



## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R08-OAR-2011-0659; FRL-9916-43-Region-8]

#### **Approval and Promulgation of Air Quality Implementation Plans; Wyoming; Revisions to the Wyoming Air Quality Standards and Regulations; Ambient Standards for Nitrogen Oxides and for Ozone**

**AGENCY:** Environmental Protection Agency.

**ACTION:** Direct final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is taking direct final action to approve a State Implementation Plan (SIP) revision submitted by the State of Wyoming. The revision affects Wyoming's Air Quality Standards and Regulations (WAQSR) regarding ambient standards for nitrogen oxides (NO<sub>x</sub>) and for ozone. This action is being taken under section 110 of the Clean Air Act (CAA).

**DATES:** This rule is effective **[insert date 60 days after publication in the Federal Register]** without further notice, unless EPA receives adverse comment by **[insert date 30 days after publication in the Federal Register]**. If adverse comments are received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R08-OAR-2011-0659, by one of the following methods:

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

- E-mail: [pratt.steven@epa.gov](mailto:pratt.steven@epa.gov).
- Fax: (303) 312-6064 (please alert the individual listed in the **FOR FURTHER INFORMATION CONTACT** if you are faxing comments).
- Mail: Director, Air Program, EPA, Region 8, Mailcode 8P-AR, 1595 Wynkoop Street, Denver, Colorado 80202-1129.
- Hand Delivery: Director, Air Program, EPA, Region 8, Mailcode 8P-AR, 1595 Wynkoop, Denver, Colorado 80202-1129. Such deliveries are only accepted Monday through Friday, 8:00 a.m. to 4:30 p.m., excluding federal holidays. Special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA-R08-OAR-2011-0659.

EPA's policy is that all comments received will be included in the public docket without change and may be made available online at <http://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through <http://www.regulations.gov> or e-mail. The <http://www.regulations.gov> website is an “anonymous access” system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA, without going through <http://www.regulations.gov>, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any

disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional instructions on submitting comments, go to Section I.

General Information of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: All documents in the docket are listed in the <http://www.regulations.gov> index.

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

**FOR FURTHER INFORMATION CONTACT:** Steven Pratt, Air Program, EPA, Region 8, Mailcode 8P-AR, 1595 Wynkoop, Denver, Colorado 80202-1129, (303) 312-6575, [pratt.steven@epa.gov](mailto:pratt.steven@epa.gov).

#### **SUPPLEMENTARY INFORMATION:**

##### **Definitions**

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

(i) The words or initials Act or CAA mean or refer to the Clean Air Act, unless the context

indicates otherwise.

(ii) The initials CFR mean the Code of Federal Regulations.

(iii) The words EPA, we, us or our mean or refer to the United States Environmental Protection Agency.

(iv) The initials NAAQS mean National Ambient Air Quality Standard.

(v) The initials NO<sub>x</sub> mean or refer to oxides of nitrogen (NO, NO<sub>2</sub>, NO<sub>3</sub>).

(vi) The initials ppb mean or refer to parts per billion.

(vii) The initials ppm mean or refer to parts per million.

(viii) The initials SIP mean or refer to State Implementation Plan.

(ix) The initials WAQSR mean Wyoming Air Quality Standards and Regulations.

(x) The words Wyoming and State mean the State of Wyoming.

## **I. General Information**

### **A. What Should I Consider as I Prepare My Comments for EPA?**

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

2. Tips for Preparing Your Comments. When submitting comments, remember to:
- a. Identify the rulemaking by docket number and other identifying information (subject heading, Federal Register date and page number).
  - b. Follow directions - The agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.
  - c. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.
  - d. Describe any assumptions and provide any technical information and/or data that you used.
  - e. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
  - f. Provide specific examples to illustrate your concerns, and suggest alternatives.
  - g. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
  - h. Make sure to submit your comments by the comment period deadline identified.

## **II. Background of Wyoming's Submissions**

On January 30, 2013 the State of Wyoming submitted to EPA a formal revision package detailing portions of rulemaking R-20 as revisions to Wyoming's SIP. These revisions amend the WAQSR. In particular, Wyoming has revised Chapter 2, "Ambient Standards," section 3, "Ambient standards for nitrogen oxides," section 6, "Ambient standards for ozone," and section 12, "Incorporation by reference."

The Wyoming Environmental Quality Council made these changes by amending WASQR Chapter 2, including sections 3, 6 and 12, via rulemaking R-20 on October 5, 2012. In accordance with the Wyoming Administrative Procedures Act, the revisions were forwarded to the Wyoming Governor's Office where they were approved, and then transmitted to the Wyoming Secretary of State's office and became effective on December 19, 2012. All necessary State reviews and approvals have been secured.

Chapter 2, section 3, the nitrogen oxides ambient standard, was revised to make the State nitrogen oxides standard consistent with the federal regulations, but no more stringent than federal standards. Chapter 2, section 6, the ozone ambient standard, was revised to make the State ozone standard consistent with the federal regulations, but no more stringent than federal standards. Section 12 of Chapter 2, "Incorporation by reference," was revised to adopt by reference Part 50 - National Primary and Secondary Ambient Air Quality Standards, from the Code of Federal Regulations (CFR) revised as of July 1, 2011.

### **III. EPA's Evaluation of Wyoming's Submissions**

The SIP revisions in the January 30, 2013 submittal that we are acting on in this document involve the WASQR Chapter 2, "Ambient Standards," section 3, "Ambient standards for nitrogen oxides," section 6, "Ambient standards for ozone," and section 12, "Incorporation by reference." To determine if Wyoming's submissions should be approved by EPA, EPA must evaluate the submissions for consistency with the CAA and EPA regulations.

Chapter 2, section 3, the nitrogen oxides ambient standard, was amended to make the State nitrogen oxides ambient standards consistent with federal standards, but no more stringent than federal standards. The section now sets the level of the primary annual ambient air quality

standard for oxides of nitrogen as: 53 parts per billion (ppb), annual average concentration, measured in the ambient air as nitrogen dioxide; the level of the primary 1-hour ambient air quality standard for oxides of nitrogen as 100 ppb, 1-hour average concentration, measured in the ambient air as nitrogen dioxide; and, the level of the secondary ambient air quality standard for nitrogen dioxide as 0.053 parts per million (ppm), annual arithmetic mean concentration. The change defines that the levels of the standards are measured by: a reference method based on 40 CFR part 50, Appendix F; or, a federal equivalent method designated in accordance with 40 CFR part 53. The revision defines that the annual primary standard is met when the annual average concentration in a calendar year is less than or equal to 53 ppb, as determined in accordance with Appendix S of 40 CFR part 50 for the annual standard, and that the 1-hour primary standard is met when the three-year average of the annual 98th percentile of the daily maximum 1-hour average concentration is less than or equal to 100 ppb, as determined in accordance with Appendix S of 40 CFR part 50 for the 1-hour standard. Further, the revision details that the secondary standard is attained when the annual arithmetic mean concentration in a calendar year is less than or equal to 0.053 ppm, rounded to three decimal places, and finally that to demonstrate attainment, an annual mean must be based upon hourly data that are at least 75 percent complete or upon data derived from manual methods that are at least 75 percent complete for the scheduled sampling days in each calendar quarter. These revisions correlate with 40 CFR 50.11(a) through (g), bringing the applicable portions of the WASQR in compliance with the requirements of 40 CFR part 50 as of the January 30, 2013 date of Wyoming's submittal.

Also in the rulemaking, Chapter 2, section 6 was revised to make the State ozone

standards consistent with federal standards, but no more stringent than federal standards. The section now sets the level of the 8-hour primary and secondary ambient air quality standards for ozone as 0.075 ppm daily maximum 8-hour average, measured by a reference method based on Appendix D to 40 CFR part 50 and designated in accordance with 40 CFR part 53 or an equivalent method designated in accordance with 40 CFR part 53. It also defines that the 8-hour primary and secondary standard ozone ambient air quality standards are met at an ambient air quality monitoring site when the 3-year average of the annual fourth-highest daily maximum 8-hour average ozone concentration is less than or equal to 0.075 ppm, as determined in accordance with 40 CFR part 50, Appendix P. These revisions correlate with 40 CFR 50.15(a) and (b), bringing the applicable portions of the WASQR in compliance with the requirements of 40 CFR part 50 as of the January 30, 2013 date of Wyoming's submittal.

Finally, in rulemaking R-20, Chapter 2, section 12 "Incorporation by reference" was revised to adopt by reference from the CFR for July 1, 2011. These changes correlate with the applicable requirements of 40 CFR part 50 as of the January 30, 2013 date of Wyoming's submittal.

EPA has reviewed Wyoming's rule amendments and additions analyzed above. The rules mirror applicable language in 40 CFR part 50. The changes quoted above provide the regulation necessary for the State to determine compliance with the CAA for the nitrogen oxides and ozone NAAQS. Therefore, these WAQSR changes and additions are consistent with the CAA and EPA regulations. As a result, EPA is approving a SIP revision submitted by the State of Wyoming consisting of the above discussed applicable portions of rulemaking R-20 submitted on January 30, 2013 to EPA.

#### **IV. Consideration of Section 110(l) of the CAA**

Under section 110(l) of the CAA, EPA cannot approve a SIP revision if the revision would interfere with any applicable requirements concerning attainment and reasonable further progress toward attainment of the NAAQS or any other applicable requirement of the Act. In addition, section 110(l) requires that each revision to an implementation plan submitted by a state shall be adopted by such state after reasonable notice and public hearing.

The Wyoming SIP revisions that EPA approves in this rulemaking do not interfere with attainment of the NAAQS or any other applicable requirement of the Act. The applicable portions of Wyoming's rulemaking R-20 simply makes the State nitrogen oxides and ozone ambient standards consistent with federal standards, but no more stringent than federal standards, and adopts by reference as appropriate from the CFR for July 1, 2011. The revisions were adopted after reasonable public notice, and after a public hearing held on October 5, 2012. All necessary State reviews and approvals have been secured. Therefore, CAA section 110(l) requirements are satisfied.

#### **V. Final Action**

EPA is approving SIP revisions that Wyoming submitted to EPA on January 30, 2013. The Environmental Quality Council of the Wyoming Department of Environmental Quality adopted revisions to Chapter 2, "Ambient Standards," section 3, "Ambient standards for nitrogen oxides," section 6, "Ambient standards for ozone," and section 12, "Incorporation by reference," of the WAQSR as revisions to the SIP.

EPA is publishing this rule without prior proposal because we view this as a noncontroversial amendment and anticipate no adverse comments. However, in the Proposed

Rules section of this **Federal Register** publication, we are publishing a separate document that will serve as the proposal to approve the SIP revision if adverse comments are filed. This rule will be effective **[insert date 60 days after publication in the Federal Register]** without further notice unless we receive adverse comments by **[insert date 30 days after publication in the Federal Register.]** If we receive adverse comments, we will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. We will address all public comments in a subsequent final rule based on the proposed rule. We will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. Please note that if we receive adverse comments on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, we may adopt as final those provisions of the rule that are not the subject of an adverse comment.

## **VI. Statutory and Executive Orders Review**

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

- Is not a “significant regulatory action” subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);

- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and,
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the State, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

The Congressional Review Act, 5 U.S.C. section 801 *et seq.*, as added by the Small

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

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **insert date 60 days from date of publication in the Federal Register**. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. Parties with objections to this direct final rule are encouraged to file a comment in response to the parallel notice of proposed rulemaking for this action published in the proposed rules section of today’s Federal Register, rather than file an immediate petition for judicial review of this direct final rule, so that EPA can withdraw this direct final rule and address the comment in the proposed rulemaking. This action may not be challenged later in proceedings to enforce its requirements. (See CAA section 307(b)(2).)

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

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by

reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organization compounds.

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

Dated: August 25, 2014.

Debra H. Thomas,  
Acting Regional Administrator,  
Region 8.

40 CFR part 52 is amended as follows:

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

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

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

**Subpart ZZ - Wyoming**

2. In §52.2620, the table in paragraph (c)(1) is amended under Chapter 2 by revising the entries for sections 3 and 6 and section 12, as added at 79 FR 50840, August 26, 2014, and effective October 27, 2014, to read as follows:

**§52.2620 Identification of plan.**

\* \* \* \* \*

(c) \* \* \*

(1) \* \* \*

State Citation	Title/subject	State adopted and effective date	EPA approval date and citation <sup>1</sup>	Explanations
* * * * *				
<b>Chapter 2</b>				
Section 3	Ambient standards for nitrogen oxides.	10/5/2012, 12/19/2012	[insert <u>Federal Register publication date</u> ], [insert <u>Federal Register citation</u> ]	

* * * * *				
Section 6	Ambient standards for ozone.	10/5/2012, 12/19/2012	[ <u>insert Federal Register publication date</u> ], [ <u>insert Federal Register citation</u> ]	
* * * * *				
Section 12	Incorporation by reference.	10/5/2012, 12/19/2012	[ <u>insert Federal Register publication date</u> ], [ <u>insert Federal Register citation</u> ]	
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<sup>1</sup> In order to determine the EPA effective date for a specific provision that is listed in this table, consult the Federal Register cited in this column for that particular provision.

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