

the schedule identified in VA's proposal for the pilot program.

(h) *Expansion of pilot programs.* VA may expand a pilot program consistent with this paragraph (h).

(1) VA may expand the scope or duration of a pilot program if, based on an analysis of the data developed pursuant to paragraph (g) of this section for the pilot program, VA expects the pilot program to reduce spending without reducing the quality of care or improve the quality of patient care without increasing spending. Expansion may only occur if VA determines that expansion would not deny or limit the coverage or provision of benefits for individuals under chapter 17. Expansion of a pilot program may not occur until 60 days after VA has published a document in the **Federal Register** and submitted an interim report to Congress stating its intent to expand a pilot program.

(2) VA may expand the scope of a pilot program by modifying, among other elements of a pilot program, the range of services provided, the qualifying conditions covered, the geographic location of the pilot program, or the population of eligible participants in a manner that increases participation in or benefits under a pilot program.

(3) In general, pilot programs are limited to 5 years of operation. VA may extend the duration of a pilot program by up to an additional 5 years of operation. Any pilot program extended beyond its initial 5-year period must continue to comply with the provisions of this section regarding evaluation and reporting under paragraph (g) of this section.

(i) *Modification of pilot programs.* The Secretary may modify elements of a pilot program in a manner that is consistent with the parameters of the Congressional approval of the waiver described in paragraph (e) of this section. Such modification does not require a submission to Congress for approval under paragraph (e) of this section.

(j) *Termination of pilot programs.* If VA determines that a pilot program is not producing quality enhancement or quality preservation, or is not resulting in the reduction of expenditures, and that it is not possible or advisable to modify the pilot program either through submission of a new waiver request under paragraph (e) of this section or through modification under paragraph (i) of this section, VA will terminate the pilot program within 30 days of submitting an interim report to Congress that states such determination. VA will also publish a document in the **Federal**

**Register** regarding the pilot program's termination.

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R08-OAR-2019-0140; FRL-9996-89-Region 8]

#### Promulgation of State Implementation Plan Revisions; Infrastructure Requirements for the 2015 Ozone National Ambient Air Quality Standards; Colorado and North Dakota

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

**ACTION:** Proposed rule.

**SUMMARY:** On October 1, 2015, the Environmental Protection Agency (EPA) promulgated the 2015 ozone NAAQS, revising the standard to 0.070 parts per million. Whenever a new or revised National Ambient Air Quality Standard (NAAQS) is promulgated, the Clean Air Act (CAA or Act) requires each state to submit a State Implementation Plan (SIP) revision for the implementation, maintenance, and enforcement of the new standard. This submission is commonly referred to as an infrastructure SIP. In this action we are proposing to approve multiple elements and disapprove a single element of the following infrastructure SIP submissions with respect to infrastructure requirements for the 2015 ozone NAAQS: Colorado, submitted to the EPA on September 17, 2018; and North Dakota, submitted to the EPA on November 6, 2018. We are also proposing to approve a portion of North Dakota's May 2, 2019 submission of chapter 33.1-15-15, the air pollution control rules of the State of North Dakota, that updates the date of incorporation by reference (IBR) of Federal rules.

**DATES:** Written comments must be received on or before August 28, 2019.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R08-OAR-2019-0140, to the Federal Rulemaking Portal: <https://www.regulations.gov>. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from [www.regulations.gov](https://www.regulations.gov). The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business

Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.*, on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <http://www2.epa.gov/dockets/commenting-epa-dockets>.

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

**FOR FURTHER INFORMATION CONTACT:** Amrita Singh, (303) 312-6103, [singh.amrita@epa.gov](mailto:singh.amrita@epa.gov); or Clayton Bean, (303) 312-6143, [bean.clayton@epa.gov](mailto:bean.clayton@epa.gov). Mail can be directed to the Air and Radiation Division, U.S. EPA, Region 8, Mail-code 8ARD-QP, 1595 Wynkoop Street, Denver, Colorado 80202-1129.

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

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## I. Background

On March 12, 2008, the EPA promulgated a new NAAQS for ozone, revising the levels of the primary and secondary 8-hour ozone standards from 0.08 parts per million (ppm) to 0.075 ppm (73 FR 16436). More recently, on October 1, 2015, the EPA promulgated and revised the NAAQS for ozone, further strengthening the primary and secondary 8-hour standards to 0.070 ppm (80 FR 65292). The October 1, 2015 standards are known as the 2015 ozone NAAQS.

Under sections 110(a)(1) and (2) of the CAA, after the promulgation of a new or revised NAAQS states are required to submit infrastructure SIPs to ensure their SIPs provide for implementation, maintenance, and enforcement of the NAAQS. These submissions must contain any revisions needed for meeting the applicable SIP requirements of section 110(a)(2), or certifications that the existing SIPs already meet those requirements. The EPA highlighted this statutory requirement in an October 2, 2007 guidance document entitled “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” (2007 Memo). On September 25, 2009, the EPA issued an additional guidance document pertaining to the 2006 PM<sub>2.5</sub> NAAQS entitled “Guidance on SIP Elements Required Under Sections 110(a)(1) and (2) for the 2006 24-Hour Fine Particle (PM<sub>2.5</sub>) National Ambient Air Quality Standards (NAAQS)” (2009 Memo), followed by the October 14, 2011 “Guidance on Infrastructure SIP Elements Required Under Sections 110(a)(1) and (2) for the 2008 Lead (Pb) National Ambient Air Quality Standards (NAAQS)” (2011 Memo). Most recently, the EPA issued “Guidance on Infrastructure State Implementation Plan (SIP) Elements under Clean Air Act Sections 110(a)(1) and (2)” on September 13, 2013 (2013 Memo).

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

CAA section 110(a)(1) provides the procedural and timing requirements for SIP submissions after a new or revised NAAQS is promulgated. Section 110(a)(2) lists specific elements the SIP must contain or satisfy. These infrastructure elements include requirements such as modeling, monitoring, and emissions inventories, which are designed to 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): Interstate transport.
- 110(a)(2)(E): Adequate resources and authority, conflict of interest, and oversight of local governments and regional agencies.
- 110(a)(2)(F): Stationary source monitoring and reporting.
- 110(a)(2)(G): Emergency powers.
- 110(a)(2)(H): Future SIP revisions.
- 110(a)(2)(J): Consultation with government officials; public notification; and PSD and visibility protection.
- 110(a)(2)(K): Air quality modeling/data.
- 110(a)(2)(L): Permitting fees.
- 110(a)(2)(M): Consultation/participation by affected local entities.

A detailed discussion of each of these elements for Colorado and North Dakota is contained in section III of this document.

### B. How did the states address the infrastructure elements of sections 110(a)(1) and (2)?

The Colorado and North Dakota 2015 ozone NAAQS infrastructure SIP submissions demonstrate how the states, where applicable, have plans in place that meet the requirements of section 110 for the 2015 ozone NAAQS. The state submittals are available within the electronic docket for today’s proposed action at [www.regulations.gov](http://www.regulations.gov).

#### 1. Colorado

The Colorado Department of Public Health and Environment (CDPHE) submitted a certification of Colorado’s infrastructure SIP for the 2015 ozone NAAQS on September 17, 2018. The State’s submission references the current Air Quality Control Commission (AQCC) regulations and Colorado Revised Statutes (C.R.S.). The AQCC regulations referenced in the submittal are publicly available at <https://www.colorado.gov/pacific/cdphe/aqcc-regs> and <http://www.lexisnexis.com/hottopics/colorado/>. Colorado’s approved SIP can be found at 40 CFR 52.320.

#### 2. North Dakota

The North Dakota Department of Health/Department of Environmental Quality (NDEQ)<sup>1</sup> submitted certification

<sup>1</sup> The EPA notes that the North Dakota state legislature created the North Dakota Department of Environmental Quality (NDEQ) in 2017. The EPA approved changes to the North Dakota SIP for

for North Dakota's infrastructure SIP for the 2015 ozone NAAQS on November 6, 2018. The State's submission references the North Dakota Century Code (NDCC) and the North Dakota Air Pollution Control Rules (APCR) contained in the North Dakota Administrative Code (NDAC). The NDCC and NDAC referenced in the submittals are publicly available at <http://www.legis.nd.gov/general-information/north-dakota-century-code> and <http://www.legis.nd.gov/cencode/t23c25.html>. North Dakota's approved SIP can be found at 40 CFR 52.1820.

## II. What is the scope of this proposed rule?

The EPA is acting upon the SIP submissions from Colorado and North Dakota that address the infrastructure requirements of CAA sections 110(a)(1) and 110(a)(2) for the 2015 ozone NAAQS. The requirement for states to make a SIP submission of this type arises out of CAA section 110(a)(1). Pursuant to section 110(a)(1), states must make SIP submissions "within 3 years (or such shorter period as the Administrator may prescribe) after the promulgation of a national primary ambient air quality standard (or any revision thereof)," and these SIP submissions are to provide for the "implementation, maintenance, and enforcement" of such NAAQS. The statute directly imposes on states the duty to make these SIP submissions, and the requirement to make the submissions is not conditioned upon the EPA taking any action other than promulgating a new or revised NAAQS. Section 110(a)(2) includes a list of specific elements that "[e]ach such plan" submission must address.

Whenever the 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 particular 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. Due to ambiguity in some of the language of CAA section 110(a)(2), the

purposes of transferring authority from the North Dakota Department of Health (NDDH) to the NDEQ. We approved the transfer of authority to implement and enforce the EPA-approved SIP on February 5, 2019 (84 FR 1610). We also approved a recodification of the state's previously-approved APCR. Given this transfer of authority and change in numbering of North Dakota's codified regulations, the state's submittal for this proposed action references rules and regulations prior to the EPA's final approval, but under the new codification. See also, 84 FR 8260, March 7, 2019.

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

## III. The EPA's Evaluation of the State Submittals

### A. CAA Section 110(a)(2)(A): Emission Limits and Other Control Measures

Section 110(a)(2)(A) requires SIPs to include enforceable emission limitations and other control measures, means, or techniques (including economic incentives such as fees, marketable permits, and auctions of emissions rights), as well as schedules and timetables for compliance as may be necessary or appropriate to meet the applicable requirements of the Act.

#### 1. Colorado

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

Multiple SIP-approved AQCC regulations cited in Colorado's certifications provide enforceable emission limitations and other control measures, means or techniques, schedules for compliance, and other related matters necessary to meet the requirements of the CAA section 110(a)(2)(A) for the 2015 NAAQS subject to the following clarification.

The EPA does not consider SIP requirements triggered by the nonattainment area mandates in part D of Title I of the CAA to be governed by

<sup>2</sup> The EPA explains and elaborates on these ambiguities and its approach to address them in its September 13, 2013 Infrastructure SIP Guidance (available at [https://www3.epa.gov/airquality/urbanair/sipstatus/docs/Guidance\\_on\\_Infrastructure\\_SIP\\_Elements\\_Multipollutant\\_FINAL\\_Sept\\_2013.pdf](https://www3.epa.gov/airquality/urbanair/sipstatus/docs/Guidance_on_Infrastructure_SIP_Elements_Multipollutant_FINAL_Sept_2013.pdf)), as well as in numerous agency actions, including the EPA's prior action on South Dakota's infrastructure SIP to address 1997 and 2006 PM<sub>2.5</sub>, 2008 Lead, 2008 Ozone, and 2010 NO<sub>2</sub> NAAQS (79 FR 71040, (December 1, 2014)).

<sup>3</sup> See U.S. Court of Appeals for the Ninth Circuit decision in *Montana Environmental Information Center v. EPA*, No. 16-71933 (August 30, 2018).

the submission deadline of section 110(a)(1). Nevertheless, Colorado has included some SIP provisions originally submitted in response to part D requirements in its certification for the infrastructure requirements of section 110(a)(2). For the purposes of this action, the EPA is reviewing any rules originally submitted in response to part D requirements solely for the purposes of determining whether they support a finding that the State has met the basic infrastructure requirements of section 110(a)(2). For example, in response to the requirement to have enforceable emission limitations under section 110(a)(2)(A), Colorado cited to rules in Regulation Number 7 that were submitted to meet the reasonably available control technology (RACT) requirements of part D. The EPA is approving those rules as meeting the requirement to have enforceable emission limitations on ozone precursors; any judgment about whether those emission limitations discharge the State's obligation to impose RACT under part D will be made separately, in an action reviewing those rules pursuant to the requirements of part D. Colorado also referenced other SIP provisions that are relevant, such as the motor vehicle inspection and maintenance program in Regulation 11 and the State's minor new source review (NSR) and Prevention of Significant Deterioration (PSD) Programs in Regulation 3. We propose to find these provisions adequately address the requirements of element (A), again subject to the clarifications made in this document.

#### 2. North Dakota

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

Multiple SIP-approved State air quality regulations within the NDAC cited in North Dakota's certifications provide enforceable emission limitations and other control measures, means or techniques, schedules for compliance, and other related matters necessary to meet the requirements of the CAA section 110(a)(2)(A) for the 2015 ozone NAAQS, subject to the following clarification.

The EPA does not consider the SIP requirements triggered by the nonattainment area mandates in part D of Title 1 of the CAA to be governed by the submission deadline of section 110(a)(1). Furthermore, North Dakota has no areas designated as nonattainment for the 2015 ozone NAAQS. North Dakota's certifications (contained within this docket) generally listed provisions within its SIP which regulate pollutants through various

programs, including major or minor source permit programs. This suffices, in the case of North Dakota, to meet the requirements of section 110(a)(2)(A) for the 2015 ozone NAAQS.

*B. CAA Section 110(a)(2)(B): Ambient Air Quality Monitoring/Data System*

Section 110(a)(2)(B) requires SIPs to provide for establishment and operation of appropriate devices, methods, systems, and procedures necessary to “(i) monitor, compile, and analyze data on ambient air quality, and (ii) upon request, make such data available to the Administrator.”

1. Colorado

(i) The State’s submission:

As discussed in Colorado’s submission, the Colorado Air Pollution Control Division (APCD) periodically submits a Quality Management Plan and a Quality Assurance Project Plan to the EPA. These plans cover procedures to monitor and analyze data. The provisions for episode monitoring, data compilation and reporting, public availability of information, and annual network reviews are found in the statewide monitoring SIP (58 FR 49435, September 23, 1993). As part of the monitoring SIP, Colorado submits an Annual Monitoring Network Plan (AMNP) each year for the EPA’s approval.

(ii) The EPA’s analysis:

A comprehensive Annual Monitoring Network Plan (AMNP), intended to fully meet the Federal requirements, was submitted to the EPA by Colorado on June 29, 2018, and subsequently approved by the EPA. We propose to find that Colorado’s SIP and practices are adequate for the ambient air quality monitoring and data system requirements for the 2015 ozone NAAQS; and therefore, propose to approve the infrastructure SIP for the 2015 ozone NAAQS for this element.

2. North Dakota

(i) The State’s submission:

North Dakota references NDCC 23.1–06–04.1.1 as the provision that provides authority to conduct ambient air monitoring. Additionally, North Dakota’s SIP (45 FR 53475, August 12, 1980) provides 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 exceedances of NAAQS.

(ii) The EPA’s analysis:

The comprehensive 2018 Annual Monitoring Network Plan (AMNP), intended to fully meet Federal

requirements, was submitted to the EPA by North Dakota on October 31, 2018 and subsequently approved by the EPA. In accordance with 40 CFR 58.10, beginning in July 2008, and every five years thereafter, North Dakota develops a periodic network assessment to ensure the effective implementation of an adequate ambient air quality surveillance system. The plan includes statutory and regulatory authority to establish and operate an air quality monitoring network, including ozone monitoring.

North Dakota’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 exceedances of NAAQS. As described in its submission, North Dakota 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. Therefore, we are proposing to approve the North Dakota SIP as meeting the requirements of CAA section 110(a)(2)(B) for the 2015 ozone NAAQS.

*C. CAA Section 110(a)(2)(C): Program for Enforcement of Control Measures*

CAA section 110(a)(2)(C) requires each state to have a program that provides for the following three sub-elements; enforcement, state-wide regulation of new and modified minor sources and minor modifications of major sources; and preconstruction permitting of major sources and major modifications in areas designated attainment or unclassifiable for the 2015 ozone NAAQS as required by CAA Title I part C (*i.e.*, the major source PSD program).

1. Colorado

(i) The State’s submission:

The Colorado submission refers to the following SIP-approved Code of Colorado Regulations (CCR) which address and provide for meeting all requirements of CAA section 110(a)(2)(C):

- Regulation 1, Particulates, Smokes, Carbon Monoxide, and Sulfur Dioxides
- Regulation 3, Stationary Source Permitting and Air Pollution Emission Notice Requirements
- Regulation 4, Woodburning Controls
- Regulation 7, Control of Ozone via Ozone Precursors and Nitrogen Oxides
- Regulation 11, Motor Vehicle Inspection

- Regulation 16, Street Sanding and Sweeping
- Common Provisions Regulation

(ii) The EPA’s analysis:

With regard to the sub-element requirement of a program providing for enforcement of all SIP measures, we are proposing to find that Colorado’s regulations provide broad authority to allow the State to enforce applicable laws, regulations, and standards; to seek injunctive relief; and to provide authority to prevent construction, modification, or operation of any stationary source at any location where emissions from such source will prevent the attainment or maintenance of a national standard or interfere with PSD requirements. Many of the AQCC regulations above address Colorado’s program for enforcement of control measures.<sup>4</sup>

Turning to the second sub-element, regulation of new and modified minor sources and minor modifications of major sources, Colorado has a SIP-approved minor NSR program, adopted under section 110(a)(2)(C) of the Act. The minor NSR program is found in Regulation 3 of the Colorado SIP. The EPA originally approved Colorado’s minor NSR program into the SIP as Regulation 3 (68 FR 37744, June 25, 2003), and over the years, the EPA has subsequently approved revisions to this program as consistent with the CAA and Federal minor NSR requirements codified at 40 CFR 51.160 through 40 CFR 51.164. The State and the EPA have relied on the State’s existing minor NSR program to assure that new and modified sources not captured by the major NSR permitting program do not interfere with attainment and maintenance of the NAAQS. We propose to determine that this program regulates construction of new and modified minor sources of ozone precursors for purposes of the 2015 ozone NAAQS.

Lastly, to generally meet the requirements of CAA section 110(a)(2)(C) with regard to the sub-element of preconstruction permitting of major sources and major modifications in areas designated attainment or unclassifiable for the subject NAAQS as required by CAA Title I part C, a state is required to have PSD, NNSR, and minor NSR permitting programs adequate to implement the 2015 ozone NAAQS. The EPA interprets the CAA to require each state to make an infrastructure SIP submission for a new or revised NAAQS that demonstrates

<sup>4</sup> We note also that, for element 110(a)(2)(E)(i), the state cited 25–7–111, C.R.S., as providing the general authority for the Division to enforce the SIP.

that the air agency has a complete PSD permitting program meeting the current requirements for *all* regulated NSR pollutants. To meet this requirement, Colorado cited its Colorado's SIP-approved PSD program codified at 5 CCR 1001–5, known as Regulation 3. We most recently approved revisions to Colorado's PSD (and NNSR) programs on May 3, 2019 (84 FR 18991). The EPA is proposing to approve Colorado's infrastructure SIP for the 2015 ozone NAAQS with respect to the general requirement in section 110(a)(2)(C) to include a PSD program in the SIP that covers all regulated pollutants including greenhouse gases (GHGs).

In addition to these requirements, there are four other revisions to the Colorado SIP that are necessary to meet the requirements of infrastructure element 110(a)(2)(C). These four revisions are related to (1) the Ozone Implementation NSR Update (November 29, 2005, 70 FR 71612); (2) the "Prevention of Significant Deterioration and Title V Greenhouse Gas Tailoring Rule" (June 3, 2010, 75 FR 31514); (3) the NSR PM<sub>2.5</sub> Rule (May 16, 2008, 73 FR 28321); and (4) the final rulemaking entitled "Prevention of Significant Deterioration (PSD) for Particulate Matter Less Than 2.5 Micrometers (PM<sub>2.5</sub>)—Increments, Significant Impact Levels (SILs) and Significant Monitoring Concentration (SMC)" (75 FR 64864, Oct. 20, 2010).

On January 9, 2012 (77 FR 1027), we approved revisions to Colorado's PSD program that addressed the PSD requirements of the Phase 2 Ozone Implementation Rule promulgated on November 29, 2005 (70 FR 71612). As a result, the approved Colorado PSD program meets the current requirements for ozone.

With respect to GHGs, on June 23, 2014, the United States Supreme Court addressed the application of PSD permitting requirements to GHG emissions. *Utility Air Regulatory Group v. Environmental Protection Agency*, 134 S Ct. 2427 (2014). The Supreme Court held that the EPA may not treat GHGs as an air pollutant for purposes of determining whether a source is a major source required to obtain a PSD permit. The Court also held that the EPA could continue to require that PSD permits, otherwise required based on emissions of pollutants other than GHGs, (anyway sources)<sup>5</sup> contain limitations on GHG emissions based on the application of Best Available Control Technology (BACT).

In accordance with the Supreme Court decision, on April 10, 2015, the U.S. Court of Appeals for the District of Columbia Circuit (the D.C. Circuit) in *Coalition for Responsible Regulation v. EPA*, 606 F. App'x. 6, at \*7–8 (D.C. Cir. April 10, 2015), issued an amended judgment vacating the regulations that implemented Step 2 of the EPA's PSD and Title V Greenhouse Gas Tailoring Rule, but not the regulations that implement Step 1 of that rule. Step 1 of the Tailoring Rule covers sources that are required to obtain a PSD permit based on emissions of pollutants other than GHGs. Step 2 applied to sources that emitted only GHGs above the thresholds triggering the requirement to obtain a PSD permit. The amended judgment preserves, without the need for additional rulemaking by the EPA, the application of the BACT requirement to GHG emissions from Step 1 or "anyway sources." With respect to Step 2 sources, the D.C. Circuit's amended judgment vacated the regulations at issue in the litigation, including 40 CFR 51.166(b)(48)(v), "to the extent they require a stationary source to obtain a PSD permit if greenhouse gases are the only pollutant (i) that the source emits or has the potential to emit above the applicable major source thresholds, or (ii) for which there is a significant emission increase from a modification." The EPA subsequently revised our PSD regulations to remove the vacated provisions. 80 FR 50199 (Aug. 19, 2015).

The EPA has subsequently revised our PSD regulations in response to the Court's decision and the subsequent amended judgment by the U.S. Court of Appeals for the District of Columbia Circuit (the D.C. Circuit) in *Coalition for Responsible Regulation v. EPA*, 606 F. App'x. 6, at \*7–8 (D.C. Cir. April 10, 2015). We recently approved revisions to the Colorado PSD program that are consistent with our revised regulations. See 84 FR 6732 (Feb. 28, 2019) (proposal); 84 FR 18991 (May 3, 2019) (final). Thus, Colorado's PSD program is current with respect to regulation of GHGs.

Finally, we evaluate the PSD program with respect to current requirements for PM<sub>2.5</sub>. In particular, on May 16, 2008, the EPA promulgated the rule, "Implementation of the New Source Review Program for Particulate Matter Less Than 2.5 Micrometers (PM<sub>2.5</sub>)" (73 FR 28321) and on October 20, 2010, the EPA promulgated the rule, "Prevention of Significant Deterioration (PSD) for Particulate Matter Less Than 2.5 Micrometers (PM<sub>2.5</sub>)—Increments, Significant Impact Levels (SILs) and Significant Monitoring Concentration

(SMC)" (75 FR 64864). The EPA regards adoption of these PM<sub>2.5</sub> rules as a necessary requirement when assessing a PSD program for the purposes of element (C).

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

The 2008 implementation rule addressed by the court decision, "Implementation of New Source Review (NSR) Program for Particulate Matter Less Than 2.5 Micrometers (PM<sub>2.5</sub>)" (73 FR 28321, May 16, 2008), promulgated NSR requirements for implementation of PM<sub>2.5</sub> in nonattainment areas (nonattainment NSR (NNSR)) and attainment/unclassifiable areas (PSD). As the requirements of Subpart 4 only pertain to nonattainment areas, the EPA does not consider the portions of the 2008 Implementation rule that address requirements for PM<sub>2.5</sub> attainment and unclassifiable areas to be affected by the decision. Moreover, the EPA does not anticipate the need to revise any PSD requirements promulgated in the 2008 Implementation rule in order to comply with the court's decision. Accordingly, the EPA's proposed approval of Colorado's infrastructure SIP for elements C or J with respect to the PSD requirements promulgated by the 2008 Implementation rule does not conflict with the court's opinion.

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

The second PSD requirement for PM<sub>2.5</sub> is contained in the EPA's October 20, 2010 rule, "Prevention of Significant Deterioration (PSD) for Particulate Matter Less Than 2.5 Micrometers (PM<sub>2.5</sub>)—Increments, Significant Impact Levels (SILs) and Significant Monitoring

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

Concentration (SMC)” (75 FR 64864). The EPA regards adoption of the PM<sub>2.5</sub> increments as a necessary requirement when assessing a PSD program for the purposes of element (C).

On May 11, 2012, the State submitted revisions to Regulation 3 that adopted all elements of the 2008 Implementation Rule and the 2010 PM<sub>2.5</sub> Increment Rule. However, the submittal contained a definition of Major Source Baseline Date which was inconsistent with 40 CFR 51.166(b)(14)(i). On May 13, 2013, the State submitted revisions to Regulation 3 which incorporate the definition of Major Source Baseline Date which was consistent with 40 CFR 51.166(b)(14)(i). These submitted revisions make Colorado’s PSD program up to date with respect to current requirements for PM<sub>2.5</sub>. The EPA approved the necessary portions of Colorado’s May 11, 2012 and May 13, 2013 submissions which incorporate the requirements of the 2008 PM<sub>2.5</sub> Implementation Rule and the 2010 PM<sub>2.5</sub> Increment Rule on September 23, 2013 (78 FR 58186). Colorado’s SIP-approved PSD program meets current requirements for PM<sub>2.5</sub>.

The EPA therefore is proposing to approve Colorado’s SIP for the 2015 ozone NAAQS with respect to the requirement in section 110(a)(2)(C) to include a permit program in the SIP as required by part C of the Act.

The State has a SIP-approved minor NSR program, adopted under section 110(a)(2)(C) of the Act. The minor NSR program is found in Regulation 3 of the Colorado SIP, and was originally approved by the EPA as Regulation 3 of the SIP (*see* 68 FR 37744, June 25, 2003). Since approval of the minor NSR program, the State and the EPA have relied on the program to ensure that new and modified sources not captured by the major NSR permitting programs do not interfere with attainment and maintenance of the NAAQS. Therefore, based on the foregoing, the EPA is proposing to fully approve Colorado’s infrastructure SIP for the 2015 ozone NAAQS with respect to the general requirement in section 110(a)(2)(C) to include a program in the SIP that regulates the modification and construction of any stationary source as necessary to assure that the NAAQS are achieved.

## 2. North Dakota

### (i) The State’s submission:

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

- NDCC 23.1–06–04.1
- NDCC 23.1–06–09
- NDCC 23.1–06–14
- NDAC 33.1–15–01–17
- NDAC 33.1–15–14–02
- NDAC 33.1–15–14–03
- NDAC 33.1–15–14–06
- NDAC 33.1–15–02
- NDAC 33.1–15–15

### (ii) The EPA’s analysis:

With regard to the sub-element requirement to have a program providing for enforcement of all SIP measures, we concur with the State that NDCC 23.1–06–14, Enforcement—Penalties—Injunctions provides the authority for enforcement and specifies penalties for violations of all North Dakota APCR (NDAPCR). Additionally, we find that NDAC 33.1–15–01–17, Enforcement, (69 FR 61762, November 22, 2004) also provides a general interpretation of enforcement for the NDAPCR, thus North Dakota meets the first sub-element for enforcement for 110(a)(2)(C).

Turning to the second sub-element of the state-wide regulation of new and modified minor sources and minor modifications of major sources, North Dakota has a SIP-approved minor NSR program. The minor NSR program is found in NDAC 33.1–15–14–02, Permit to Construct; NDAC 33.1–15–14–03, Minor Source Permit to Operate; and NDAC 33.1–15–14–06.1, Title V Permit to Operate. The EPA previously approved North Dakota’s minor NSR program into the SIP, with our most recent approved revision occurring on October 21, 2016 (81 FR 72718). The EPA has approved revisions to this program as consistent with the CAA and Federal minor NSR requirements codified at 40 CFR 51.160 through 40 CFR 51.164. The State and the EPA have relied on the State’s existing minor NSR program to assure that new and modified sources not captured by the major NSR permitting program do not interfere with attainment and maintenance of the NAAQS. We propose to determine that this program regulates construction of new and modified minor sources of ozone precursors for purposes of the 2015 ozone NAAQS, thereby meeting the second sub-element for regulation of minor sources and minor modifications for 110(a)(2)(C).

Lastly, to generally meet the requirements of CAA section 110(a)(2)(C) with regard to the sub-element of preconstruction permitting of major sources and major modifications in areas designated attainment or unclassifiable for the subject NAAQS as required by CAA title I part C, a state

is required to have PSD, NNSR, and minor NSR permitting programs adequate to implement the 2015 ozone NAAQS.

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

On June 3, 2010 (75 FR 31291), we approved a revision to the North Dakota PSD program that addressed the PSD requirements of the Phase 2 Ozone Implementation Rule promulgated on November 29, 2005 (70 FR 71612). We most recently approved revisions to North Dakota’s PSD program on October 21, 2016 (81 FR 72718). North Dakota’s SIP approved PSD program is codified in NDAC 33.1–15–15 and incorporates by reference all Federal PSD regulations. As a result, the EPA-approved North Dakota PSD program meets the current requirements for ozone.

Similarly, on October 23, 2012 (77 FR 64736), we approved a North Dakota SIP revision that revised the date of incorporation by reference of the Federal PSD program to July 2, 2010. As explained in the notice for that action, that revision addressed the PSD requirements related to GHGs provided in the EPA’s June 3, 2010 “Prevention of Significant Deterioration and Title V Greenhouse Gas Tailoring Rule” (75 FR 31514). The approved North Dakota PSD program thus also meets current requirements for GHGs.

Based on the Supreme Court GHG decision discussion above, the EPA has determined that North Dakota’s SIP is sufficient to satisfy Elements (C), (D)(i)(II) prong 3 and (J) with respect to GHGs. This is due to the PSD permitting program previously approved by the EPA into the SIP continues to require that PSD permits issued to “anyway sources” contain limitations on GHG emissions based on the application of BACT. The approved North Dakota PSD permitting program still contains some provisions regarding Step 2 sources that are no longer necessary in light of the Supreme Court decision and D.C. Circuit’s amended judgment. Nevertheless, the presence of these provisions in the previously-approved

plan does not render the infrastructure SIP submission inadequate to satisfy Elements (C), (D)(i)(II) prong 3 and (J). The SIP contains the PSD requirements for applying the BACT requirement to greenhouse gas emissions from “anyway sources” that are necessary at this time. The application of those requirements is not impeded by the presence of other previously-approved provisions regarding the permitting of Step 2 sources. Accordingly, the Supreme Court decision and subsequent D.C. Circuit judgment do not prevent the EPA’s approval of North Dakota’s infrastructure SIP as to the requirements of Elements (C), (D)(i)(II) prong 3, and (J).

Finally, we evaluate the PSD program with respect to current requirements for PM<sub>2.5</sub>. Noting the PM<sub>2.5</sub> discussion above the EPA’s proposed approval of North Dakota’s infrastructure SIP as to Elements (C), (D)(i)(II) prong 3, and (J) with respect to the PSD requirements promulgated by the 2008 Ozone Implementation rule does not conflict with the court’s opinion.

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

The second PSD requirement for PM<sub>2.5</sub> is contained in the EPA’s October 20, 2010 rule, “Prevention of Significant Deterioration (PSD) for Particulate Matter Less Than 2.5 Micrometers (PM<sub>2.5</sub>)—Increments, Significant Impact Levels (SILs) and Significant Monitoring Concentration (SMC)” (75 FR 64864). The EPA regards adoption of the PM<sub>2.5</sub> increments as a necessary requirement when assessing a PSD program for the purposes of Element (C).

On October 23, 2012 (77 FR 64736), the EPA approved SIP revisions that revised North Dakota’s PSD program which incorporated the 2008 Implementation Rule. On July 30, 2013 (78 FR 45866), the EPA approved revisions to the North Dakota SIP to reflect the 2010 PM<sub>2.5</sub> Increment Rule. Therefore, North Dakota’s SIP approved

PSD program meets current requirements for PM<sub>2.5</sub>.

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

The State has a SIP-approved minor NSR program, adopted under section 110(a)(2)(C) of the Act, originally approved by the EPA on August 21, 1995 (60 FR 43401). The minor NSR program is found in NDAC 33.1–15–14–02, Permit to Construct; NDAC 33.1–15–14–03, Minor Source Permit to Operate; and NDAC 33.1–15–14–06, Title V Permit to Operate. Since approval of the minor NSR program, the State and the EPA have relied on the State’s existing minor NSR program to assure that new and modified sources not captured by the major NSR permitting program do not interfere with attainment and maintenance of the NAAQS.

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

#### *D. CAA 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 which will contribute significantly to nonattainment of the NAAQS in any other state (prong 1), and adequate provisions prohibiting emissions which will interfere with maintenance of the NAAQS by any other state (prong 2). CAA section 110(a)(2)(D)(i)(II) requires SIPs to contain adequate provisions prohibiting emissions which will interfere with any other state’s required measures to prevent significant deterioration of its air quality (prong 3), and adequate provisions prohibiting emissions which will interfere with any other state’s required measures to protect visibility (prong 4). Under section 110(a)(2)(D)(i)(I) of the CAA, the EPA and states must give independent significance to prong 1 and prong 2 when evaluating downwind air quality

problems under section 110(a)(2)(D)(i)(I).<sup>6</sup>

With regard to the prong 1 and prong 2 requirements of CAA section 110(a)(2)(D)(i)(I), the EPA has addressed these requirements with respect to prior ozone NAAQS in several regional regulatory actions, including the Cross-State Air Pollution Rule (CSAPR), which addressed interstate transport with respect to the 1997 ozone NAAQS as well as the 1997 and 2006 fine PM standards, and the Cross-State Air Pollution Rule Update for the 2008 ozone NAAQS (CSAPR Update).<sup>7</sup> These actions only addressed interstate transport in the Eastern United States<sup>8</sup> and did not address the 2015 ozone NAAQS.

Through the development and implementation of CSAPR, the CSAPR Update and previous regional rulemakings pursuant to the good neighbor provision,<sup>9</sup> the EPA, working in partnership with states, developed the following four-step interstate transport framework to address the requirements of the good neighbor provision for the ozone NAAQS:<sup>10</sup> (1) Identify downwind air quality problems; (2) identify upwind states that impact those downwind air quality problems sufficiently such that they are considered “linked” and therefore warrant further review and analysis; (3) identify the emissions reductions necessary (if any), considering cost and air quality factors, to prevent linked upwind states identified in step 2 from contributing significantly to nonattainment or interfering with maintenance of the NAAQS at the locations of the downwind air quality problems; and (4) adopt permanent and enforceable measures needed to achieve those emissions reductions.

The EPA has released several documents containing information relevant to evaluating interstate

<sup>6</sup> See *North Carolina v. EPA*, 531 F.3d 896, 909–911 (2008).

<sup>7</sup> See 76 FR 48208 (August 8, 2011) (*i.e.*, CSAPR) and 81 FR 74504 (October 26, 2016) (*i.e.*, CSAPR Update).

<sup>8</sup> For purposes of the CSAPR and CSAPR Update actions, the Western U.S. (or the West) was considered to consist of the 11 western contiguous states of Arizona, California, Colorado, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington, and Wyoming. The Eastern U.S. (or the East) was considered to consist of the 37 states east of the 11 Western states.

<sup>9</sup> Other regional rulemakings addressing ozone transport include the NO<sub>x</sub> SIP Call, 63 FR 57356 (October 27, 1998), and the Clean Air Interstate Rule (CAIR), 70 FR 25162 (May 12, 2005).

<sup>10</sup> The four-step interstate framework has also been used to address requirements of the good neighbor provision for some previous particulate matter and ozone NAAQS, including in the Western United States. See, e.g., 83 FR 30380 (June 28, 2018) and 83 FR 5375, 5376–77 (February 7, 2018).

transport with respect to the 2015 ozone NAAQS. First, on January 6, 2017, the EPA published a notice of data availability (NODA) with preliminary interstate ozone transport modeling with projected ozone design values for 2023, on which we requested comment.<sup>11</sup> The year 2023 was used as the analytic year for this preliminary modeling because that year aligns with the expected attainment year for Moderate ozone nonattainment areas.<sup>12</sup> On October 27, 2017, we released a memorandum (October 2017 Memo) containing updated modeling data for 2023, which incorporated changes made in response to comments on the NODA.<sup>13</sup> Although the October 2017 Memo released data for a 2023 modeling year, we specifically stated that the modeling may be useful for states developing SIPs to address remaining good neighbor obligations for the 2008 ozone NAAQS but did not address the 2015 ozone NAAQS. And, on March 27, 2018, we issued a memorandum (March 2018 Memo) indicating the same 2023 modeling data released in the October 2017 Memo could also be useful for evaluating potential downwind air quality problems with respect to the 2015 ozone NAAQS (step 1 of the four-step framework). The March 2018 Memo included newly available contribution modeling results to assist states in evaluating their impact on potential downwind air quality problems (step 2 of the four-step framework) in their efforts to develop good neighbor SIPs for the 2015 ozone NAAQS to address their interstate transport obligations.<sup>14</sup> The EPA subsequently issued two more memoranda in August and October 2018, providing guidance to states developing good neighbor SIPs for the 2015 NAAQS concerning, respectively, potential contribution thresholds that may be appropriate to apply in step 2 and considerations for identifying downwind areas that may have

problems maintaining the standard (under interstate transport prong 2) at step 1 of the framework.<sup>15</sup>

The March 2018 Memo describes the process and results of the updated photochemical and source-apportionment modeling used to project ambient ozone concentrations for the year 2023 and the state-by-state impacts on those concentrations. The March 2018 Memo also explains that the selection of the 2023 analytic year aligns with the 2015 NAAQS attainment year for Moderate nonattainment areas. As described in more detail in the October 2017 and March 2018 memoranda, the EPA used the Comprehensive Air Quality Model with Extensions (CAMx version 6.40) to model average and maximum design values in 2023 to identify potential nonattainment and maintenance receptors (*i.e.*, monitoring sites that are projected to have problems attaining or maintaining the 2015 ozone NAAQS). The March 2018 Memo presents design values calculated in two ways: First, following the EPA's historic "3 x 3" approach<sup>16</sup> to evaluating all sites, and second, following a modified approach for coastal monitoring sites in which "overwater" modeling data were not included in the calculation of future year design values (referred to as the "no water" approach).

For purposes of identifying potential nonattainment and maintenance receptors in 2023, the EPA applied the same approach used in the CSAPR Update, wherein the EPA considered a combination of monitoring data and modeling projections to identify monitoring sites that are projected to have problems attaining or maintaining the NAAQS. Specifically, the EPA identified nonattainment receptors as those monitoring sites with measured values<sup>17</sup> exceeding the NAAQS that also have projected (*i.e.*, in 2023) average design values exceeding the NAAQS. The EPA identified maintenance receptors as those

monitoring sites with projected maximum design values exceeding the NAAQS. This included sites with measured values below the NAAQS but with projected average and maximum design values exceeding the NAAQS, and monitoring sites with projected average design values below the NAAQS but with projected maximum design values exceeding the NAAQS. The EPA included the design values and monitoring data for all monitoring sites projected to be potential nonattainment or maintenance receptors based on the updated 2023 modeling in Attachment B to the March 2018 Memo.

After identifying potential downwind nonattainment and maintenance receptors, the EPA next performed nationwide, state-level ozone source-apportionment modeling to estimate the expected impact from each state to each nonattainment and maintenance receptor.<sup>18</sup> The EPA included contribution information resulting from the source-apportionment modeling in Attachment C to the March 2018 Memo. For more specific information on the modeling and analysis, please see the 2017 and March 2018 memoranda, the NODA for the preliminary interstate transport assessment, and the supporting technical documents included in the docket for this action.

In the CSAPR and the CSAPR Update, the EPA used a threshold of one percent of the NAAQS to determine whether a given upwind state was "linked" at step 2 of the four-step framework and would therefore contribute to downwind nonattainment and maintenance sites identified in step 1. If a state's impact did not equal or exceed the one percent threshold, the upwind state was not "linked" to a downwind air quality problem, and the EPA therefore concluded the state will not significantly contribute to nonattainment or interfere with maintenance of the NAAQS in the downwind states. However, if a state's impact equaled or exceeded the one percent threshold, the state's emissions were further evaluated in step 3, taking into account both air quality and cost considerations, to determine what, if any, emissions reductions might be necessary to address the good neighbor provision.

As noted previously, on August 31, 2018, the EPA issued a memorandum (August 2018 Memo) providing guidance concerning potential

<sup>11</sup> See Notice of Availability of the Environmental Protection Agency's Preliminary Interstate Ozone Transport Modeling Data for the 2015 Ozone National Ambient Air Quality Standard (NAAQS), 82 FR 1733 (January 6, 2017).

<sup>12</sup> 82 FR 1735 (January 6, 2017).

<sup>13</sup> See Information on the Interstate Transport State Implementation Plan Submissions for the 2008 Ozone National Ambient Air Quality Standards under Clean Air Act Section 110(a)(2)(D)(i)(I), October 27, 2017, available in the docket for this action or at <https://www.epa.gov/interstate-air-pollution-transport/interstate-air-pollution-transport-memos-and-notices>.

<sup>14</sup> See Information on the Interstate Transport State Implementation Plan Submissions for the 2015 Ozone National Ambient Air Quality Standards under Clean Air Act Section 110(a)(2)(D)(i)(I), March 27, 2018, available in the docket for this action or at <https://www.epa.gov/interstate-air-pollution-transport/interstate-air-pollution-transport-memos-and-notices>.

<sup>15</sup> See Analysis of Contribution Thresholds for Use in Clean Air Act Section 110(a)(2)(D)(i)(I) Interstate Transport State Implementation Plan Submissions for the 2015 Ozone National Ambient Air Quality Standards, August 31, 2018 ("August 2018 memorandum"), and Considerations for Identifying Maintenance Receptors for Use in Clean Air Act Section 110(a)(2)(D)(i)(I) Interstate Transport State Implementation Plan Submissions for the 2015 Ozone National Ambient Air Quality Standards, October 19, 2018, available in the docket for this action or at <https://www.epa.gov/airmarkets/memo-and-supplemental-information-regarding-interstate-transport-sips-2015-ozone-naaqs>.

<sup>16</sup> See March 2018 Memo, at 4.

<sup>17</sup> The EPA used 2016 ozone design values, based on 2014–2016 measured data, which were the most current data at the time of the analysis. See attachment B of the March 2018 Memo, at B–1.

<sup>18</sup> As discussed in the March 2018 Memo, the EPA performed source-apportionment model runs for a modeling domain that covers the 48 contiguous United States and the District of Columbia, and adjacent portions of Canada and Mexico.

contribution thresholds that may be appropriate to apply with respect to the 2015 NAAQS in step 2. Consistent with the process for selecting the one percent threshold in CSAPR and the CSAPR Update, the August 2018 Memo included analytical information regarding the degree to which potential air quality thresholds would capture the collective amount of upwind contribution from upwind states to downwind receptors for the 2015 ozone NAAQS. The August 2018 Memo indicated that, based on the EPA's analysis of its most recent modeling data, the amount of upwind collective contribution captured using a 1 ppb threshold is generally comparable, overall, to the amount captured using a threshold equivalent to one percent of the 2015 ozone NAAQS. Accordingly, the EPA indicated that it may be reasonable and appropriate for states to use a 1 ppb contribution threshold, as an alternative to the one percent threshold, at step 2 of the four-step framework in developing their SIP revisions addressing the good neighbor provision for the 2015 ozone NAAQS.<sup>19</sup>

While the March 2018 Memo presented information regarding the EPA's latest analysis of ozone transport following the approaches the EPA has taken in prior regional rulemaking actions, the EPA has not made any final determinations regarding how states should identify downwind receptors with respect to the 2015 ozone NAAQS at step 1 of the four-step framework. Rather, the EPA noted that states have flexibility in developing their own SIPs to follow different analytical approaches than the EPA's, so long as their chosen approach has an adequate technical justification and is consistent with the requirements of the CAA.

The prong 3 (PSD) requirement of CAA section 110(a)(2)(D)(II) may be met for all NAAQS by a state's confirmation in an infrastructure SIP submission that new major sources and major modifications in the state are subject to a comprehensive EPA-approved PSD permitting program in the SIP that applies to all regulated NSR pollutants and that satisfies the requirements of the EPA's PSD implementation rule(s).<sup>20</sup>

To meet the prong 4 (visibility) requirement of CAA section 110(a)(2)(D)(i)(II) under the 2015 ozone NAAQS, a SIP must address the potential for interference with visibility protection caused by ozone, including precursors. An approved regional haze SIP that fully meets the regional haze requirements in 40 CFR 51.308 satisfies

the 110(a)(2)(D)(i)(II) requirement for visibility protection as it ensures that emissions from the state will not interfere with measures required to be included in other state SIPs to protect visibility. In the absence of a fully approved regional haze SIP, a state can still make a demonstration that satisfies the visibility requirement section of 110(a)(2)(D)(i)(II).<sup>21</sup>

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

#### 1. Colorado

##### (i) The State's submission:

Colorado's September 17, 2018 submission includes an interstate transport analysis for prongs 1 and 2 that focused on the modeling information provided in the EPA's March 2018 Memo. The State notes that its highest projected ozone contribution to any nonattainment or maintenance receptor outside of Colorado was 0.33 ppb at site ID 484392003 in Tarrant, TX. Colorado concludes that the modeling results from the March 2018 Memo indicate that Colorado sources do not contribute significantly to nonattainment or interfere with maintenance of the 2015 ozone NAAQS in any other state.

To address prong 3, Colorado references the PSD program in AQCC Regulation Number 3 of the Colorado SIP, which the State asserts meets all Federal requirements and applies to all regulated pollutants. Colorado's submission states that it cannot issue a PSD permit unless the new or modified source demonstrates that emissions from the construction or operation of the facility will not cause or contribute to air pollution in any area that exceeds any NAAQS. Colorado also asserts that it cannot issue a NNSR permit unless

<sup>21</sup> See 2013 Memo. In addition, the EPA approved the visibility requirement of 110(a)(2)(D)(i) for the 1997 Ozone and PM<sub>2.5</sub> NAAQS for Colorado before taking action on the State's regional haze SIP. 76 FR 22036 (April 20, 2011).

the source shows it has obtained sufficient emissions reductions to offset increases in emissions of the pollutants for which an area is in nonattainment, consistent with reasonable further progress toward attainment. For these reasons, Colorado concludes that its SIP is sufficient to meet the prong 3 requirements of CAA section 110(a)(2)(D)(i)(II).

To address prong 4, Colorado references its EPA-approved Regional Haze SIP to demonstrate that the state does not interfere with visibility for the 2015 ozone NAAQS in any other state (77 FR 76871, December 31, 2012).

To address CAA section 110(a)(2)(D)(ii), Colorado states that there are no petitions or pending actions before the EPA under sections 115, 126(b) and 126(c) of the CAA regarding interstate or international transport. Colorado also states that its approved NSR program has a regulatory provision in place that requires notification of neighboring states of potential impacts from sources, specifically, AQCC Regulation Number 3, Part D, Section IV, provides for notice to any state, tribal governing body, Federal land manager (FLM) or local agency that may be affected by emissions from a major source or major modification subject to the PSD program. For these reasons, Colorado asserts that its SIP meets the requirements of CAA section 110(a)(2)(D)(ii) for the 2015 ozone NAAQS.

##### (ii) The EPA's Analysis:

Prongs 1 and 2: Significant Contribution to Nonattainment and Interference With Maintenance

The EPA primarily relied on the air quality results presented in our March 2018 Memo for our analysis of prongs 1 and 2 for Colorado. As previously discussed, the March 2018 Memo identifies potential downwind nonattainment and maintenance receptors, using the definitions applied in the CSAPR Update and using both the "3 x 3" and the "no water" approaches to calculating future year design values. The March 2018 memorandum identifies 75 potential nonattainment and maintenance receptors in the contiguous U.S.<sup>22</sup> The

<sup>22</sup> The number of receptors in the contiguous United States is 75. Of these, 73 are projected as nonattainment and/or maintenance receptors in 2023 irrespective of whether the "3 x 3" or "no water" approach is used. Two receptors, located in Richmond County, New York and Milwaukee County, Wisconsin, respectively, are projected as nonattainment and maintenance under one approach, but are projected as neither nonattainment nor maintenance under the second approach. Although the EPA has indicated that states may have flexibilities to apply a different

<sup>19</sup> See August 2018 Memo, at 4.

<sup>20</sup> See 2013 Memo.

March 2018 memorandum also provides contribution data regarding the impact of other states on the potential receptors. For purposes of evaluating Colorado's 2015 ozone NAAQS interstate transport SIP submission, we propose that, at least where a state's impacts are less than one percent to downwind nonattainment and maintenance sites, it is reasonable to conclude that the state's impact will not significantly contribute to nonattainment or interfere with maintenance of the NAAQS in any other state. This is consistent with our prior action on Colorado's SIP with respect to the 2008 ozone NAAQS<sup>23</sup> and with the EPA's approach to both the 1997 and 2008 ozone NAAQS in CSAPR and the CSAPR Update. The EPA notes, nonetheless, that consistent with the August 2018 memorandum, it may be reasonable and appropriate for states to use a 1 ppb contribution threshold, as an alternative to a one percent threshold, at step 2 of the four-step framework in developing their SIP revisions addressing the good neighbor provision for the 2015 ozone NAAQS. However, for the reasons discussed below, it is unnecessary for the EPA to determine whether it may be appropriate to apply a 1 ppb threshold for purposes of this action.

The EPA's updated 2023 modeling discussed in the March 2018 Memo indicates that Colorado's largest impact on any potential downwind nonattainment and maintenance receptor in the United States are 0.33 ppb and 0.27 ppb, respectively.<sup>24</sup> These values are less than 0.70 ppb (one percent of the 2015 ozone NAAQS),<sup>25</sup> demonstrating that emissions from Colorado are not linked to any 2023

analytic approach to evaluating interstate transport, including identifying downwind air quality problems, because the EPA is also proposing in this action that Colorado will have an insignificant impact on any potential receptors identified in its analysis, Colorado need not definitively determine whether the identified monitoring sites should be treated as receptors for the 2015 ozone standard.

<sup>23</sup> 81 FR 7706 (February 16, 2016).

<sup>24</sup> The EPA's analysis indicates that Colorado will have a 0.33 ppb impact at the potential nonattainment receptor in Tarrant County, Texas (Site ID 484392003), which has a 2023 projected average design value of 74.8 ppb, a 2023 projected maximum design value of 72.5 ppb, and had a 2014–2016 design value of 73 ppb. The EPA's analysis further indicates that Colorado will have a 0.27 ppb impact at a potential maintenance receptor in Denton County, Texas (Site ID 481210034), which has which has a projected 2023 average design value of 72 ppb, a 2023 projected maximum design value of 69.7 ppb, and had a 2014–2016 design value of 80 ppb. See the March 2018 Memo, attachment C.

<sup>25</sup> Because none of Colorado's impacts exceed 0.70 ppb, they necessarily also do not exceed the 1 ppb contribution threshold discussed in the August 2018 memorandum.

downwind potential nonattainment and maintenance receptors identified in the March 2018 Memo. Thus, Colorado will not impact downwind air quality problems at a level that warrants further review and analysis at step 2 of the 4-step interstate transport framework. Accordingly, we propose to conclude that emissions from Colorado will not contribute to any potential receptors, and thus, will not significantly contribute to nonattainment or interfere with maintenance of the NAAQS in any other state.

We also note that the EPA has assessed potential transport to the Shoshone-Bannock Tribes of the Fort Hall Reservation in southeast Idaho, which the EPA approved to be treated as an affected downwind state for CAA sections 110(a)(2)(D) and 126. While the Shoshone-Bannock Tribes do not operate an ozone monitor, the nearest ozone monitors to the Fort Hall Reservation are in Ada County, Idaho, in the Boise area and in Butte County, Idaho, in the Idaho Falls area. As discussed previously, the EPA's modeling did not identify receptors in Idaho and the ozone monitoring sites nearest to the Fort Hall Reservation were projected to remain below the current standard. For the Idaho Falls area monitoring site (Site ID 160230101), which had a 2014–2016 design value of 60 ppb, the EPA's modeling projects a 2023 maximum design value of 60.2 ppb and a 2023 average design value of 59.6 ppb, both below the 70 ppb standard. For the Boise area monitoring site with the highest projected ozone concentrations (Site ID 160010017), which had a 2014–2016 design value of 67 ppb, the EPA's modeling projects a 2023 maximum design value of 59.8 ppb and a 2023 average design value of 59.4 ppb.<sup>26</sup> We therefore propose to find that emissions from Colorado will not significantly contribute to nonattainment or interfere with maintenance of the 2015 ozone NAAQS at the Fort Hall Reservation.

#### Prong 3: Interference With PSD Measures

As noted, the PSD portion of section 110(a)(2)(D)(i)(II) may be met by a state's confirmation in an infrastructure SIP submission that new major sources and major modifications in the state are subject to a comprehensive EPA-approved PSD permitting program in the SIP that applies to all regulated NSR pollutants and that satisfies the

requirements of the EPA's PSD implementation rule(s).<sup>27</sup> As noted in Section III.(c)(1) of this proposed action, Colorado has such a program, and the EPA is therefore proposing to approve Colorado's SIP for the 2015 ozone NAAQS with respect to the requirement in section 110(a)(2)(C) to include a permit program in the SIP as required by part C of the Act.

As stated in the 2013 Memo, in-state sources not subject to PSD for any one or more of the pollutants subject to regulation under the CAA because they are in a nonattainment area for a NAAQS related to those particular pollutants may also have the potential to interfere with PSD in an attainment or unclassifiable area of another state. One way a state may satisfy prong 3 with respect to these sources is by citing EPA-approved NNSR provisions addressing any pollutants for which the state has designated nonattainment areas. Colorado has a SIP-approved NNSR program that ensures regulation of major sources and major modifications in nonattainment areas.<sup>28</sup>

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

#### Prong 4: Interference With Measures To Protect Visibility

In our prong 4 review, the EPA primarily reviewed Colorado's regional haze SIP. Colorado submitted a regional haze SIP to the EPA on May 25, 2011. The EPA approved Colorado's regional haze SIP on December 31, 2012 (77 FR 76871). Colorado submitted an updated regional haze SIP to the EPA on May 26, 2017, to incorporate an updated Best Available Retrofit Technology (BART) limit for Craig Unit 1 and an updated reasonable progress determination to incorporate a new limit for the Nucla Station. The EPA approved these updates to the Colorado regional haze SIP in a final action published July 5, 2018 (83 FR 31332). Because Colorado has a fully approved regional haze SIP, we are proposing to approve the Colorado SIP as meeting the requirements of element 4 of CAA section 110(a)(2)(D)(i) for the 2015 ozone NAAQS.

<sup>27</sup> See September 2013 Guidance at 31.

<sup>28</sup> See Colorado Regulation No. 3, Part D, Section V, which was most recently approved by the EPA in a final rulemaking dated May 3, 2019 (84 FR 18991).

<sup>26</sup> In attachment A of the October 2017 Memo, the EPA provided the projected ozone design values at individual monitoring sites nationwide. The data for the Idaho monitors is presented on page A–10.

110(a)(2)(D)(ii): Interstate and International Transport Provisions

Regarding CAA section 110(a)(2)(D)(ii), Colorado's SIP approved PSD program requires notice to states whose lands may be affected by the emissions of sources subject to PSD, as required by 40 CFR 51.166(q)(2)(iv).<sup>29</sup> This suffices to meet the notice requirement of section 126(a). Colorado also has no pending obligations under sections 126(c) or 115(b). Therefore, the Colorado SIP currently meets the requirements of those sections. In summary, the SIP satisfies the requirements of CAA section 110(a)(2)(D)(ii) for the 2015 ozone NAAQS.

2. North Dakota

(i) The State's submission:

In its November 6, 2018 submission, North Dakota's transport analysis for prongs 1 and 2 focused on the modeling information provided in the EPA's March 2018 Memo. North Dakota notes that the maximum concentration of ozone that North Dakota sources are projected to contribute to any nonattainment or maintenance receptor in the March 2018 Memo is 0.23 ppb, substantially less than the one percent significant contribution level. North Dakota also states that it reviewed the modeled emissions inventory from the March 2018 Memo and determined that the 2011 base emissions inventory is correct, and the 2023 projected emissions are reasonable. For these reasons, North Dakota concludes that sources in its state do not significantly contribute to nonattainment or interfere with maintenance of the 2015 ozone NAAQS in any other state.

To address prong 3, North Dakota asserts that new major sources and modifications of existing major sources are subject to review for all regulated NSR pollutants in accordance with North Dakota's EPA-approved PSD program in the SIP. Specifically, North Dakota references its incorporation by reference of the Federal PSD program into the North Dakota SIP at 33.1-15-15, which it has incorporated through July 1, 2018. North Dakota notes that these rules incorporate all existing requirements for ozone.

To address prong 4, North Dakota points to existing portions in the North Dakota SIP to certify that the State meets the visibility requirements of section 110(a)(2)(D)(i). North Dakota specifically references the North Dakota regional haze SIP as well as the EPA's regional haze FIP, asserting that together the SIP

and FIP provide all measures necessary to achieve North Dakota's fair share of emissions reductions based on that regional process.<sup>30</sup> The State also references the PSD (NDAC 33-15-15.1) and Visibility Protection (NDAC 33-15-19.1) portions of its SIP, both of which address visibility impairment. North Dakota's submission also included analysis of regional haze 5-year progress reports for Federal Class I areas in neighboring states to which North Dakota was initially modeled to significantly contribute to visibility impairment.<sup>31</sup> North Dakota asserts that these Class I areas are either meeting their reasonable progress goals or, in the case of Medicine Lake in Montana, is not meeting its reasonable progress goals due to international sources rather than sources in North Dakota. North Dakota concludes that its sources are making reasonable progress in remedying visibility impairment in North Dakota's Class I areas and are not interfering with other states plans for visibility improvement in their Class I areas, and therefore the state meets the requirements of CAA section 110(a)(2)(D)(i)(II), prong 4, for the 2015 ozone NAAQS.

To address CAA section 110(a)(2)(D)(ii), North Dakota states that provisions in the PSD portion of its SIP, specifically NDAC-33.1-15-15-01.2.1(q)(2)(d), require notification of neighboring states whose land may be significantly affected by emissions from a new or modified source in North Dakota. North Dakota also states that no sources within North Dakota are the subject of an active finding under CAA section 126 with respect to any pollutant, and that there are no findings under CAA section 115 against North Dakota with respect to any pollutant. For these reasons, North Dakota concludes that its SIP meets the requirements of CAA section 110(a)(2)(D)(ii).

(ii) The EPA's analysis:

Prongs 1 and 2: Significant Contribution to Nonattainment and Interference With Maintenance

The EPA primarily relied on the air quality results presented in our March 2018 Memo for our analysis of prongs 1 and 2 for North Dakota. As previously

discussed, the March 2018 Memo identifies potential downwind nonattainment and maintenance receptors, using the definitions applied in the CSAPR Update and using both the "3 x 3" and the "no water" approaches to calculating future year design values. The March 2018 memorandum identifies 75 potential nonattainment and maintenance receptors in the contiguous U.S. The March 2018 memorandum also provides contribution data regarding the impact of other states on the potential receptors. For purposes of evaluating North Dakota's 2015 ozone NAAQS infrastructure SIP submission, we propose that, at least where a state's impacts are less than one percent to downwind nonattainment and maintenance sites, it is reasonable to conclude that the state's impact will not significantly contribute to nonattainment or interfere with maintenance of the NAAQS in any other state. This is consistent with our prior action on North Dakota's SIP with respect to the 2008 ozone NAAQS<sup>32</sup> and with the EPA's approach to both the 1997 and 2008 ozone NAAQS in CSAPR and the CSAPR Update. The EPA notes, nonetheless, that consistent with the August 2018 memorandum, it may be reasonable and appropriate for states to use a 1 ppb contribution threshold, as an alternative to a one percent threshold, at step 2 of the four-step framework in developing their SIP revisions addressing the good neighbor provision for the 2015 ozone NAAQS. However, for the reasons discussed below, it is unnecessary for the EPA to determine whether it may be appropriate to apply a 1 ppb threshold for purposes of this action.

The EPA's updated 2023 modeling discussed in the March 2018 Memo indicates that North Dakota's largest impact on any potential downwind nonattainment and maintenance receptor in the United States are 0.23 ppb and 0.15 ppb, respectively.<sup>33</sup> These values are less than 0.70 ppb (one

<sup>32</sup> 81 FR 7706 (February 16, 2016).

<sup>33</sup> The EPA's analysis indicates that North Dakota will have a 0.23 ppb impact at the potential nonattainment receptor in Milwaukee County, Wisconsin (Site ID 550790085). The Milwaukee County site has a 2023 projected average design value of 73 ppb, a 2023 projected maximum design value of 71.2 ppb, and had a 2014-2016 design value of 71 ppb. The EPA's analysis further indicates that North Dakota will have a 0.15 ppb impact at a potential maintenance receptor in New Haven County, Connecticut (Site ID 90099002), which has which has a projected 2023 average design value of 72.6 ppb, a 2023 projected maximum design value of 69.9 ppb, and had a 2014-2016 design value of 76 ppb. See the March 2018 Memo, attachment C.

<sup>30</sup> See 77 FR 20894, April 6, 2012, and 78 FR 16452, March 15, 2013.

<sup>31</sup> The Five-Year Progress Reports that North Dakota included in its analysis, for South Dakota (see <https://denr.sd.gov/des/aaqnews/RH5YearReport.pdf>), Montana (see [https://deq.mt.gov/Portals/112/Public/Air/ProgressReport\\_DRAFT\\_7-2017.pdf](https://deq.mt.gov/Portals/112/Public/Air/ProgressReport_DRAFT_7-2017.pdf)), and Minnesota (see <https://www.pca.state.mn.us/sites/default/files/aaq-sip2-17.pdf>), respectively, are all available in the docket for this proposed action.

<sup>29</sup> See Colorado AQCC Regulation Number 3, Part D. IV.A.1.

percent of the 2015 ozone NAAQS),<sup>34</sup> and as a result, demonstrate that emissions from North Dakota are not linked to any 2023 downwind potential nonattainment and maintenance receptors identified in the March 2018 Memo. Accordingly, we propose to conclude that emissions from North Dakota will not contribute to any potential receptors, and thus, the state will not significantly contribute to nonattainment or interfere with maintenance of the NAAQS in any other state.

We also note that the EPA has assessed potential transport to the Shoshone-Bannock Tribes of the Fort Hall Reservation in southeast Idaho, which the EPA approved to be treated as an affected downwind state for CAA sections 110(a)(2)(D) and 126. While the Shoshone-Bannock Tribes do not operate an ozone monitor, the nearest ozone monitors to the Fort Hall Reservation are in Ada County, Idaho, in the Boise area and in Butte County, Idaho, in the Idaho Falls area. As discussed previously, the EPA's modeling did not identify receptors in Idaho and the ozone monitoring sites nearest to the Fort Hall Reservation were projected to remain below the current standard. For the Idaho Falls area monitoring site (Site ID 160230101), which had a 2014–2016 design value of 60 ppb, the EPA's modeling projects a 2023 maximum design value of 60.2 ppb and a 2023 average design value of 59.6 ppb, both below the 70 ppb standard. For the Boise area monitoring site with the highest projected ozone concentrations (Site ID 160010017), which had a 2014–2016 design value of 67 ppb, the EPA's modeling projects a 2023 maximum design value of 59.8 ppb and a 2023 average design value of 59.4 ppb.<sup>35</sup> We therefore propose to find that emissions from North Dakota will not significantly contribute to nonattainment or interfere with maintenance of the 2015 ozone NAAQS at the Fort Hall Reservation.

#### Prong 3: Interference With PSD Measures

As noted, the PSD portion of section 110(a)(2)(D)(i)(II) may be met by a state's confirmation in an infrastructure SIP submission that new major sources and major modifications in the state are subject to a comprehensive EPA-

approved PSD permitting program in the SIP that applies to all regulated NSR pollutants and that satisfies the requirements of the EPA's PSD implementation rule(s).<sup>36</sup> As noted in Section III.(c)(2) of this proposed action, North Dakota has such a program, and the EPA is therefore proposing to approve North Dakota's SIP for the 2015 ozone NAAQS with respect to the requirement in section 110(a)(2)(C) to include a permit program in the SIP as required by part C of the Act.

As stated in the 2013 Memo, in-state sources not subject to PSD for any one or more of the pollutants subject to regulation under the CAA because they are in a nonattainment area for a NAAQS related to those particular pollutants may also have the potential to interfere with PSD in an attainment or unclassifiable area of another state. North Dakota does not contain any nonattainment areas. The consideration of NNSR for prong 3 is therefore not relevant as all major sources locating in the state are subject to PSD. As North Dakota's SIP meets PSD requirements for all regulated NSR pollutants, and North Dakota does not contain any nonattainment areas, the EPA is proposing to approve the infrastructure SIP submission as meeting the applicable requirements of prong 3 of section 110(a)(2)(D)(i) for the 2015 ozone NAAQS.

#### Prong 4: Interference With Measures To Protect Visibility

For the EPA's prong 4 analysis for North Dakota, the EPA reviewed several pieces of information including the North Dakota regional haze SIP and FIP. The 2013 Memo lays out two ways in which a state's infrastructure SIP submission may satisfy prong 4. One way is through a state's confirmation in its infrastructure SIP submission that it has an EPA-approved regional haze SIP in place. Alternatively, in the absence of a fully approved regional haze SIP, a state can make a demonstration in its infrastructure SIP submission that emissions within its jurisdiction do not interfere with other states' plans to protect visibility. Such a submission should point to measures in the SIP that limit visibility-impairing pollutants and ensure that the resulting reductions conform to any mutually agreed emission reductions under the relevant regional haze regional planning organization (RPO) process.<sup>37</sup>

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

In this action, we are proposing to disapprove North Dakota's prong 4 infrastructure SIP submittal for the 2015 ozone NAAQS. The EPA's disapproval of the North Dakota regional haze SIP included the specific disapprovals of North Dakota's selection of nitrogen oxides (NO<sub>x</sub>) BART for Great River Energy's Coal Creek Station and the state's reasonable progress determination for Basin Electric's Antelope Valley Station (77 FR 20894, April 6, 2012). Based on the EPA's disapproval of these portions of North Dakota's regional haze SIP, we propose to determine that North Dakota's SIP does not include measures needed to ensure that its emissions will not interfere with other states' plans to protect visibility from the effects of NAAQS pollutants impacted by NO<sub>x</sub>. Specifically, NO<sub>x</sub> is a precursor of ozone, and is also a term which refers to both nitrogen oxide (NO) and nitrogen dioxide (NO<sub>2</sub>). The EPA is therefore proposing to disapprove prong 4 of North Dakota's infrastructure SIP with regard to the 2015 ozone NAAQS.

If the EPA disapproves an infrastructure SIP submission for prong 4, as we are proposing, a FIP obligation will be created. However, the EPA was previously under an obligation to promulgate a FIP for North Dakota that corrects all regional haze SIP deficiencies (77 FR 20894, April 6, 2012). Therefore, there will be no additional practical consequences from the disapproval for the State, the sources within its jurisdiction, or the EPA, as this disapproval will not add any new FIP obligation for the EPA (See 2013 Memo at 34–35). Additionally, since the infrastructure SIP submission is not required under CAA title I part D or in response to a SIP call under CAA section 110(k)(5), mandatory sanctions under CAA section 179 would not apply. *Id.*

<sup>34</sup> Because none of North Dakota's impacts exceed 0.70 ppb, they necessarily also do not exceed the 1 ppb contribution threshold discussed in the August 2018 memorandum.

<sup>35</sup> In attachment A of the October 2017 Memo, the EPA provided the projected ozone design values at individual monitoring sites nationwide. The data for the Idaho monitors is presented on page A–10.

<sup>36</sup> See September 2013 Guidance at 31.

<sup>37</sup> See *id.* at 34, and also 76 FR 22036 (April 20, 2011) containing the EPA's approval of the visibility requirement of 110(a)(2)(D)(i)(II) based on a demonstration by Colorado that did not rely on the Colorado Regional Haze SIP.

#### 110(a)(2)(D)(ii): Interstate and International Transport Provisions

For the EPA's analysis of CAA section 110(a)(2)(D)(ii), we reviewed the sections of the North Dakota SIP referenced by the State in its 2015 Ozone infrastructure SIP submission. As required by 40 CFR 51.166(q)(2)(iv), North Dakota'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 NDAC 33-15-15-01.2.1(q)(2)(d)). This provision satisfies the notice requirement of section 126(a). North Dakota also has no pending obligations under sections 126(c) or 115(b). Therefore, the North Dakota SIP currently meets the requirements of those sections. On these bases, the EPA is proposing to find that the North Dakota SIP meets the requirements of CAA section 110(a)(2)(D)(ii) for the 2015 ozone NAAQS.

#### E. CAA Section 110(a)(2)(E): Adequate Resources

Section 110(a)(2)(E)(i) requires states to provide necessary assurances that the State will have adequate personnel, funding, and authority under state law to carry out the SIP (and is not prohibited by any provision of Federal or state law from carrying out the SIP or portion thereof). Section 110(a)(2)(E)(ii) requires each state to comply with the requirements respecting state boards under CAA section 128. Section 110(a)(2)(E)(iii) requires states to "provide necessary assurances that, where the State has relied on a local or regional government, agency, or instrumentality for the implementation of any [SIP] provision, the State has responsibility for ensuring adequate implementation of such [SIP] provision."

##### 1. Colorado

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

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

Colorado Revised Statutes, specifically the Colorado Air Pollution Prevention and Control Act (APPCA) Sections 25-7-105, 25-7-11, 42-4 301, to 42-4-414 and Article 7 of Title 25, provide adequate authority for the State of Colorado APCD and AQCC to carry out its SIP obligations with respect to the 2015 ozone NAAQS. The submission states the APCD has an annual budget to operate its six programs which employs 176 people,

and for fiscal year 2018 the APCD had a budget of \$18 million. The budget indicates that 50 percent of funding was derived from stationary source fees, 30 percent being from mobile source fees, 17 percent from Federal grants, and the remaining three percent coming from other cash sources.

The State also receives Sections 103 and 105 grand funds through its Performance Partnership Grant (PPG) along with required state matching funds to provide funding necessary to carry out Colorado's SIP requirements. The regulations cited by Colorado in their certifications and contained within this docket also provide the necessary assurances that the State has responsibility for adequate implementation of SIP provisions by local governments. Therefore, we propose to approve Colorado's SIP as meeting the requirements of section 110(a)(E)(i) and (E)(iii) for the 2015 ozone NAAQS.

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

Section 110(a)(2)(E)(ii) requires each state's SIP to contain provisions that comply with the requirements of section 128 of the CAA. Section 128 requires SIPs to contain two explicit requirements: (i) That any board or body which approves permits or enforcement orders under the CAA shall have at least a majority of members who represent the public interest and do not derive a significant portion of their income from persons subject to such permits and enforcement orders; and (ii) that any potential conflicts of interest by members of such board or body or the head of an executive agency with similar powers be adequately disclosed.<sup>38</sup>

On April 10, 2012 (77 FR 21453) the EPA approved the Procedural Rules, Section 1.11.0, as adopted by the AQCC on January 16, 1998, into the Colorado SIP as meeting the requirements of section 128 of the Act. Section 1.11.0 specifies certain requirements regarding the composition of the AQCC and disclosure by its members of potential conflicts of interest. Details on how this portion of the Procedural Rules meet the requirements of section 128 are provided in our January 4, 2012 proposal document (77 FR 235). In our April 10, 2012 action, we correspondingly approved Colorado's infrastructure SIP for the 1997 ozone NAAQS for element (E)(ii). Colorado's SIP continues to meet the requirements of section 110(a)(2)(E)(ii), and we propose to approve Colorado's

infrastructure SIP for the 2015 ozone NAAQS for this element.

##### 2. North Dakota

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

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

The North Dakota submission cites NDCC 23.1-06-04.1.1 which provides the NDEQ adequate personnel, funding, and legal authority to carry out its SIP and related issues. In addition, the NDEQ currently has 17 full time staff dedicated to permitting of new or modified sources of air pollution and the enforcement of the APCR. NDCC 23-25-03.1 provides adequate authority for the State of North Dakota and the NDEQ to carry out its SIP obligations with respect to the 2015 ozone NAAQS. North Dakota's resources meet the requirements of CAA section 110(a)(2)(E).

We propose to approve North Dakota's SIP as meeting the requirements of section 110(a)(2)(E)(i) and (E)(iii) for the 2015 ozone NAAQS.

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

Section 110(a)(2)(E)(ii) requires each state's SIP to contain provisions that comply with the requirements of section 128 of the CAA. Section 128 requires SIPs to contain two explicit requirements: (i) That any board or body which approves permits or enforcement orders under the CAA shall have at least a majority of members who represent the public interest and do not derive a significant portion of their income from persons subject to such permits and enforcement orders; and (ii) that any potential conflicts of interest by members of such board or body or the head of an executive agency with similar powers be adequately disclosed. On July 30, 2013 (78 FR 45866) the EPA approved revised language in North Dakota's SIP, chapter 2, section 15, Respecting Boards that addresses conflict of interest requirements. Details on how this portion of chapter 2, section 15 meets the requirements of CAA section 128 are provided in the May 13, 2013 proposal document (78 FR 27888). North Dakota's SIP continues to meet the requirements of section 110(a)(2)(E)(ii), and we propose to approve the infrastructure SIP for the 2015 ozone NAAQS for this element.

#### F. CAA Section 110(a)(2)(F): Stationary Source Monitoring System

Section 110(a)(2)(F) requires the SIP to require, as may be prescribed by the EPA: (i) The installation, maintenance, and replacement of equipment, and the

<sup>38</sup>EPA's proposed rule document (79 FR 71040, Dec. 1, 2014) includes a discussion of the legislative history of CAA section 128.

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.

#### 1. Colorado

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

The Colorado AQCC Regulations listed in the State's certifications (Regulations 1, 3, 7, and Common Provisions Regulation) and contained within this docket provide authority to establish a program for measurements and testing of sources, including requirements for sampling and testing. Air Pollutant Emission Notice (APEN) requirements are defined in Regulation 3 and requires stationary sources to report their emissions on a regular basis through APENs. Regulation 3 also requires monitoring to be performed in accordance with EPA-accepted procedures, and recordkeeping of air pollutants. Additionally, Regulation 3 provides for a permitting program that establishes emission limitations and standards. Emissions must be reported by sources to the state for correlation with applicable emissions limitations and standards. Monitoring may be required for both construction and operating permits.

Additionally, Colorado 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 (73 FR 76539). The AERR shortened the time states had to report emissions data from 17 to 12 months, giving states one calendar year to submit emissions data. All states are required to submit a comprehensive emissions inventory every three years and report emissions for certain larger sources annually through the EPA's online Emissions Inventory System (EIS). States report emissions data for six criteria pollutants and their associated precursors—NO<sub>x</sub>, sulfur dioxide (SO<sub>2</sub>), ammonia, Pb, carbon monoxide (CO), PM, and volatile organic compounds (VOCs). Colorado made its latest update to the NEI on March 5, 2019. The EPA compiles the emissions data, supplementing it where

necessary, and releases it to the general public through the website <http://www.epa.gov/ttn/chief/eiinformation.html>.

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

#### 2. North Dakota

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

The North Dakota statutory provisions listed in the State's certifications (NDCC 23–25–03) and contained within this docket provide authority to establish a program for measurement and testing of sources, including requirements for sampling and testing. North Dakota's SIP-approved minor source and PSD programs provide for monitoring, recordkeeping, and reporting requirements for sources subject to minor and major source permitting. The State cites several regulations (NDAC 33–15–14–02.9.1, 33–15–14–03.6.1, 33–15–14–06.5.1 and contained within this docket) requiring monitoring of emissions from stationary sources, recordkeeping, and reporting of emissions, monitoring date. Source surveillance is also addressed in Chapter 8 of the SIP. The chapter provides for the permitting of sources, inspection of the sources, recordkeeping and reporting by sources, and compliance determinations. Section 8.2 of the SIP commits the NDEQ of the correlation of data with the applicable requirements. All reports are available for public inspection in accordance with NDAC 33–15–01–16.1.1. Additionally, North Dakota is required to submit emissions data to the EPA for purposes of the NEI, as detailed above.

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

#### G. CAA Section 110(a)(2)(G): Emergency Powers

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

Under CAA section 303, the Administrator has authority to immediately restrain an air pollution source that presents an imminent and substantial endangerment to public health or welfare, or the environment. If such action may not practicably assure prompt protection, then the Administrator has authority to issue temporary administrative orders to

protect the public health or welfare, or the environment, and such orders can be extended if the EPA subsequently files a civil suit.

#### 1. Colorado

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

APPCA Sections 25–7–112 and 25–7–113 provide APCD with general emergency authority comparable to that in section 303 of the Act. APPCA section 25–7–112(1) provides the Division of Administration in the CDPHE with the authority to maintain civil actions over the sources of air pollution discharges that constitute “a clear, present, and immediate danger to the environment or to the health of the public.” Specifically, the APCD can seek a “temporary restraining order, temporary injunction, or permanent injunction as provided for in the Colorado rules of civil procedure” (C.R.S. section 25–7–112(1)(b)). This authority extends to discharges that constitute “an immediate danger to the welfare of the public because such pollutants make habitation of residences or the conduct of businesses subjected to the pollutants extremely unhealthy or disruptive.” (C.R.S. Section 25–7–113(1)).

These civil actions may be maintained “in any district court of this state for the district in which the said activity or discharge is occurring.” (C.R.S. Sections 25–7–112(1)(b); 25–7–113(1)(b)). Additionally, the action “shall be given precedence over all other matters pending in such district court.” (*Id.*) As such, Colorado law provides statutory authority over sources of air pollution discharges that cause an “immediate danger” to public health, welfare, or the environment. This authority allows for the pursuit of immediate relief and provides precedence for such matters. Therefore, Colorado has comparable judicial authority to that provided to the Administrator in Section 303.

Similarly, APPCA section 25–7–112(1)(a) provides the APCD with the authority to issue “cease-and-desist orders . . . requiring immediate discontinuance of such activity or the discharge of such pollutant into the atmosphere” when the activity or discharge “constitutes a clear, present, and immediate danger to the environment or to the health of the public.” (C.R.S. Section 25–7–112(1)(a)). Further, “upon receipt of such order, such person shall immediately discontinue such activity or discharge.” (*Id.*) This authority extends to discharges that constitute “an immediate danger to the welfare of the public because such pollutants make

habitation of residences or the conduct of businesses subjected to the pollutants extremely unhealthy or disruptive.” (C.R.S. Section 25–7–113(1)).

These provisions also allow the APCD to “both issue such a cease-and-desist order and apply for any such restraining order or injunction” (C.R.S. Sections 25–7–112(1)(c); 25–7–113(c)). Colorado law provides administrative authority over sources of air pollution discharges that cause an “immediate danger” to public health, welfare, or the environment. Furthermore, C.R.S. Sections 25–7–112(2)(b) allows the Governor to declare a state of air pollution emergency and take any and all actions necessary to protect the health of the public. This authority is comparable to that provided to the Administrator in Section 303.

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

## 2. North Dakota

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

Chapter 23–25 of the NDCC provides relevant language and authority for “Air Pollution Control.” The purpose of this chapter is “to achieve and maintain the best air quality possible” and to “protect human health, welfare and property, [and] prevent injury to plant and animal life” (NDCC 23–25–01.1(2)). NDCC 23–25–01.1 defines “air pollution” as “the presence in the outdoor atmosphere of one or more air contaminants in such quantities and duration as is or may be injurious to human health, welfare, or property, animal or plant life, or which unreasonably interferes with the enjoyment of life or property.” As such, the chapter aims to protect all three areas required by section 303; human health, welfare, and environment. The “Air Pollution Control” chapter provides general grants of authority to maintain actions in certain situations. We find these grants provide comparable authority to that provided in Section 303. Furthermore, the NDAC 33–15–01–15.1(1) makes it unlawful to “permit or cause air pollution” as defined in NDCC 23–25–01.1. A person causing or contributing to emissions that endanger public health, welfare, or the environment, would be causing “air pollution” within the meaning of North Dakota law, and would therefore be in violation of NDAC 33–15–01–15.1(1). This could occur in either an emergency or non-emergency situation.

NDCC 23–25–10.1(5) provides that “the department has the authority to

maintain an action in the name of the state against any person to enjoin any threatened or continuing violation of any provision of this chapter or any permit condition, rule, order, limitation, or other applicable requirement implementing this chapter.” Under NDCC 23–25–10.1(5), the NDEQ has the authority to bring an action to enjoin a violation of NDCC 23–25.1 or its rules. The NDEQ may seek a court order to restrain a source from causing or contributing to emissions that endanger public health, welfare, or the environment. In an emergency, this may take the form of an injunction or temporary restraining order (*see* NDCC 32–06–02.1). Therefore, the NDEQ has the authority to seek judicial actions during emergency situations.

North Dakota’s statutes also provide the NDEQ with the authority to issue administrative orders and emergency rules to protect the public health, welfare, and the environment under certain circumstances. NDCC 23–25–08.1, as cited in North Dakota’s SIP submittals, authorizes that in the event of “an emergency requiring immediate action to protect the public health and safety,” the NDEQ has the authority to “issue an order reciting the existence of such emergency and requiring that such action be taken as is necessary” to meet the emergency. The emergency order is effective immediately. Any person who violates the order is subject to enforcement, penalties, and injunctions under NDCC 23–25–10.1.

Furthermore, as cited in North Dakota’s SIP submittals, the NDEQ has the authority to “use an emergency adjudicative proceeding, in its discretion, in an emergency situation involving imminent peril to the public health, safety, or welfare” (NDCC 28–32–32.1). Accordingly, “in an emergency, the administrative agency may take action pursuant to a specific statute as is necessary to prevent or avoid imminent peril to the public health, safety, or welfare” (NDCC–28–32–32.1.1). In the absence of a specific statute requiring other administrative action, “the administrative agency shall issue an order” (NDCC 28–32–32.1(4)).

Further supplemental authority is found in a broad provision, cited by the State in their SIP submittals, granting additional authority to the NDEQ. The NDEQ has the authority to “[i]ssue such orders as may be necessary to effectuate the purposes” of the “Air Pollution Control” chapter NDCC 23–25–03.5.1. These orders can be enforced “by all appropriate administrative and judicial procedures” (NDCC 23–25–03.5.1). Thus, this broad grant of authority includes the authority to issue

administrative orders during air pollution emergencies which would disrupt protection of human health, welfare, and animal and plant life.

The combination of NDCC and NDAC provisions discussed above provide for authority comparable to section 303 to immediately bring suit to restrain, issue emergency orders against, and use special rule adoption procedures 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. We propose that they 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 set forth in 40 CFR part 51, subpart H.

Subpart H of 40 CFR part 51 requires states to classify regions and to develop contingency plans (also known as emergency episode plans) after ambient concentrations of certain criteria pollutants in an area have exceeded specified levels. For example, if ambient concentrations of NO<sub>2</sub> in an area have exceeded 0.06 parts per million (ppm) (annual arithmetic mean), then the area is classified as a Priority I region, and the state must develop a contingency plan that meets the requirements of §§ 51.151.1 and 51.152.1 North Dakota has not monitored any values above the priority cut point for ozone or NO<sub>2</sub>.

Prevention of air pollution emergency episodes is addressed in Section 5 of North Dakota’s SIP, which was approved on May 31, 1972 (37 FR 10842). We find that North Dakota’s air pollution emergency provisions establish stages of episode criteria (Section 5.2), provide for public announcement whenever any episode stage has been determined to exist (Section 5.3), and specify emission control actions to be taken at each episode stage (Section 5.5) consistent with the EPA emergency episode SIP requirements set forth at the 40 CFR part 51, subpart H (prevention of air pollution emergency episode) for ozone and NO<sub>2</sub>.

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

*H. CAA Section 110(a)(2)(H): Future SIP Revisions*

Section 110(a)(2)(H) requires that SIPs provide for revision of such plan: (i) From time to time as may be necessary to take account of revisions of such national primary or secondary ambient air quality standard or the availability of improved or more expeditious methods of attaining such standard, and (ii), except as provided in paragraph (3)(C), whenever the Administrator finds on the basis of information available to the Administrator that the SIP is substantially inadequate to attain the NAAQS which it implements or to otherwise comply with any additional requirements under this [Act].

1. Colorado

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

The Colorado submission refers to the Colorado APPCA Section 25-7-105(1)(a)(I) which directs the AQCC to promulgate a comprehensive SIP that meets all Federal requirements and to revise the SIP whenever necessary or appropriate. In addition, the Colorado APPCA Section 25-7-109 C.R.S. gives the AQCC the authority to promulgate emissions control regulations.

Colorado's statutory provision at APPCA Section 25-7-105(1)(a)(I) directs the AQCC to promulgate a comprehensive SIP that meets all Federal requirements and to revise the SIP whenever necessary or appropriate. Therefore, we propose to approve Colorado's SIP as meeting the requirements of CAA section 110(a)(2)(H).

2. North Dakota

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

The EPA approved section 1.14 of the North Dakota SIP on September 17, 2012 (77 FR 57029). Section 1.14 commits the State to revise the SIP in the circumstances covered by CAA section 110(a)(2)(H). North Dakota's statutory provision at NDCC 23-25-03.1 provides adequate authority for the NDEQ to carry out such revisions. Therefore, we propose to approve North Dakota's SIP as meeting the requirements of CAA section 110(a)(2)(H).

*I. CAA Section 110(a)(2)(I): Nonattainment Area Plan Revision Under Part D*

There are two elements identified in CAA section 110(a)(2) are not governed by the three-year submission deadline of CAA section 110(a)(1) because SIPs incorporating necessary local nonattainment area controls are due on

nonattainment area plan schedules pursuant to section 172 and the various pollutant-specific subparts 2 through 5 of part D. These are submissions required by: (i) CAA section 110(a)(2)(C) to the extent that subsection refers to a permit program as required in part D, Title I of the CAA, and (ii) section 110(a)(2)(I) which pertain to the nonattainment planning requirements of part D, Title I of the CAA. As a result, this action does not address CAA section 110(a)(2)(C) with respect to NNSR or CAA section 110(a)(2)(I).

*J. CAA Section 110(a)(2)(J): Consultation With Government Officials, Public Notification, PSD and Visibility Protection*

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

1. Colorado

(i) State's submission:

The Colorado submission references the following laws and regulations relating to consultation with identified officials on certain air agency actions; public notification; PSD; and visibility protection:

- APPCA 25-7-105(1)(d).
- APPCA 25-7-118.
- APPCA 25-7-128.
- AQCC Regulation 3 (Stationary Source Permitting and Air Pollution Emission Notice Requirements).
- AQCC Regulation 6 (Standards of Performance for New Stationary Sources).
- AQCC Regulation 10, Part III (Transportation Conformity Rule).
- Colorado's Regional Haze SIP.
- Colorado's Interstate Transport SIP.

(ii) The EPA's analysis:

Colorado has demonstrated that it has the authority and rules in place to provide a process of consultation with general purpose local governments, designated organizations of elected officials of local governments and any FLM having authority over Federal land to which the SIP applies, consistent with the requirements of CAA section 121. Moreover, the EPA previously addressed the requirements of CAA section 127 for the Colorado SIP and

determined public notification requirements are appropriate (45 FR 53147, Aug. 11, 1980).

Addressing the requirement in CAA section 110(a)(2)(J) that the SIP meet the applicable requirements of part C, Title I of the CAA, we have evaluated this requirement in the context of CAA section 110(a)(2)(C). The EPA most recently approved revisions to Colorado's PSD program on May 3, 2019 (84 FR 18991), updating the program for current Federal requirements. Therefore, we are proposing to approve the Colorado 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 Act. In the event of the establishment of a new NAAQS, however, the visibility and regional haze program requirements under part C do not change. Consequently, we find that there is no new applicable requirement relating to visibility triggered under CAA section 110(a)(2)(J) when a new NAAQS becomes effective.

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

2. North Dakota

(i) State's submission:

The North Dakota submission references the following specific laws and regulations relating to consultation with identified officials on certain air agency actions, public notification, prevention of significant deterioration, and visibility protection:

- North Dakota SIP, Chapter 10
- North Dakota SIP, Section 6.9
- NDCC 23.1-06-12
- NDCC 23.1-06-13
- NDCC 28-32
- NDAC 33.1-15-11-03.1
- NDAC 33.1-15-14-02.6
- NDAC 33.1-15-15-01.2(k)(i)
- NDAC 33.1-15-15-01.2(p)
- NDAC 33.1-15-15-01.2(q)

(ii) EPA's analysis:

North Dakota has demonstrated that it has the authority and rules in place to provide for a process of consultation with 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. Moreover, the EPA previously

addressed the requirements of CAA section 127 for the North Dakota SIP and determined public notification requirements are appropriate (45 FR 53475, Aug. 12, 1980).

Addressing the requirement in CAA section 110(a)(2)(f) that the SIP meet the applicable requirements of part C, Title I of the CAA, we have evaluated this requirement in the context of CAA section 110(a)(2)(C). The EPA most recently approved revisions to North Dakota's PSD program on June 3, 2010 (75 FR 31291), updating the program for current Federal PSD requirements. Additionally, the North Dakota's SIP-approved PSD program incorporates by reference the Federal program at 40 CFR 52.21. Accordingly, we are proposing to approve the North Dakota SIP as meeting the requirements of CAA 110(a)(2)(f) with respect to PSD for the 2015 ozone NAAQS.

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

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

#### K. CAA Section 110(a)(2)(K): Air Quality and Modeling/Data

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

The EPA's requirements for air quality modeling for criteria pollutants are found in 40 CFR part 51, appendix W, Guideline on Air Quality Models. On January 17, 2017 (82 FR 5182), the EPA revised appendix W, effective February 16, 2017. The **Federal Register** notice stated: "For all regulatory applications covered under the Guideline, except for transportation conformity, the changes to the appendix A preferred models and revisions to the requirements and recommendations of the Guideline must

be integrated into the regulatory processes of respective reviewing authorities and followed by applicants by no later than January 17, 2018."

#### 1. Colorado

##### (i) State's submission:

The Colorado submission refers to Colorado's Regulation 3 Part A.VIII (Technical Modeling and Monitoring Requirements) which requires that estimates of ambient air concentrations are based on applicable air quality models approved by the EPA. Further, Regulation 3 Part D, Section VI.C. requires the APCD to transmit to the Administrator of the EPA a copy of each permit application relating to a major stationary source or major modification subject to this regulation and provide notice of every action related to the consideration of such permit. The State also references the following rules and regulations which require and provide authority for air quality modeling and submission of such data to the EPA Administrator:

- Regulation 3.
- Regulation 3 Part A, Section VIII.
- Regulation 3, Part D, Section X.A.4.
- Regulation 3, Part D, Section VI.C.
- AQCC Regulation 4.
- Denver PM<sub>10</sub> SIP.

##### (ii) The EPA's analysis:

Colorado has broad authority and resources to model for all criteria pollutants. Air quality modeling is done for SIP revisions, transportation conformity, and permitting. AQCC Regulation 3 (Stationary Source Permitting and Air Pollution Emission Notice Requirements) requires stationary sources to predict the effect of air pollutants in attainment areas. Regulation 3 also details the State of Colorado's program regarding permitting as related to air quality modeling and data handling in predicting the effect of emissions of a pollutant with an established NAAQS.

Colorado Regulation 3 Part A, Section VIII, "Technical Modeling and Monitoring Requirements," most recently approved by the EPA on January 25, 2016 (81 FR 3963), states that all estimates of ambient concentrations required under Regulation 3 shall be based on the applicable air quality models, data bases, and other requirements generally approved by the EPA and specifically approved by the APCD. Part A also requires all modeling data used to determine compliance to be appropriate given the topography, meteorology and other characteristics of the region. In previous actions, the EPA has interpreted Colorado's provisions on permit modeling to mean that the

modeling is performed in accordance with appendix W of 40 CFR part 51. Because the provision requires use of EPA-approved models without setting any cutoff date for that approval, we interpret the provision to mean EPA-approved models as they are currently approved. As confirmation, Colorado's May 2018 draft modeling guidance (contained in the docket), "Colorado Modeling Guideline for Air Quality Permits" has been revised and updated to refer to the most recent version of appendix W described above.<sup>39</sup>

The state submits data to the EPA as required under Regulation 3, Part D, Section VI.C., most recently approved by the EPA on January 25, 2016 (81 FR 3963), requiring Colorado to transmit to the EPA Administrator a copy of each permit application relating to a major stationary source or major modification subject to the regulation, and provide notice of every action related to the consideration of such permit. Additionally, the State also has the authority to submit any modeling data to the EPA upon request under the Colorado Open Records Act.<sup>40</sup>

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

#### 2. North Dakota

##### (i) State's submission:

The North Dakota submission refers to the following rules and regulations that provide for NAAQS pollutant air quality modeling and the submission of such data to EPA:

- North Dakota SIP, section 7.7, Air Quality Modeling
- NDAC 33.1-15-14-02.4
- NDCC 23.1-06-04.1

##### (ii) EPA's analysis:

North Dakota's PSD program requires that estimates of ambient air concentrations are based on applicable air quality models specified in appendix W of 40 CFR part 51, and incorporates by reference<sup>41</sup> the provisions at 40 CFR 52.21(i)(2) requiring that modification or substitution of a model specified in appendix W must be approved by the Administrator (*see* NDAC 33.1-15-14-

<sup>39</sup> For our most recent Colorado infrastructure SIP approval, *see* 82 FR 39030, September 18, 2017. *See also* [https://www3.epa.gov/airquality/urbanair/sipstatus/reports/co\\_infrastructypoll.html](https://www3.epa.gov/airquality/urbanair/sipstatus/reports/co_infrastructypoll.html).

<sup>40</sup> *See* 24-72-201 to 24-72-309, C.R.S.

<sup>41</sup> In this action, the EPA is also proposing to approve a revision to NDAC chapter 33.1-15-15 by updating the date of incorporation by reference to July 1, 2018. This proposed action thus will update the State's regulations to the most current version of appendix W found in 40 CFR part 51 as of July 1, 2018.

02.4 and NDAC 33.1–15–15–01.2). Section 7.7, Air Quality Modeling, last approved by the EPA on September 17, 2009 (77 FR 10842) of North Dakota's SIP commits the state to perform air quality modeling to predict the impact of a source on air quality, and to provide data to the EPA upon request. As a result, the SIP provides for such air quality modeling as the Administrator has prescribed.

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

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

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

1. Colorado

(i) State's submission:

The Colorado submission refers to AQCC Regulation 3, Part A, Section VI; which requires owners or operators of major stationary sources to pay the APCD annual fees, based on total emissions, necessary to recover the direct and indirect costs incurred by CDPHE in processing permit applications, issuing permits, and in conducting a compliance monitoring and enforcement program. Fees collected are used by Colorado to administer stationary source air pollution control programs.

(ii) The EPA's analysis:

The EPA-approved Regulation 3, Part A, Section VI adequately addresses requirements in CAA section 110(a)(2)(L) regarding construction (*i.e.*, NSR) permits. With respect to title V permits, on October 16, 2000, the EPA fully approved Colorado's part 70 title V operating permit program (65 FR 49919). The fully approved Colorado title V program and Colorado's Air Quality Control Commission Regulation 3 demonstrate that fees will be adequate to fund the title V and NSR programs, and that the State will collect fees above the presumptive minimum in accordance with 40 CFR 70.9(b)(2)(i). Therefore, we are proposing that Colorado has satisfied the requirements of CAA section 110(a)(2)(L) for the 2015 ozone NAAQS.

2. North Dakota

(i) State's submission:

The North Dakota submission refers to its fully approved title V operating permit program and references the NDAC for permit processing and annual

fees for reviewing, approving, implementing and enforcing a permit. The state references the regulations of NDCC as its authority for fees.

• NDAC 33.1–15–23.1.

• NDCC 23.1–06–10.1.

(ii) The EPA's analysis:

NDAC 33.1–15–23.1 requires

applicants for permits to construct or modify stationary sources to pay fees. With respect to title V fees, on August 16, 1999, the EPA fully approved North Dakota's part 70 title V operating permit program (64 FR 32433). Therefore, we are proposing that North Dakota has satisfied the requirements of CAA section 110(a)(2)(L) for the 2015 ozone NAAQS.

*M. 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.

1. Colorado

(i) State's submission:

Colorado refers to the following rules and regulations, which require and provide authority for public hearings, notice of hearings, public comment periods, and the consultation and coordination between state and local governments:

• APPCA 25–7–105(1)(d).

• APPCA 25–7–110.

• APPCA 25–7–128.

• AQCC Reg. 3, Part D. Section

IV.A.1.

• AQCC Reg. 10.

(ii) The EPA's analysis:

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

2. North Dakota

(i) State's submission:

North Dakota refers to the following NDAC and NDCC rules and regulations, which require and provide authority for public hearings, notice of hearings, public comment periods; and the advisement, consultation and cooperation with other public agencies and with affected groups and industries:

• NDCC 23.1–06–03.1.

• NDCC 23.1–06–04.1.d.

• NDAC 28–32.1.

(ii) The EPA's analysis:

The rules and regulations cited by North Dakota provide for the

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

*N. Revisions to North Dakota Air Pollution Control Rules*

On May 2, 2019, the EPA received revisions for the APCR for the State of North Dakota. The EPA is proposing to approve one portion of the submittal, a revision to chapter 33.1–15–15, the State's PSD program. For the most part, North Dakota incorporates by reference the Federal program at 40 CFR 52.21. However, the provision that we propose to approve replaces 40 CFR 52.21(l)(1) with a specific reference to 40 CFR part 51, appendix Was it existed on July 1, 2018. The revised provision is consistent with the parallel requirement for state PSD programs in 40 CFR 51.166(l). The submittal was signed by the Governor and received a public hearing on October 10, 2018. The EPA is proposing to approve this specific provision in chapter 33.1–15–15 at this time and will act on other portions of the submitted revisions to the North Dakota APCR in a separate notice.

**IV. Proposed Action**

In this rulemaking, we are proposing approval for multiple elements of the infrastructure SIP requirements for the 2015 ozone NAAQS for Colorado and North Dakota and a proposed approval to chapter 33.1–15–15 of North Dakota's APCR, along with a proposed disapproval for one infrastructure element for North Dakota. Our proposed actions are contained in Table 1 below.

With respect to Colorado, the EPA is proposing to approve Colorado's September 17, 2018 SIP submission for the following CAA section 110(a)(2) infrastructure elements for the 2015 ozone NAAQS: (A), (B), (C), (D), (E), (F), (G), (H), (J), (K), (L), and (M).

With respect to North Dakota, the EPA is proposing to approve North Dakota's November 6, 2018 SIP submission for the following CAA section 110(a)(2) infrastructure elements for the 2015 ozone NAAQS: (A), (B), (C), (D)(i)(I) Prong 1 Interstate transport—significant contribution, (D)(i)(I) Prong 2 Interstate transport—interference with maintenance, (D)(i)(II) Prong 3 Interstate transport—prevention of significant deterioration, (D)(ii), (E), (F), (G), (H), (J), (K), (L), and (M). The EPA is also proposing to disapprove (D)(i)(II) Prong 4 Interstate transport—visibility. Additionally, the EPA is proposing to

approve a revision to chapter 33.1–15–15 of North Dakota’s APCR.

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

2015 Ozone NAAQS Infrastructure SIP Elements	Colorado	North Dakota
(A): Emission Limits and Other Control Measures .....	A	A
(B): Ambient Air Quality Monitoring/Data System .....	A	A
(C): Program for Enforcement of Control Measures .....	A	A
(D)(i)(I): Prong 1 Interstate Transport—significant contribution .....	A	A
(D)(i)(II): Prong 2 Interstate Transport—interference with maintenance .....	A	A
(D)(i)(III): Prong 3 Interstate Transport—prevention of significant deterioration .....	A	A
(D)(i)(IV): Prong 4 Interstate Transport—visibility .....	A	D
(D)(ii): Interstate and International Pollution Abatement .....	A	A
(E): Adequate Resources .....	A	A
(F): Stationary Source Monitoring System .....	A	A
(G): Emergency Episodes .....	A	A
(H): Future SIP revisions .....	A	A
(J): Consultation with Government Officials, Public Notification, PSD and Visibility Protection .....	A	A
(K): Air Quality and Modeling/Data .....	A	A
(L): Permitting Fees .....	A	A
(M): Consultation/Participation by Affected Local Entities .....	A	A
North Dakota APCR Chapter 33.1–15–15 .....	NA	A

In the table above, the key is as follows:  
 A—Approve.  
 D—Disapprove.  
 NA—No Action.

**V. Incorporation by Reference**

In this document, the EPA is proposing to include regulatory text in an EPA final rule that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is proposing to incorporate by reference North Dakota’s May 2, 2019 submission of chapter 33.1–15–15, the APCR of the State of North Dakota, that updates the date of incorporation by reference of Federal rules. The EPA has made, and will continue to make, these materials generally available through [www.regulations.gov](http://www.regulations.gov) and at the EPA Region 8 Office (please contact the persons identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

**VI. Statutory and Executive Order Reviews**

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA’s role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely proposes to approve state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a “significant regulatory action” subject to review by the Office

of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);

- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866;
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (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 the EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

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

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

Environmental protection, Air pollution control, Carbon monoxide, Greenhouse gases, 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 19, 2019.

**Gregory Sopkin,**

*Regional Administrator, EPA Region 8.*

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