

for the prior denial. The Office of Tribal Justice may provide appropriate technical assistance to any tribe that wishes to prepare and submit a renewed request.

(i) *Retrocession of State criminal jurisdiction.* Retrocession of State criminal jurisdiction under Public Law 280 is governed by 25 U.S.C. 1323(a) and Executive Order 11435 of November 21, 1968. The procedures for retrocession do not govern a request for assumption of concurrent Federal criminal jurisdiction under section 221.

Dated: May 16, 2011.

**Eric H. Holder, Jr.,**

*Attorney General.*

[FR Doc. 2011-12541 Filed 5-20-11; 8:45 am]

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R08-OAR-2010-0303; FRL-9310-1]

#### Approval and Disapproval and Promulgation of State Implementation Plan Revisions; Infrastructure Requirements for the 1997 8-Hour Ozone National Ambient Air Quality Standards; Wyoming

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

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to partially approve and partially disapprove the State Implementation Plan (SIP) submission from the State of Wyoming to demonstrate that the SIP meets the requirements of Sections 110(a)(1) and (2) of the Clean Air Act (CAA) for the National Ambient Air Quality Standards (NAAQS) promulgated for ozone on July 18, 1997. Section 110(a)(1) of the CAA requires that each state, after a new or revised NAAQS is promulgated, review their SIPs to ensure that they meet the requirements of the "infrastructure elements" of section 110(a)(2). The State of Wyoming submitted two certifications of their infrastructure SIP for the 1997 ozone NAAQS, dated December 7, 2007 and December 10, 2009. EPA does not propose to act on the State's May 25, 2007 submission to meet the requirements of section 110(a)(2)(D)(i) of the CAA, relating to interstate transport of air pollution, for the 1997 ozone NAAQS. EPA approved the State's interstate transport SIP submission on May 8, 2008 (73 FR 26019). EPA is also proposing to approve a Wyoming submittal, dated May 10, 2011, revising the State's

Prevention of Significant Deterioration (PSD) program.

**DATES:** Written comments must be received on or before June 22, 2011.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R08-OAR-2010-0303, by one of the following methods:

- <http://www.regulations.gov>. Follow the on-line instructions for submitting comments.
- *E-mail:* [dolan.kathy@epa.gov](mailto:dolan.kathy@epa.gov).
- *Fax:* (303) 312-6064 (please alert the individual listed in the **FOR FURTHER INFORMATION CONTACT** if you are faxing comments).
- *Mail:* Director, Air Program, Environmental Protection Agency (EPA), Region 8, Mail Code 8P-AR, 1595 Wynkoop Street, Denver, Colorado 80202-1129.
- *Hand Delivery:* Director, Air Program, Environmental Protection Agency (EPA), Region 8, Mail Code 8P-AR, 1595 Wynkoop Street, Denver, Colorado 80202-1129.

Such deliveries are only accepted Monday through Friday, 8 a.m. to 4:30 p.m., excluding Federal holidays. Special arrangements should be made for deliveries of boxed information.

*Instructions:* Direct your comments to Docket ID No. EPA-R08-OAR-2010-0303. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at <http://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through <http://www.regulations.gov> or e-mail. The <http://www.regulations.gov> Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA, without going through <http://www.regulations.gov> your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at <http://www.epa.gov/epahome/dockets.htm>. For additional instructions on submitting comments, go to section I, General Information, of the **SUPPLEMENTARY INFORMATION** section of this document.

*Docket:* All documents in the docket are listed in the <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 <http://www.regulations.gov> or in hard copy at the Air Program, Environmental Protection Agency (EPA), Region 8, 1595 Wynkoop Street, Denver, Colorado 80202-1129. 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 a.m. to 4 p.m., excluding Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Kathy Dolan, Air Program, U.S. Environmental Protection Agency (EPA), Region 8, Mail Code 8P-AR, 1595 Wynkoop Street, Denver, Colorado 80202-1129. 303-312-6142, [dolan.kathy@epa.gov](mailto:dolan.kathy@epa.gov).

#### SUPPLEMENTARY INFORMATION:

##### Definitions

For the purpose of this document, we are giving meaning to certain words or initials as follows:

- (i) The words or initials *Act* or *CAA* mean or refer to the Clean Air Act, unless the context indicates otherwise.
- (ii) The words *EPA*, *we*, *us* or *our* mean or refer to the United States Environmental Protection Agency.
- (iii) The initials *SIP* mean or refer to State Implementation Plan.

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## I. General Information

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

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

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

Identify the rulemaking by docket number and other identifying information (subject heading, Federal Register, date, and page number);

Follow directions and organize your comments;

Explain why you agree or disagree; Suggest alternatives and substitute language for your requested changes;

Describe any assumptions and provide any technical information and/or data that you used;

If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced;

Provide specific examples to illustrate your concerns, and suggest alternatives;

Explain your views as clearly as possible, avoiding the use of profanity or personal threats; and,

Make sure to submit your comments by the comment period deadline identified.

## II. Background

On July 18, 1997, EPA promulgated new NAAQS for ozone based on 8-hour average concentrations. The 8-hour averaging period replaced the previous 1-hour averaging period, and the level of the NAAQS was changed from 0.12 parts per million (ppm) to 0.08 ppm (62 FR 38856). By statute, SIPs meeting the requirements of sections 110(a)(1) and (2) are to be submitted by states within three years after promulgation of a new or revised standard. Section 110(a)(2) provides basic requirements for SIPs, including emissions inventories, monitoring, and modeling, to assure attainment and maintenance of the

standards. These requirements are set out in several “infrastructure elements,” listed in section 110(a)(2).

Section 110(a) imposes the obligation upon states to make a SIP submission to EPA for a new or revised NAAQS, and the contents of that submission may vary depending upon the facts and circumstances. In particular, the data and analytical tools available at the time the state develops and submits the SIP for a new or revised NAAQS affects the content of the submission. The contents of such SIP submissions may also vary depending upon what provisions the state’s existing SIP already contains. In the case of the 1997 ozone NAAQS, states typically have met the basic program elements required in section 110(a)(2) through earlier SIP submissions in connection with previous NAAQS. In a guidance issued on October 2, 2007, EPA noted that, to the extent an existing SIP already meets the section 110(a)(2) requirements, states need only to certify that fact via a letter to EPA.<sup>1</sup>

On March 27, 2008, EPA published a final rule entitled, “Completeness Findings for Section 110(a) State Implementation Plans for the 8-hour Ozone NAAQS” (73 FR 16205). In the rule, EPA made a finding for each State that it had submitted or had failed to submit a complete SIP that provided the basic program elements of section 110(a)(2) necessary to implement the 1997 8-hour ozone NAAQS. In particular, EPA found that Wyoming had submitted a complete SIP to meet these requirements.

## III. What infrastructure elements are required under sections 110(a)(1) and (2)?

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 that are designed to assure 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)(ii): Interstate and international pollution.
- 110(a)(2)(E): Adequate resources and authority.
- 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 prevention of significant deterioration (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 the next section.

Two elements identified in section 110(a)(2) are not governed by the three-year submission deadline of section 110(a)(1) and are therefore not addressed in this action. These elements relate to part D of Title I of the CAA, and submissions to satisfy them are not due within three years after promulgation of a new or revised NAAQS, but rather are due at the same time nonattainment area plan requirements are due under section 172. The two elements are: (i) section 110(a)(2)(C) to the extent it refers to permit programs (known as “nonattainment new source review (NSR)”) required under part D, and (ii) section 110(a)(2)(I), pertaining to the nonattainment planning requirements of part D. As a result, this action does not address infrastructure elements related to the nonattainment NSR portion of section 110(a)(2)(C) or related to 110(a)(2)(I).

This action also does not address the “interstate transport” requirements of element 110(a)(2)(D)(i). In a separate action, EPA approved the State’s submission to meet the requirements of 110(a)(2)(D)(i) for the 1997 ozone NAAQS (73 FR 26019).

## IV. How did the State of Wyoming address the infrastructure elements of section 110(a)(2)?

1. *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 this Act.

<sup>1</sup> Memorandum from William T. Harnett, Director, Air Quality Policy Division, “Guidance on SIP Elements Required Under Sections 110(a)(1) and (2) for the 1997 8-hour Ozone and PM<sub>2.5</sub> National Ambient Air Quality Standards” (Oct. 2, 2007).

a. *Wyoming's response to this requirement:* Wyoming cited the following SIP provisions: *Non-regulatory documents:* Control Strategy Document, Source Surveillance Document and Compliance Schedule Document approved by EPA May 31, 1972 (37 FR 10842). *Regulatory Documents:* Wyoming Air Quality Standards and Regulations (WAQSR), Section 2, *Definitions*; Section 18, *Diluting and concealing emissions*; Section 19, *Abnormal conditions and equipment malfunction*; Section 14, *Control of particulate emissions*; and Section 10, *Nitrogen oxides*, approved by EPA May 31, 1972 (37 FR 10842). WAQSR, Section 4, *Sulfur oxides*, approved by EPA June 10, 1975 (40 FR 24726). WAQSR, Section 12, *Carbon monoxide* and Section 9, *Hydrocarbons*, approved by EPA on May 31, 1972 (37 FR 10842). WAQSR, Section 4, *Sulfur oxides*, approved by EPA June 10, 1975 (40 FR 24726). WAQSR, Section 5, *Sulfuric acid mist*, approved by EPA May 31, 1972 (37 FR 10842). WAQSR, Section 25, *Sweetwater County non-attainment area particulate matter regulations*, approved by EPA July 2, 1979 (44 FR 38473). WAQSR, Section 13, *Open burning restrictions*, Section 15, *Wood waste burners*, Section 17, *Motor vehicle pollution*, approved by EPA May 31, 1972 (37 FR 10842). Chapter 1, Section 3, *Definitions*; Section 4, *Diluting and concealing emissions*; Section 5, *Abnormal conditions and equipment malfunction*; Chapter 3, Section 2, *Emission standards for particulate matter*; Section 3, *Emission standards for nitrogen oxides*; Section 4, *Emission standard for sulfur oxides*; Section 5, *Emission standards for carbon monoxide*; Section 6, *Emission standards for volatile organic compounds*; Chapter 4, Section 2, *Existing sulfuric acid production units*; Section 3, *Existing nitric acid manufacturing plans*; Chapter 8, Section 2, *Sweetwater County particular matter regulations*, Section 3, *Conformity of general federal actions to state implementation plans*; Chapter 10, Section 2, *Open burning restrictions*; Section 3, *Wood waste burners*; Chapter 13, Section 2, *Motor vehicle pollution control*, approved by EPA July 28, 2004 (69 FR 44965).

b. *EPA analysis:* Wyoming's SIP meets the requirements of CAA section 110(a)(2)(A) for the 1997 ozone NAAQS, subject to the following clarifications. First, Wyoming has no areas designated as nonattainment for the 1997 ozone NAAQS and, therefore, is not required to establish enforceable emission limitations or other emission reduction

measures to attain the 1997 ozone NAAQS. The SIP provisions cited by Wyoming include emissions limitations for ozone precursors: Nitrogen oxides (WAQSR Chapter 3, section 3), and volatile organic compounds (WAQSR Chapter 3, section 6). These emissions limitations meet the requirements of 110(a)(2)(A) for the 1997 ozone NAAQS.

Second, in this action, EPA is not proposing to approve or disapprove any existing state rules with regard to director's discretion or variance provisions. A number of states have such provisions which are contrary to the CAA and existing EPA guidance (52 FR 45109, Nov. 24, 1987), and the Agency plans to take action in the future to address such state regulations. In the meantime, EPA encourages any state having a director's discretion or variance provision which is contrary to the CAA and EPA guidance to take steps to correct the deficiency as soon as possible.

Finally, in this action, EPA is also not proposing to approve or disapprove any existing state provisions with regard to excess emissions during startup, shutdown, or malfunction (SSM) of operations at a facility. A number of states have SSM provisions which are contrary to the CAA and existing EPA guidance<sup>2</sup> and the Agency plans to address such state regulations in the future. In the meantime, EPA encourages any state having a deficient SSM provision to take steps to correct it as soon as possible.

2. *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.

a. *Wyoming's response to this requirement:* Wyoming cited the following SIP provisions: *Non-regulatory documents:* *Air Quality Surveillance Document*, approved by EPA May 31, 1972 (37 FR 10842); *Air Quality Surveillance Network Document*, approved by EPA February 9, 1982 (47 FR 5892); *Implementation Plan for Lead*, approved by EPA October 11, 1984 (49 FR 39843). *Regulatory documents:* WAQSR, Section 3,

*Particulates*; Section 10, *Nitrogen Oxides*; Section 4, *Sulfur oxides*; Section 12, *Carbon monoxide*; Section 8, *Photochemical oxidants*; Section 6, *Sulfation*; and, Section 27, *Ambient air quality standard for lead*, approved by EPA October 11, 1984 (49 FR 39843). Chapter 2, Section 2, *Ambient standards for particulate matter*; Section 3, *Ambient standards for nitrogen oxides*; Section 4, *Ambient standards for sulfur oxides*, Section 5, *Ambient standards for carbon monoxide*; Section 6, *Ambient standards for ozone*; Section 8, *Ambient standards for suspended sulfates*; and, Section 10, *Ambient standards for lead*, approved by EPA July 28, 2004 (69 FR 44965).

b. *EPA analysis:* Wyoming's air monitoring programs and data systems meet the requirements of CAA section 110(a)(2)(B) for the 1997 ozone NAAQS. The Wyoming Ambient Air Monitoring Annual Network Plan, 2009, was approved by EPA Region 8 on December 3, 2009.

3. *Program for enforcement of control measures:* Section 110(a)(2)(C) requires SIPs to include a program to provide for the enforcement of the measures described in subparagraph (A), and regulation of the modification and construction of any stationary source within the areas covered by the plan as necessary to assure that NAAQS are achieved, including a permit program as required in parts C and D.

a. *Wyoming's response to this requirement:* Wyoming cited the following SIP provisions: *Non-regulatory documents:* *Legal authority document*; *Source Surveillance document*; *Review of New Sources and Modifications Document*, approved by EPA May 31, 1972 (37 FR 10842). *Regulatory documents:* 1974 WAQSR, Section 21, *Permit requirements for construction, modification and operation*, approved by EPA June 10, 1975 (40 FR 24726); 1979 WAQSR, Section 24, *Prevention of significant deterioration*, approved by EPA July 2, 1979 (44 FR 38473). Chapter 6, Section 2, *Permit requirements for construction, modification, and operation* and Section 4, *Prevention of significant deterioration*, approved by EPA July 28, 2004 (69 FR 44965).

b. *EPA analysis:* As explained above, in this action EPA is not evaluating nonattainment related provisions, such as the nonattainment NSR program required by part D of the Act. In addition, Wyoming has no nonattainment areas for the 1997 ozone NAAQS and is therefore not required at this point to have a corresponding nonattainment NSR program. EPA is evaluating the State's prevention of

<sup>2</sup> Steven Herman, Assistant Administrator for Enforcement and Compliance Assurance, and Robert Perciasepe, Assistant Administrator for Air and Radiation, Memorandum to EPA Air Division Directors, "State Implementation Plans (SIPs): Policy Regarding Excess Emissions During Malfunctions, Startup, and Shutdown." (Sept. 20, 1999).

significant deterioration (PSD) program as required by part C of the Act, and the State's minor NSR program as required by 110(a)(2)(C).

#### *GHG Regulation*

Wyoming's PSD program was most recently approved by EPA on July 16, 2008. As described in our notice of approval (73 FR 40750), Wyoming's PSD program at that date met the general requirements of CAA section 110(a)(2)(C). However, on June 3, 2010, EPA promulgated the "Prevention of Significant Deterioration and Title V Greenhouse Gas Tailoring Rule" ("Tailoring Rule") (75 FR 31514), setting out requirements for application of PSD to emissions sources of greenhouse gases (GHG). On December 13, 2010, EPA issued a finding of substantial inadequacy and SIP call for seven states, including Wyoming, on the basis that the states' SIP-approved PSD programs did not apply PSD to GHG-emitting sources as required under the Tailoring Rule (75 FR 77698). Next, on December 29, 2010, EPA issued a finding that the seven states had failed to submit revisions to their SIPs as necessary to correct this inadequacy (75 FR 81874). Finally, on December 30, 2010, EPA established a federal implementation plan (FIP) in the seven states to ensure that PSD permits for sources emitting GHGs could be issued in accordance with the Tailoring Rule (75 FR 82246). As the Wyoming PSD program is currently subject to a finding of substantial inadequacy and SIP call, and Wyoming has not taken steps to remedy the inadequacy, EPA proposes in this action to disapprove the Wyoming infrastructure SIP for each infrastructure element that requires the SIP to contain a PSD program that meets the requirements of part C of title I of the Act. These elements are 110(a)(2)(C) and (J).

#### *Ozone Precursors*

In addition, in order for the State's SIP-approved PSD program to satisfy the requirements of section 110(a)(2)(C) for the 1997 ozone NAAQS, the program must properly regulate ozone precursors. On November 29, 2005, EPA promulgated the phase 2 implementation rule for the 1997 ozone NAAQS (Phase 2 Rule), which includes requirements for PSD programs to treat nitrogen oxides (NO<sub>x</sub>) as a precursor for ozone (72 FR 71612). Wyoming has adopted revisions to its PSD program to meet the requirements of the Phase 2 rule, and submitted these revisions to EPA on May 10, 2011. EPA proposes in this action to concurrently approve the PSD program updates in Wyoming's

May 11, 2011 submittal, including approval of the revisions which meet the requirements of the Phase 2 Rule. In particular, the revisions in Chapter 6, section 4(a) to the definitions of "major modification," "major stationary source," "regulated NSR pollutant," and "significant" meet the requirements of 40 CFR 51.166(b)(2)(ii), (b)(1)(ii), (b)(49)(i)(a), and (b)(23)(i), respectively, as amended by the Phase 2 Rule (see 70 FR at 71699–700). In addition, the revision to section 4(b)(i)(E)(vi)(1)(e) meets the requirements of the footnote to 40 CFR 51.166(i)(5)(i)(e). Contingent on final approval of these revisions, Wyoming's SIP meets the requirement of infrastructure element 110(a)(2)(C) to include a PSD program that properly regulates ozone precursors. This approval does not negate the disapproval (discussed in the previous paragraph) based on the finding of substantial inadequacy and SIP call.

EPA also proposes approval of the portions of Wyoming's May 11, 2011 submission which update the State's PSD program to comply with the NSR implementation rule for PM<sub>2.5</sub> (73 FR 28321, May 16, 2008), and the inserted definition of "replacement unit," which reflects the language of 40 CFR 51.166 (b)(32)(i) through (iv). In particular, the revisions in Chapter 6, section 4(a) to the definitions of "regulated NSR pollutant" and "significant" meet the requirements of 40 CFR 51.166 (b)(49)(i)(b), (c), (d), and (b)(49)(vi); and (b)(23)(i), respectively, as amended by the PM<sub>2.5</sub> NSR implementation rule (see 73 FR at 28348). In addition, the revisions to section 4(b)(i)(E)(vi)(2) and (3) meet the requirements of 40 CFR 51.166(i)(5)(ii) and (iii), respectively.

#### *Minor NSR*

Finally, with regards to minor NSR, in this action EPA is proposing to approve Wyoming's infrastructure SIP for the 1997 ozone NAAQS with respect to the general requirement in section 110(a)(2)(C) to include a program in the SIP that regulates the modification and construction of any stationary source as necessary to assure that the NAAQS are achieved. Wyoming's approved minor NSR program is found in Chapter 6, section 2 of the WAQSR. 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, Feb. 9, 1982.) Since then, the State and 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 programs do not interfere with attainment and maintenance of the NAAQS. EPA is not proposing to approve or disapprove the State's existing minor NSR program itself to the extent that it is inconsistent with EPA's regulations governing this program. A number of states may have minor NSR provisions that are contrary to the existing EPA regulations for this program. EPA intends to work with states to reconcile state minor NSR programs with EPA's regulatory provisions for the program. The statutory requirements of section 110(a)(2)(C) provide for considerable flexibility in designing minor NSR programs, and it may be time to revisit the regulatory requirements for this program to give the states an appropriate level of flexibility to design a program that meets their particular air quality concerns, while assuring reasonable consistency across the country in protecting the NAAQS with respect to new and modified minor sources.

4. *Interstate transport*: Section 110(a)(2)(D)(i) requires SIPs to contain adequate provisions prohibiting, consistent with the provisions of this title, any source or other type of emissions activity within the state from emitting any air pollutant in amounts which will (I) contribute significantly to nonattainment in, or interfere with maintenance by, any other state, with respect to any such national primary or secondary ambient air quality standard, or (II) interfere with measures required to be included in the applicable implementation plan for any other state under part C to prevent significant deterioration of air quality or to protect visibility.

a. *Wyoming's response to this requirement*: Wyoming submitted its Interstate Transport SIP to EPA on May 25, 2007.

b. *EPA Analysis*: EPA approved the State's Interstate Transport provisions for the 1997 ozone NAAQS on May 8, 2008 (73 FR 26019). EPA is taking no action relevant to section 110(a)(2)(D)(i) in this proposal.

5. *Interstate and International transport provisions*: Section 110(a)(2)(D)(ii) requires that each SIP shall contain adequate provisions insuring compliance with applicable requirements of sections 126 and 115 (relating to interstate and international pollution abatement).

a. *Wyoming's response to this requirement*: Wyoming did not cite any specific provisions relevant to this requirement.

b. *EPA Analysis*: Section 126(a) requires notification to affected, nearby

states of major proposed new (or modified) sources. Sections 126(b) and (c) pertain to petitions by affected States to the Administrator regarding sources violating the "interstate transport" provisions of section 110(a)(2)(D)(i). Section 115 similarly pertains to international transport of air pollution.

WAQSR Chapter 6, Section 2, specifically paragraph (m) meets the requirements of CAA section 126(a) for the 1997 ozone NAAQS. Final approval of this language became effective January 30, 1995 (59 FR 60902, Nov. 29, 1994). Final approval of the renumbering of this language became effective August 27, 2004 (See 69 FR 44965, July 28, 2004).

Wyoming has no pending obligations under sections 126(c) or 115(b); therefore, its SIP currently meets the requirements of those sections. The SIP therefore meets the requirements of 110(a)(2)(D)(ii) for the 1997 ozone NAAQS.

6. *Adequate resources:* Section 110(a)(2)(E) requires states to provide (i) 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 portion thereof), (ii) requires that the state comply with the requirements respecting state boards under section 128, and (iii) necessary assurances that, where the state has relied on a local or regional government, agency, or instrumentality for the implementation of any SIP provision, the state has responsibility for ensuring adequate implementation of such SIP provision.

a. *Wyoming's response to this requirement:* Wyoming cited the following SIP provisions: *Non-regulatory documents:* Resources and legal authority document submitted to EPA on January 28, 1972 and approved by EPA on May 31, 1972 (37 FR 10842). *Regulatory document:* Chapter 1, Section 2, *Authority*, approved by EPA on July 28, 2004 (69 FR 44965).

b. *EPA Analysis:* The provisions in Articles 1 and 2 of the Wyoming Environmental Quality Act (Chapter 11, Title 35 of the Wyoming Statutes) give the State adequate authority to carry out the SIP. The composition of the Wyoming Council of Environmental Quality is governed by section 35–11–111(a) of the Wyoming Statutes. Finally, the State receives sections 103 and 105 grant funds through its Performance Partnership Grant along with required state matching funds to provide funding necessary to carry out Wyoming's SIP requirements. The requirements of

section 110(a)(2)(E) for the 1997 ozone NAAQS are therefore met.

7. *Stationary source monitoring system:* Section 110(a)(2)(F) requires (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.

a. *Wyoming's response to this requirement:* Wyoming cited the following SIP provisions: *Regulatory documents:* 1979 WAQSR, Section 23, *Continuous monitoring requirements for existing sources*, approved by EPA on July 2, 1979 (44 FR 38473) and Chapter 7, Section 2, *Continuous monitoring requirements for existing sources*, approved by EPA on July 28, 2004 (69 FR 44965).

b. *EPA Analysis:* In addition to the specific monitoring provisions cited by Wyoming, the SIP provides for monitoring, recordkeeping, and reporting requirements for sources subject to minor and major source permitting. (See WAQSR Chapter 6, section 2.) Wyoming's SIP therefore meets the requirements of section 110(a)(2)(F) for the 1997 ozone NAAQS.

8. *Emergency power:* Section 110(a)(2)(G) requires states to provide for authority to address activities causing imminent and substantial endangerment to public health, including contingency plans to implement the emergency episode provisions in their SIPs.

a. *Wyoming's response to this requirement:* Wyoming cited the following SIP provisions: *Non-regulatory documents:* *Emergency Episode Plan Document*, approved by EPA May 31, 1972 (37 FR 10842); *Emergency Episode Contingency Plan Document*, approved by EPA February 9, 1982 (47 FR 5892). *Regulatory documents:* 1971 WAQSR, Section 20, *Air Pollution emergency episodes*, approved by EPA May 31, 1972 (37 FR 10842) and Chapter 12, Section 2, *Air pollution emergency episodes*, approved by EPA July 28, 2004 (69 FR 44965).

b. *EPA analysis:* Section 35–11–115 of the Wyoming Statutes gives the Director of the Wyoming Department of Environmental Quality (DEQ) comparable emergency powers to those in section 303 of the Act. Furthermore, Wyoming has not monitored any values

above the priority cut point for ozone (see 40 CFR 51.150(b)(5)), and is not required at this point to have a contingency plan for ozone that meets the requirements of 40 CFR part 51, subpart H. The SIP therefore meets the requirements of 110(a)(2)(G) for the 1997 ozone NAAQS.

9. *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.

a. *Wyoming's response to this requirement:* Wyoming cited the following SIP provisions: *Non-regulatory document:* Implementation Plan Review Document, approved by EPA April 19, 1983 (48 FR 16682).

b. *EPA analysis:* The general provisions in Article 1 of the Wyoming Environmental Quality Act (Article 1, Chapter 11, Title 35 of the Wyoming Statutes) and the particular provision in Article 2 at section 35–11–202 of the Wyoming Statutes give the State sufficient authority to revise the SIP as required by section 110(a)(2)(H).

10. *Nonattainment Area Plan or Plan Revision under Part D:* Section 110(a)(2)(I) requires that a SIP or SIP revision for an area designated as a nonattainment area must meet the applicable requirements of part D of this subchapter (relating to nonattainment areas).

a. *EPA analysis for Section 110(a)(2)(I):* As noted above, the specific nonattainment area plan requirements of Section 110(a)(2)(I) are subject to the timing requirement of Section 172, not the timing requirement of Section 110(a)(1). This element is therefore not applicable to this action. EPA will take action on part D attainment plans through a separate process.

11. *Consultation with government officials, public notification, PSD and visibility protection:* Section 110(a)(2)(J) 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 prevention of significant deterioration of air quality and visibility protection).

a. *Wyoming's response to this requirement:* Wyoming cited the following SIP provisions: *Non-regulatory document:* Consultation document, approved by EPA July 2, 1979 (44 FR 38473). *Regulatory document:* 1979 WAQSR, Section 24, *Prevention of significant deterioration*, approved by EPA on July 2, 1979 (44 FR 38473); Chapter 7, Section 4, *Prevention of significant deterioration*, approved by EPA 7/28/04 (69 FR 44965)

b. *EPA Analysis:*

The State 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 Federal Land Manager having authority over federal land to which the SIP applies, consistent with the requirements of CAA section 121. Furthermore, EPA previously approved portions of the Wyoming SIP meeting the requirements of CAA section 127. (44 FR 38473, July 2, 1979.)

As noted above, the State has a SIP-approved PSD program. EPA has further evaluated Wyoming's SIP-approved PSD program in this proposed action under IV.3, element 110(a)(2)(C). For the same reasons as discussed in subsection IV.3, EPA proposes to disapprove the Wyoming infrastructure SIP for the 1997 ozone NAAQS specifically for the requirement in section 110(a)(2)(J) that the SIP meet the applicable requirements of part C of title I of the Act, in particular with regards to the requirement that the PSD program apply to GHG sources in accordance with the Tailoring Rule.

Finally, with regard to the applicable requirements for visibility protection, 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. Thus we find that there is no new visibility obligation "triggered" under section 110(a)(2)(J) when a new NAAQS becomes effective.

12. *Air quality and modeling/data:* Section 110(a)(2)(K) requires that each SIP provide for (i) the performance of such air quality modeling as the Administrator may prescribe for the purpose of predicting the effect on ambient air quality of any emissions of any air pollutant for which the Administrator has established a NAAQS, and (ii) the submission, upon request, of data related to such air quality modeling to the Administrator.

a. *Wyoming's response to this requirement:* Wyoming cited the following SIP provisions: *Regulatory Documents:* 1974 WAQSR, Section 21, *Permit requirements for construction, modification and operation*, approved by EPA on June 10, 1975 (40 FR 24726); 1979 WAQSR, Section 24, *Prevention of significant deterioration*, approved by EPA on July 2, 1979 (44 FR 38473); Chapter 6, Section 2, *Permit requirements for construction, modification, and operation*, approved by EPA on July 28, 2004 (69 FR 44965); Chapter 6, Section 4, *Prevention of significant deterioration*, approved by EPA on July 28, 2004 (69 FR 44965).

b. *EPA Analysis:* Wyoming's SIP meets the requirements of CAA section 110(a)(2)(K) for the 1997 ozone NAAQS. In particular, Wyoming's PSD program requires that estimates of ambient air concentrations be 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 4(b)(iv).) As a result, the SIP provides for such air quality modeling as the Administrator has prescribed.

13. *Permitting fees:* Section 110(a)(2)(L) requires SIPs to require the owner or operator of each major stationary source to pay to the permitting authority, as a condition of any permit required under this act, a fee sufficient to cover (i) the reasonable costs of reviewing and acting upon any application for such a permit, and (ii) if the owner or operator receives a permit for such source, the reasonable costs of implementing and enforcing the terms and conditions of any such permit (not including any court costs or other costs associated with any enforcement action), until such fee requirement is superseded with respect to such sources by the Administrator's approval of a fee program under title V.

a. *Wyoming's response to this requirement:* Wyoming cited the following SIP provisions: *Regulatory Documents:* 1993 WAQSR, Section 21, *Permit requirements for construction, modification, and operation*, approved by EPA on 11/29/94 (59 FR 60905); Chapter 6, Section 2, *Permit requirements for construction, modification and operation*, approved by EPA on July 28, 2004 (69 FR 44965).

b. *EPA Analysis:* Wyoming's approved title V operating permit program meets the requirements of CAA section 111(a)(2)(L) for the 1997 ozone NAAQS. Final approval of the title V operating permit program became effective April 23, 1999 (64 FR 8523, Feb. 22, 1990).

Interim approval of Wyoming's title V operating permit program became effective February 21, 1995 (60 FR 4563, Jan. 19, 1995). As discussed in a previous direct final rule (which received comments) for interim approval of the title V program (59 FR 48802, Sept. 23, 1994), the State demonstrated that the fees collected were sufficient to administer the program.

14. *Consultation/participation by affected local entities:* Section 110(a)(2)(M) requires states to provide for consultation and participation in SIP development by local political subdivisions affected by the SIP.

a. *Wyoming's response to this requirement:* Wyoming cited the following SIP provisions: *Non-regulatory document:* Intergovernmental Cooperation Document, approved by EPA on May 31, 1972 (37 FR 10842).

b. *EPA Analysis:* Wyoming's submittal meets the requirements of CAA Section 110(a)(2)(M) for the 1997 ozone NAAQS.

## V. What action is EPA taking?

In this action, EPA is proposing to approve the following infrastructure elements for the 1997 ozone NAAQS: (A), (B), (C) with regards to the requirement to have a minor NSR program, (D)(ii), (E), (F), (G), (H), (J) with regards to the requirements related to sections 121 and 127 of the Act, (K), (L), and (M).

In this action, EPA also proposes approval of the State's May 11, 2011 submission, updating the Wyoming PSD program to, among other things, regulate NO<sub>x</sub> as a precursor to ozone. Contingent on final approval of these updates, EPA is proposing to approve portions of infrastructure elements (C) and (J) for the 1997 ozone NAAQS with regards to the requirement that the State's SIP-approved PSD program properly regulate ozone precursors.

In this action, EPA is proposing to disapprove the following infrastructure elements for the 1997 ozone NAAQS:

(C) and (J) with regards to the requirement that the State's PSD program regulate GHG-emitting sources in accordance with the Tailoring Rule.

In this action, EPA is taking no action on infrastructure elements (D)(i), (I), and (J) specifically in regard to visibility, for the 1997 ozone NAAQS.

## VI. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations (42 U.S.C. 7410(k), 40 CFR 52.02(a)).

Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this proposed action merely approves some state law as meeting Federal requirements and disapproves other state law because it does not meet Federal requirements; this proposed action does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- 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 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 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, this rule does not have Tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the State, and EPA notes that it will not impose substantial direct costs on Tribal governments or preempt Tribal law.

#### List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate

matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: May 16, 2011.

**James B. Martin,**

*Regional Administrator, Region 8.*

[FR Doc. 2011-12600 Filed 5-20-11; 8:45 am]

**BILLING CODE 6560-50-P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R03-OAR-2010-0856; FRL-9308-2]

#### Approval and Promulgation of Air Quality Implementation Plans; Virginia; Permits for Major Stationary Sources and Major Modifications Locating in Prevention of Significant Deterioration (PSD) Areas

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

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to approve a State Implementation Plan (SIP) revision submitted by the Virginia Department of Environmental Quality (VADEQ). This revision pertains to EPA's proposal to approve the addition of nitrogen oxides (NO<sub>x</sub>) as a precursor to ozone in the Virginia SIP that governs permits for constructing or significantly modifying facilities located in areas attaining the national ambient air quality standards (NAAQS). This action is being taken under the Clean Air Act (CAA).

**DATES:** Written comments must be received on or before June 22, 2011.

**ADDRESSES:** Submit your comments, identified by Docket ID Number EPA-R03-OAR-2010-0856 by one of the following methods:

A. *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.

B. *E-mail:* [cox.kathleen@epa.gov](mailto:cox.kathleen@epa.gov).

C. *Mail:* EPA-R03-OAR-2010-0856, Kathleen Cox, Associate Director, Office of Permits and Air Toxics, Mailcode 3AP10, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

D. *Hand Delivery:* At the previously-listed EPA Region III address. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

*Instructions:* Direct your comments to Docket ID No. EPA-R03-OAR-2010-0856. EPA's policy is that all comments received will be included in the public docket without change, and may be

made available online at <http://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through <http://www.regulations.gov> or e-mail. The <http://www.regulations.gov> Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through <http://www.regulations.gov>, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

*Docket:* All documents in the electronic docket are listed in the <http://www.regulations.gov> index. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in <http://www.regulations.gov> or in hard copy during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the Virginia submittal are available at the VADEQ Office, 629 East Main Street, Richmond, Virginia 23219.

**FOR FURTHER INFORMATION CONTACT:** Sharon McCauley, (215) 814-3376, or by e-mail at [mccauley.sharon@epa.gov](mailto:mccauley.sharon@epa.gov).

**SUPPLEMENTARY INFORMATION:** Throughout this document, whenever "we," "us," or "our" is used, we mean EPA. On June 7, 2010, the VADEQ submitted a revision to the Virginia SIP for including NO<sub>x</sub> as a precursor to ozone for permits of major stationary