ENFORCEMENT PROTECTION
AGENCY
40 CFR Part 52

Disapproval, Approval and
Promulgation of Air Quality
Implementation Plan Revisions;
Infrastructure Requirements for the
1997 and 2006 PM2.5 National Ambient
Air Quality Standards; Prevention of
Significant Deterioration; Wyoming
AGENCY: Environmental Protection
Agency (EPA).
ACTION: Final rule.
SUMMARY: EPA is partially approving
and partially disapproving the State
Implementation Plan (SIP) submissions
from the State of Wyoming to
demonstrate that the SIP meets the
infrastructure requirements of the Clean
Air Act (CAA) for the National Ambient
Air Quality Standards (NAAQS)
promulgated for fine particulate matter
(PM2.5) on July 18, 1997 and on October
17, 2006. The CAA requires that each
state, after a new or revised NAAQS is
promulgated, review their SIPs to
ensure that they meet infrastructure
requirements. The State of Wyoming
provided infrastructure submissions for
the 1997 and 2006 PM2.5 NAAQS on
March 26, 2008 and August 19, 2011,
respectively. EPA is also approving
revisions to Wyoming’s Prevention of
Significant Deterioration (PSD) program
that incorporate necessary provisions
from EPA’s 2010 PM2.5 Increment Rule.
DATES: This final rule is effective
January 6, 2014.
ADDRESSES: EPA has established a
docket for this action under Docket ID
No. EPA–R08–OAR–2011–0728. All
documents in the docket are listed on the
Although listed in the index, some
information is not publicly available,
e.g., Confidential Business Information
(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 through
www.regulations.gov or in hard copy at
the Air Program, Regional 8, 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, 8:00 a.m. to 4:00 p.m., excluding
Federal holidays.
FOR FURTHER INFORMATION CONTACT:
Kathy Ayala, Air Program, U.S.
Environmental Protection Agency
(EPA), Region 8, Mail Code 8P–AR,
1595 Wynkoop Street, Denver, Colorado
80202–1129, (303) 312–6142,
ayala.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 initials CBI mean or refer to
confidential business information.
(iii) The words EPA, we, us or our
mean or refer to the United States
Environmental Protection Agency.
(iv) The initials NAAQS mean or refer
to national ambient air quality
standards.
(v) The initials PM mean or refer to
particulate matter.
(vi) The initials NSR mean or refer to
new source review.
(vii) The initials PSD mean or refer to
prevention of significant
deterioration program.
(viii) The initials NSR mean or refer to
particulate matter with an
aerodynamic diameter of less than 2.5
micrometers (fine particulate matter).
(ix) The initials SIP mean or refer to
State Implementation Plan.
(x) The initials 110(a)(2) mean or refer
to CAA section 110(a)(2).
For reasons explained in the NPR,
EPA proposed to disapprove Wyoming’s
March 26, 2008 and August 19, 2011
submittals for the section 110(a)(2)(E)(ii)
infrastructure element, related to CAA
section 128, State Boards, for the 1997
and 2006 PM2.5 NAAQS. EPA is taking
no action at this time on infrastructure
requirements (D)(iii), which concerns
interstate transport of pollutants, for the
2006 PM2.5 NAAQS.
II. Response to Comments
We received one set of comments
from the Wyoming Department of
Environmental Quality (DEQ). DEQ
supported our proposed approval of
Wyoming’s infrastructure submissions
for the 1997 and 2006 PM2.5 NAAQS for
elements (A), (B), (C) with respect to
minor NSR and PSD requirements,
(D)(iii), (E)(i), (E)(iii), (F), (G), (H), (J), (K),
(L), and (M). However, DEQ took issue
with certain aspects of our action.
Comment: DEQ states that EPA, in our
proposal notice, summarized, and in
some cases incorrectly stated, the
references within the infrastructure SIP
submittals to various regulatory and
non-regulatory provisions. DEQ asked
that EPA “correct the citations” in the
summaries “to ensure accuracy and
maintain consistency” between EPA’s
notices and Wyoming’s submittals.
Response: EPA disagrees with certain
portions of this comment. In our
proposal notice, the summaries of the
state’s submittals were merely meant to
be descriptive in general terms. For the
most part, these summaries accurately stated that the infrastructure SIP submittals cited provisions “included” in various chapters of the WAQSR. By this, we meant the submittals had cited certain provisions included within the chapters; we did not mean that the submittals cited the entire chapter. The summaries did not identify any particular provisions with those Chapters as legally relevant. Instead, our separate analysis for each element explained which provisions were relevant in meeting requirements of specific elements. EPA notes that the infrastructure SIP submittals (which are included in the docket for this rulemaking) speak for themselves and EPA does not need to reproduce them verbatim (or the exact citations within them).

EPA does agree that, in a few instances, DEQ correctly notes that EPA erred in its summary. For element (B), DEQ is correct that the submittals did not cite any provisions within Chapter 1 of the WAQSR. For element (F), the proposed notice omitted a comma making it appear that the submittals cited 1979 versions of certain provisions in Chapters 6 and 7, instead of the current versions. For element (H), although EPA did not include in our summary all the provisions cited in the submittals, EPA did reference the cited provisions in our analysis. For the public notification requirements in element (J), DEQ is correct that the submittals described a document as “non-regulatory.” For element (K), EPA agrees that DEQ’s description of the submittal is correct. None of these minor corrections to our summaries in any way changes or modifies EPA’s analysis of how the submittals for the 1997 and 2006 PM2.5 NAAQS substantively met infrastructure requirements. As a result, these minor corrections do not change our proposed action on the submittals.

Comment: DEQ requested that EPA add approval language specifically citing elements (E)(i) and (E)(iii) in our final rule.

Response: EPA has examined the proposal to be sure that we adequately addressed these elements in our proposal. Although we did not specifically cite elements (E)(i) and (E)(iii) in our paragraph analyzing Wyoming’s submittal, the paragraph introducing our description and analysis of Wyoming’s submittal cited (and in fact quoted) those two elements. In context, the introductory paragraph makes clear that the description and analysis address elements (E)(i) and (E)(iii). Furthermore, in section VI of our proposal notice, we specifically stated that we proposed to approve the infrastructure SIP submittals for the 1997 and 2006 PM2.5 NAAQS for (among others) elements (E)(i) and (E)(iii). Finally, to ensure that our approval of these elements is clear, the notice for this final action specifically states that we are approving the submittals for (among others) elements (E)(i) and (E)(iii).

Comment: DEQ requested that EPA remove our discussion of the State’s minor NSR program from the final approval of the infrastructure SIP submittions. DEQ stated that the minor NSR program in WAQSR Chapter 6, Section 2 is an approved program and is not at issue in an infrastructure SIP action. DEQ stated that the reference to WAQSR Chapter 6, Section 2 is outside the scope of EPA’s action on the submittions.

Response: EPA disagrees with this comment. First, we note that DEQ, in both of its infrastructure submittions, specifically cited WAQSR Chapter 6, Section 2 as already approved by EPA in our infrastructure SIP addresses element (C). It is appropriate for EPA, in acting on an infrastructure SIP submittion, to assess the State’s own description of how the State’s SIP meets infrastructure requirements, and as we next explain, it was appropriate for the State in addressing element (C) to cite the minor NSR program.

Second, in this action on Wyoming’s infrastructure submittals for the 1997 and 2006 PM2.5 NAAQS, EPA appropriately assessed whether Wyoming’s approved minor NSR program addressed regulation of PM2.5 for sources subject to the program. EPA’s position is that an infrastructure SIP submittal should demonstrate that the state has a minor NSR program to regulate the construction of new or modified stationary sources that can address the new or revised NAAQS that triggered the State’s obligation to submit an infrastructure SIP. This position follows from the language of sections 110(a)(1) and (a)(2).

Section 110(a)(1) of the Act requires states, within three years of EPA’s promulgation of a new or revised NAAQS, to submit “a plan which provides for implementation, maintenance, and enforcement” of the standards. This plan, which EPA refers to as an “infrastructure SIP,” must at a minimum satisfy the applicable requirements set out in the elements in section 110(a)(2) of the Act.

In particular, element 110(a)(2)(C) requires, among other things, that SIPs incorporate by reference federal rules. Section 110(a)(2)(C) requires states to as an infrastructure SIP, must at a minimum satisfy the applicable requirements set out in the elements in section 110(a)(2) of the Act.

First, DEQ has not identified how nonattainment NSR requirements are relevant to EPA’s action on an infrastructure SIP submittal. As stated in our proposal notice (and not disputed by DEQ), nonattainment area plan requirements under part D of Title I of the Act, including the requirement in 110(a)(2)(C) for a permit program as required by part D of title I (i.e., nonattainment NSR), are not governed by the three-year submission deadline in section 110(a)(1). Instead, nonattainment NSR requirements are due at the same time as other nonattainment area plan requirements are due under the Air Quality Act. As a result, nonattainment NSR requirements are outside the scope of this action on
Wyoming’s infrastructure SIP submittals.

Second, it does not appear that our action on Wyoming’s infrastructure SIP submittals and on Wyoming’s adoption of the PM2.5 increments could result in an inconsistency in GHG PSD permitting. We have separately completed our proposed approval of Wyoming’s March 8, 2013 GHG PSD submittal. With respect to Section 13 of Chapter 6, DEQ did not identify any specific dependency between it and the March 8, 2013 GHG PSD submittal or the May 24, 2012 PM2.5 increment submittal that would cause any future inconsistency in GHG permitting. In addition, the March 8, 2013 GHG PSD submittal did not include Section 13, so it appears to EPA that the two are independent.

Third, DEQ has not identified any reason why EPA’s inaction on the Section 13 portion of the May 11, 2011 submittal would cause a construction ban to take effect on January 20, 2014.

We note that on May 21, 2012, EPA designated the Upper Green River Basin Area in Wyoming as marginal nonattainment for the 2008 ozone standard, effective July 20, 2012. See 77 FR 30517–30518. Although DEQ does not explain how it derived its January 20, 2014 date, that date is 18 months after the effective date of the designation of the Upper Green River Basin Area.

Under 40 CFR §52.24(k), after designation of a nonattainment area and prior to EPA’s approval of a nonattainment NSR program that meets the requirements of part D of title I of the CAA, the Emission Offset Interpretative Ruling, 40 CFR part 51, appendix S governs permits to construct. As stated in EPA’s June 6, 2013 proposed rule for implementation of the 2008 ozone standards, 78 FR 34200–201, in EPA’s 2005 promulgation of the phase 2 implementation rule for the 1997 ozone NAAQS, “the EPA revised section 52.24(k) to eliminate language stating that if a nonattainment area did not have an approved nonattainment NSR program within 18 months after designation, a construction ban would apply.” The June 6, 2013 proposal explains that the DC Circuit Court of Appeal’s decision in NRDC v. EPA, 571 F.3d 1245 (D.C. Cir. 2009) left this revision of §52.24(k) undisturbed, except with respect to the availability of waivers under section VI of Appendix S after the 18-month period has expired. Thus, DEQ’s concerns about a construction ban are unnecessary, as Appendix S to 40 CFR part 51 (with the exception under section VI of Appendix S after January 20, 2014) governs construction permits within the Upper Green River Basin Area until EPA approves a SIP revision containing a nonattainment NSR program that meets the requirements of part D of title I of the Act, specifically requirements contained in 40 CFR §51.165.

III. Final Action

EPA is approving Wyoming’s March 26, 2008 and August 19, 2011 submittals for the following infrastructure elements for the 1997 and 2006 PM2.5 NAAQS: (A), (B), (C) with respect to minor NSR and PSD requirements, (D)(i), (E)(i), (E)(iii), (F), (G), (H), (I), (K), (L), and (M). EPA is also approving revisions to WAQSR Chapter 6, Section 4, as submitted on May 24, 2012, which incorporate the requirements of the 2010 PM2.5 Increment Rule; specifically, revisions to: Chapter 6, Section 4(a) Definitions of “Baseline area”, “Major source baseline date”, and “Minor source baseline date”; Chapter 6, Section 4(b)(i)(A)(I) Table 1, Chapter 6, Section 4(b)(viii), and Section 14.

EPA is disapproving Wyoming’s March 26, 2008 and August 19, 2011 submittals for the section 110(a)(2)(E)(ii) infrastructure element, related to CAA section 128, State Boards, for the 1997 and 2006 PM2.5 NAAQS. Finally, EPA is taking no action on infrastructure element (D)(i) for the 2006 PM2.5 NAAQS.

IV. Statutory and Executive Orders Review

Under the Clean Air Act, 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 Clean Air Act.

Accordingly, this action merely approves some state law as meeting Federal requirements and disapproves other state law as not meeting Federal requirements; it 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);
• 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 Clean Air Act; 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 Wyoming’s SIP does not apply in Indian country, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the Federal Register. A major rule cannot take effect until 60 days after it is published in the Federal Register. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by February 4, 2014. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review or does it extend the time within which a petition for judicial review may be filed,
and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

**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.

Dated: November 15, 2013.

**Judith Wong,**
**Acting Regional Administrator, Region 8.**

40 CFR part 52 is amended as follows:

**PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS**

1. The authority for citation for part 52 continues to read as follows:

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

**Subpart ZZ—Wyoming**

2. Section 52.2620 is amended by:

   i. Under Chapter 6, revise the entry for Section 4.
   ii. Under Chapter 6, add the entry for Section 14.

The amendments read as follows:

**§ 52.2620 Identification of plan.**

<table>
<thead>
<tr>
<th>Name of nonregulatory SIP provision</th>
<th>Applicable geographic or non-attainment area</th>
<th>State submital date/adopted date</th>
<th>EPA approval date and citation</th>
<th>Explanations</th>
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</thead>
<tbody>
<tr>
<td>XXI. Section 110(a)(2) Infrastructure Requirements for the 1997 PM 2.5 NAAQS.</td>
<td>Statewide ..................................</td>
<td>3/26/2008</td>
<td>12/6/13 [insert Federal Register page number where document begins].</td>
<td>Element (E)(ii) is disapproved.</td>
</tr>
<tr>
<td>XXII. Section 110(a)(2) Infrastructure Requirements for the 2006 PM 2.5 NAAQS.</td>
<td>Statewide ..................................</td>
<td>8/19/2011</td>
<td>12/6/13 [insert Federal Register page number where document begins].</td>
<td>Element (E)(ii) is disapproved.</td>
</tr>
</tbody>
</table>

1 In order to determine the EPA effective date for a specific provision that is listed in this table, consult the Federal Register cited in this column for that particular provision.

2 In order to determine the EPA effective date for a specific provision listed in this table, consult the Federal Register notice cited in this column for the particular provision.
ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[40 CFR part 300 is amended as follows:]

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) Region 7 announces the deletion of 1,154 residential parcel(s) identified June 4, 2013 Federal Register (FR) Notice of Intent to Partially Delete (NOIPD) of the Omaha Lead Superfund Site (Site) located in Omaha, Nebraska from the National Priorities List (NPL). The NPL, promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended, is an appendix of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP). This partial deletion pertains to the soil of 1,154 residential parcels identified in the June 4, 2013 FR NOIPD. The remaining residential parcels with soil lead levels at or above 400 parts per million (ppm) will remain on the NPL and are not being considered for deletion as part of this action. The EPA and the State of Nebraska, through the Nebraska Department of Environmental Quality, have determined that all appropriate response actions under CERCLA have been completed. However, the deletion of these parcels does not preclude future actions under Superfund.

DATES: This action is effective December 6, 2013.

ADDRESS: EPA has established a docket for this action under Docket Identification No. EPA–HQ–SFUND–2003–0010. All documents in the docket are listed on the http://www.regulations.gov Web site. Although listed in the index, some information is not publicly available, i.e., Confidential Business Information 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 through http://www.regulations.gov or in hard copy at the site information repositories. Locations, contacts, phone numbers and viewing hours are:

EPA Region 7, 11201 Renner Boulevard, Lenexa, Kansas 66219, open from 8 a.m. to 4 p.m.

EPA Public Information Center (north) 3040 Lake Street, Omaha, NE 68111, open from 8 a.m. to 4 p.m. Call (402) 991–9583 to ensure that staff are available; EPA Public Information Center (south) 4909 S. 25th Street, Omaha, NE 68107, open from 8 a.m. to 4 p.m. Call (402) 731–3045 to ensure that staff are available; W. Dale Clark Library, 215 S. 15th Street, Omaha, NE 68102.

FOR FURTHER INFORMATION CONTACT: Pauletta Franco-Isetts, Remedial Project Manager, U.S. Environmental Protection Agency, Region 7, 8400 Underground Drive, Pillar 253, Kansas City, Missouri 64161, (913) 551–7701, email: france-isetts.pauletta@epa.gov.

SUPPLEMENTARY INFORMATION: The portion of the site to be deleted from the NPL is: 1,154 residential parcels located within the Final Focus Area of the Omaha Lead Site, Omaha, Nebraska. A Notice of Intent for Partial Deletion for this Site was published in the Federal Register on June 4, 2013. Parcel addresses are included as part of docket EPA–HQ–1990–0010, which can be accessed through the http://www.regulations.gov Web site.

The closing date for comments on the Notice of Intent for Partial Deletion was July 5, 2013. No public comments were received. EPA still believes the partial deletion action is appropriate.

EPA maintains the NPL as the list of sites that appear to present a significant risk to public health, welfare, or the environment. Deletion of a site from the NPL does not preclude further remedial action. Whenever there is a significant release from a site deleted from the NPL, the deleted site may be restored to the NPL without application of the hazard ranking system. Deletion of portions of a site from the NPL does not affect responsible party liability, in the unlikely event that future conditions warrant further actions.

List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous waste, Hazardous substances, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.


Karl Brooks,
Regional Administrator, Region 7.

For reasons set out in the preamble, 40 CFR part 300 is amended as follows:

PART 300—NATIONAL OIL AND HAZARDOUS SUBSTANCES POLLUTION CONTINGENCY PLAN

1. The authority citation for part 300 continues to read as follows:


2. Table 1 of Appendix B to part 300 is amended by revising the entry under Omaha Lead Site, Omaha, Nebraska to read as follows:

Appendix B to Part 300—National Priorities List

<table>
<thead>
<tr>
<th>State</th>
<th>Site name</th>
<th>City/County</th>
<th>Notes</th>
</tr>
</thead>
<tbody>
<tr>
<td>NE</td>
<td>Omaha Lead</td>
<td>Omaha/Douglas</td>
<td>P</td>
</tr>
</tbody>
</table>

* = Sites with partial deletion(s).