state are the subject of an active finding under CAA section 126 with respect to the 2015 ozone NAAQS, nor are there any findings against Montana under CAA section 115 for this NAAQS. For these reasons, Montana concludes that its SIP meets the requirements of CAA section 110(a)(2)(D)(ii) for the 2015 ozone NAAQS.

For the EPA's analysis of CAA section 110(a)(2)(D)(ii), we reviewed the sections of the Montana SIP referenced by the State in its 2015 Ozone infrastructure SIP submission. As required by 40 CFR 51.166(q)(2)(iv), Montana's SIP-approved PSD program requires notice of proposed new sources or modifications to states whose lands may be significantly affected by emissions from the source or modification (*see* ARM 17.8.826(2)(d)). This provision satisfies the notice requirement of section 126(a). Montana also has no pending obligations under sections 126(c) or 115(b). Therefore, the Montana SIP currently meets the requirements of those sections. On these bases, the EPA is proposing to find that the Montana SIP meets the requirements of CAA section 110(a)(2)(D)(ii) for the 2015 ozone NAAQS.

Section 110(a)(2)(E)—Adequate Resources and Authority, Conflict of Interest, and Oversight of Local Governments and Regional Agencies

Section 110(a)(2)(E)(i) requires each SIP to provide necessary assurances that the state will have adequate personnel, funding, and legal authority under state law to carry out its SIP. In addition, section 110(a)(2)(E)(ii) requires each state to comply with the requirements respecting state boards under CAA section 128. Finally, section 110(a)(2)(E)(iii) requires that, where a state relies upon local or regional governments or agencies for implementation of its SIP provisions, the state retains responsibility for ensuring implementation of SIP obligations with respect to relevant NAAQS.

The provisions contained in 75-2-102, MCA, 75-2-111, MCA, and 75-2-112, MCA, provide adequate authority for the State of Montana and the MDEQ to carry out its SIP obligations with respect to the 2015 ozone NAAQS. The State receives section 103 and 105 grant funds through its Performance Partnership Grant, along with required state matching funds to provide funding necessary to carry out Montana's SIP requirements. Montana's Performance Partnership Agreement with the EPA, documents that the State has the resources to carry out agreed 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. Therefore, we propose to approve Montana's SIP meeting the requirements of section 110(a)(2)(E)(i) for the 2015 ozone NAAQS.

With respect to section 110(a)(2)(E)(iii), the regulations cited by Montana in their certifications (75-2-111 and 75-2-112, MCA) and contained within this docket also provide the necessary assurances that the state has the responsibility for adequate implementation of SIP provisions by local governments. Therefore, we propose to approve Montana's SIP meeting the requirements of section 110(a)(2)(E)(iii) for the 2015 ozone NAAQS.

Section 110(a)(2)(E)(ii) requires each SIP to contain provisions that comply with the state board requirements of section 128 of the CAA. That provision contains two explicit requirements: (1) that any board or body which approves permits or enforcement orders under

this chapter shall have at least a majority of members who represent the public interest and do not derive any significant portion of their income from persons subject to permits and enforcement order under this chapter, and (2) 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. Section 128 further provides that a state may adopt more stringent conflicts of interest requirements and require EPA to approve such requirements submitted as part of a SIP.

The New Rules I (ARM 17.8.150), II (17.8.151) and III (ARM 17.8.152) adopted by the BER on October 16, 2015, were submitted and approved by the EPA for inclusion in the SIP on December 17, 2015, and contain provisions that meet the requirements of section 128(a)(1) and section 128(a)(2) (*See* 81 FR 4234). Montana's SIP continues to meet the requirements of section 110(a)(2)(E)(ii). EPA proposes that Montana meets the infrastructure requirements of this portion of section 110(a)(2)(E) for the 2015 ozone NAAQS.

Section 110(a)(2)(F)—Stationary Source Monitoring and Reporting

States must establish a system to monitor emissions from stationary sources and submit periodic emission reports. Each plan shall also require 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. The state plan shall also require periodic reports on the nature and amounts of emissions and emissions-related data from such sources, and correlation of such reports by each state agency with any emission limitations or standards. Lastly, the reports shall be available at reasonable times for public inspection.

The provisions cited by Montana (ARM 17.8.105 and 17.8.106) pertain to testing requirements and protocols. Montana also incorporates by reference 40 CFR part 51, appendix P regarding minimum reporting requirements. (*See* ARM 17.8.103(1)(D)). In addition, Montana provides for monitoring, recordkeeping, and reporting requirements for sources subject to minor and major source permitting.

Furthermore, Montana is required to submit emissions data to the EPA for purposes of the National Emissions Inventory (NEI). The NEI is the EPA's central repository for air emissions data. The EPA published the Air Emissions Reporting Rule (AERR) on December 5, 2008, which modified the requirements for collecting and reporting air emissions data (*See* 73 FR 76539). The AERR shortened the time states had to report emissions data from 17 months to 12 months, giving states one calendar year to submit emissions data. All states are required to submit comprehensive emission inventories every three years and report emissions for certain larger sources annually through the EPA's online Emissions Inventory System. States report emissions data for the six criteria pollutants and their associated precursors – nitrogen oxides, sulfur dioxides, ammonia, lead, carbon monoxide, particulate matter, and volatile organic compounds. Many states also voluntarily report emissions of hazardous air pollutants. Montana made its latest update to the NEI in 2024, however for purposes of this proposed action the emissions data are based on the 2017 NEI released in February 2019 since that included the State's most recent NEI update at the time of the October 1, 2018 ISIP submittal. Based on the analysis above, we propose to approve the Montana SIP as meeting the requirements of CAA section 110(a)(2)(F) for the 2015 ozone NAAQS.

Section 110(a)(2)(G)—Emergency Powers

This section requires that a plan provide for state authority analogous to that provided to the EPA Administrator in section 303 of the CAA, and adequate contingency plans to implement such authority. Section 303 of the CAA provides authority to the EPA administrator to seek a court order to restrain any source from causing or contributing to emissions that present an “imminent and substantial endangerment to public health or welfare or the environment” in the event that “it is not practicable to assure prompt protection...by commencement of such civil action.”

Montana's SIP submittals with regard to the section 110(a)(2)(G) emergency order requirements explain that Montana has an EPA-approved Emergency Episode Avoidance Plan

(EEAP) (*See* 71 FR 19, Jan. 3, 2006). According to the EEAP, “the Department shall take the necessary precautions to protect public health as set forth in 75-2-402, MCA, “Emergency Powers.” These precautions include, but are not limited to, ordering a halt or curtailment of any operations, activities, processes, or conditions the Department believes are contributing to the air pollutant emergency episode.” Montana’s submission cites 75-2-402, MCA, as providing general authority comparable to CAA section 303. The submission also cites 75-2-112(2)(a) and 75-2-111(3), MCA. Under 75-2-111(3) MCA, Montana's environmental review board has broad authority to “issue orders necessary to effectuate the purposes” of Chapter 2. Also, under 75-2-112(2)(a) MCA, the MDEQ has the authority to use “appropriate administrative and judicial proceedings” to enforce orders issued by the board. Any air pollution discharge that created an emergency situation would constitute a violation of the chapter and its purposes; therefore, providing the BER and the MDEQ authority to issue administrative orders to stop discharges that cause emergencies effecting welfare and the environment.

While no single Montana statute mirrors the authorities of CAA section 303, we propose to find that the combination of MCA provisions discussed above provide for authority comparable to section 303 to immediately bring suit to restrain and issue emergency orders for applicable emergencies 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 and, therefore are sufficient to meet the authority requirement of CAA section 110(a)(2)(G).

States must also have adequate contingency plans adopted into their SIP to implement the air agency's emergency episode authority (as discussed above). Requirements for contingency plans are provided in 40 CFR part 51, subpart H. The EPA approved Montana's EEAP in 71 FR 19 (Jan. 3, 2006). We find that Montana's air pollution emergency rules include ozone and establish stages of episode criteria; provide for public announcement whenever any episode stage has been determined to exist; and specify emission control actions to be taken at each episode

stage. These are consistent with the EPA emergency episode SIP requirements set forth at 40 CFR part 51, subpart H (prevention of air pollution emergency episode) for ozone.

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

Section 110(a)(2)(H)—Future SIP Revisions

This section requires that a state's SIP provide for revision may be necessary, to take account of changes in the NAAQS or availability of improved methods for attaining the NAAQS and whenever EPA finds that the SIP is substantially inadequate.

Montana's statutory provisions in the Montana CAA at 75-2-101 et. seq., give the BER sufficient authority to meet the requirements of 110(a)(2)(H). Therefore, we propose to approve Montana's SIP as meeting the requirements of the CAA section 110(a)(2)(H).

Section 110(a)(2)(I)—Nonattainment Area Plan or Plan Revisions Under Part D

Section 110(a)(2)(I) provides that each plan, or plan revisions for an area designated as a nonattainment area, shall meet the applicable requirements of part D of the CAA. EPA interprets section 110(a)(2)(I) to be inapplicable to the infrastructure SIP process because specific SIP submissions designated nonattainment areas, as required by part D, are subject to different submission schedule under subparts 2 through 5 of part D, extending as far as 10 years following areas of designation for some elements, whereas infrastructure SIP submissions are due within three years after adoption or revision of a NAAQS. Accordingly, EPA takes action on part D attainment plans through separate processes.

Section 110(a)(2)(J)—Consultation with Government Officials; Public Notifications; and PSD and Visibility Protection

Section 110(a)(2)(J) of the CAA requires that each SIP “meet the applicable requirements of section 121 of this title (relating to consultation), section 127 of this title (relating to public notification) and part C of this subchapter (relating to PSD of air quality and visibility protection).”

The Montana submissions reference the following specific laws and regulations relating to consultation with identified officials on certain air agency actions, public notifications, prevention of significant deterioration, and visibility protection:

- MCA 2-3-203.
- ARM 17.8.801 *et seq.* – Prevention of Significant Deterioration of Air Quality.
- ARM 17.8.901 *et seq.* – Permit Requirements for Major Stationary Sources of Major Modifications Locating within Nonattainment Areas.
- ARM 17.8.1001 *et seq.* – Preconstruction Permit Requirements for Major Stationary Sources of Major Modifications Locating within Attainment or Unclassified areas.
- Montana’s Emergency Episode Avoidance Plan (EEAP) SIP.

(i) Montana has demonstrated that it has authority and rules in place to provide a process a process of consultation with general purpose local governments, designated organizations of elected officials of 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 (59 FR 2988, Jan. 20, 1994). Moreover, Montana’s Emergency Episode Avoidance Plan, approved into the SIP (71 FR 19, Jan, 3, 2006), meets the general requirements of CAA section 127.

Montana has demonstrated that it has the authority and rules in place to provide a process of consultation with general purpose local governments, designated organizations with 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* 59 FR 2988, Jan. 20, 1994). Furthermore, Montana’s Emergency Episode Avoidance Plan, approved into the SIP (*See* 71 FR 19, Jan, 3, 2006), meets the general requirements of the CAA section 127.

Addressing the requirement in CAA section 110 (a)(2)(J) that the SIP meet the applicable requirements of part C, title 1 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 Montana's PSD program on June 26, 2018 (*See* 83 FR 29694), updating the program consistency with CAA requirements. Therefore, we are proposing to approve the Montana SIP as meeting the requirements of CAA 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 CAA. In the event of an establishment of a new NAAQS, however, the visibility and regional haze program requirements under part C does 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 Montana SIP as meeting the requirements of CAA section 110(a)(2)(J) for the 2015 Ozone NAAQS.

Section 110(a)(2)(K)—Air Quality Modeling/Data

Section 110(a)(2)(K) of the CAA requires that SIPs provide for (i) the performance of air quality modeling as the Administrator may prescribe for the purpose of predicating the effect on 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 (*See* 82 FR 5182), the EPA revised appendix W, effective February 16, 2017. The *Federal Register* document stated: "For all regulatory applications covered under the Guideline, except for transportation conformity, the changes to appendix A preferred models and revisions to the requirements and recommendations of the Guidelines must be integrated into the regulatory processes of respective reviewing authorities and followed by applicants by no later than January 17, 2018."

In the September 26, 2018 submission, Montana cites ARM 17.8.821 (MT's PSD Program) which requires estimates of ambient air concentrations be based on applicable air quality models specified in appendix W of 40 CFR part 51, pertaining to the Guidelines on Ambient Air Quality Models. Additionally, Montana cites in its State rules and regulations, as contained within ARM 17.8.701, ARM 17.8.801, ARM 17.8.901, and ARM 17.8.1001 (regulating construction of new or modified stationary sources consistent with PSD and NSR requirements) shall demonstrate the facility can be expected to operate in compliance with applicable law and that it will not cause or contribute to a violation of any NAAQS.

ARM 17.8.802(1)(b) incorporates appendix W by reference without a specific date. ARM 17.8.102(1)(a) provides:

(1) Unless expressly provided otherwise in this chapter, where the board has:

(a) Adopted a federal regulation by reference, the reference is to the July 1, 2016 edition of the Code of Federal Regulations (CFR), as it is published on the website of the U.S.

Government Printing Office:

<https://www.gpo.gov/fdsys/browse/collectionCfr.action?selectedYearFrom=2016&go=Go>;

In the December 28, 2022 appendix W revision¹⁵ we received, Montana incorporates the most current version of the "Guideline on Air Quality Models", 40 CFR part 51, appendix W. ARM rule 17.8.802 Incorporation by Reference (b) is updated to comply with EPA's January 17, 2017 revisions to appendix W.

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

CAA Section 110(a)(2)(L): Permitting Fees

¹⁵ See appendix W revisions in docket. In its most recent revision to appendix W, the EPA stated that revised requirements must be "integrated into the regulatory processes of respective reviewing authorities and followed by applicants by no later than January 17, 2018." Final rule, Revisions to the Guideline of Air Quality Models: Enhancements to the AERMOD Dispersion Modeling System and Incorporation of Approaches to Address Ozone and Fine Particulate Matter, 82 FR 5182 (Jan. 17, 2017).

CAA section 110(a)(2)(L) provides that the SIP must require each major stationary source to pay permitting fees to cover the cost of reviewing, approving, implementing, and enforcing a permit.

The Montana submission refers to its fully approved title V operating permit program, and references the ARM regulations for the assessment and collection of fees:

- ARM 17.8.504 - Air Quality Permit Application Fees.
- ARM 17.8.505 - Air Quality Operation Fees.
- ARM 17.8.1701, *et seq.* - Registration of Air Contaminant Sources.

ARM 17.8.48 requires new and modified sources to pay fees in accordance with ARM 17.8.504. With respect to title V sources, on January 22, 2001, the EPA fully approved Montana's part 70 title V operating permit program (*See* 65 FR 80785). Therefore, we are proposing that Montana has satisfied the requirements of CAA section 110(a)(2)(L) for the 2015 ozone NAAQS.

CAA Section 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.

Montana refers to the following ARM and MCA regulations, which require the MDEQ to “...advise, consult, contract, and cooperate with other agencies of the state, local governments, industries, other states, inter-local agencies, the United States, and any interested persons or groups”. Additionally, Montana law allows potentially affected parties of MDEQ actions to petition for hearings.

- ARM 17.8.140 Rehearing Procedures - Form and Filing of Petition.
- ARM 17.8.141 Rehearing Procedures - Filing Requirements.
- ARM 17.8.142 Rehearing Procedures - Board Review.
- 75-2-112, MCA - Powers and Responsibilities of Department.

The rules and regulations cited by Montana provide for the consultation and participation by local political subdivisions affected by the SIP; therefore, we are proposing to approve the Montana SIP as meeting the requirements of CAA section 110(a)(2)(M) for the 2015 ozone NAAQS.

IV. What action is EPA taking?

In this rulemaking, we are proposing to approve multiple elements of the infrastructure SIP requirements for the 2015 ozone NAAQS for Montana along with a proposed no action for three infrastructure elements for Montana. Additionally, we are proposing to approve the revisions to appendix W. Our proposed action is contained in table 1 below.

The EPA is proposing to approve Montana’s September 26, 2018, SIP submission for the following CAA section 110(a)(2) infrastructure elements for the 2015 ozone NAAQS: (A), (B), (C), (D)(ii), (E), (F), (G), (H), (J), (K), (L), and (M). The EPA is proposing no action on D(i)(I) Prongs 1 and 2, and D(i)(II) Prong 4.

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.

Table 1: Infrastructure Elements That the EPA is Proposing To Act On

2015 Ozone NAAQS Infrastructure SIP Elements	Montana
(A): Emission Limitations and Other Control Measures	A
(B): Ambient Air Quality Monitoring/Data System	A
(C): Program for Enforcement of Control Measures; minor NSR; PSD	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 - PSD	A

(D)(i)(II): Prong 4 Interstate Transport - visibility	NA
(D)(ii): Interstate and International Pollution Abatement	A
(E): Adequate Personnel, Funding, and Authority; State Boards; Local Implementation	A
(F): Stationary Source Monitoring	A
(G): Emergency Authority; Emergency Episode Plans	A
(H): Future SIP Revisions	A
(J): Consultation with Government Officials, Public Notification, PSD and Visibility Protection	A
(K): Air Quality 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 CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves 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 Order 12866 (58 FR 51735, October 4, 1993);
- Is not subject to Executive Order 14192 (90 FR 9065, February 6, 2025) because State Implementation Plan approvals under the CAA are exempt from review 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 (Pub. L. 104-4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997) because it approves a state program;
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001); and
- 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.

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian Tribe has demonstrated that a Tribe has jurisdiction. In those areas of Indian country, the 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: July 8, 2025.

Cyrus M. Western,
Regional Administrator,
Region 8.

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