



**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

**[EPA-R08-OAR-2019-0419; FRL-10004-97-Region 8]**

**Approval and Promulgation of Implementation Plans; Infrastructure Requirements for the  
2015 Ozone National Ambient Air Quality Standards; Wyoming**

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

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is acting on multiple elements of State Implementation Plan (SIP) revisions from the State of Wyoming to demonstrate that the State meets infrastructure requirements of Clean Air Act (CAA) section 110(a) for the 2015 ozone National Ambient Air Quality Standard (NAAQS). Section 110(a) of the CAA requires that each state submit a SIP for the implementation, maintenance and enforcement of each NAAQS promulgated by the EPA.

**DATES:** This rule is effective on **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

**ADDRESSES:** The EPA has established a docket for this action under Docket ID No. EPA-R08-OAR-2019-0419. All documents in the docket are listed on the <http://www.regulations.gov> website. 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, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available through <http://www.regulations.gov>,

or please contact the person identified in the “For Further Information Contact” section for additional availability information.

**FOR FURTHER INFORMATION CONTACT:** Clayton Bean, Air and Radiation Division, EPA, Region 8, Mailcode 8ARD-IO, 1595 Wynkoop Street, Denver, Colorado, 80202-1129, (303) 312-6143, bean.clayton@epa.gov.

**SUPPLEMENTARY INFORMATION:** Throughout this document “we,” “us,” and “our” means the EPA.

## **I. Background**

On March 12, 2008, the EPA promulgated a new NAAQS for ozone, revising the levels of 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.

Section 110(a)(1) of the CAA directs each state to make an infrastructure SIP submission to the EPA within 3 years of promulgation of a new or revised NAAQS. Infrastructure requirements for SIPs are provided in section 110(a)(1) and (2) of the CAA. Section 110(a)(2) lists the specific infrastructure elements that a SIP must contain or satisfy. The elements that are the subject of this action are described in detail in our notice of proposed rulemaking (NPRM) published on December 4, 2019 (84 FR 66352) for the State of Wyoming’s infrastructure SIP revision, submitted to the EPA on January 3, 2019.

## **II. Response to Comments**

Comments on our December 4, 2019 NPRM were due on or before January 3, 2020. The EPA received two comments. The first comment was supportive of the proposed action. The second comment is discussed below.

*Comment:* The commenter appears to oppose approval of Wyoming's infrastructure SIP submission on the basis that it "would mean that Wyoming could build three new state dams," and that the EPA cannot confirm "whether Wyoming has adequate regulations or authority or enforcement power in its SIP." The commenter also requests that the EPA "check whether Wyoming has adequate funding to enforce its rules against powerful coal companies and the coal lobby of Wyoming" and that EPA, "disavow this SIP until all dams and hydroelectric power is rerouted to solar and wind power."

*Response:* The commenter largely discusses subjects outside the scope of an infrastructure SIP action, and does not explain, nor provide a legal basis for disapproval. Although the commenter states that a determination of whether Wyoming has adequate regulations, authority, or enforcement power in its SIP should be based upon "rerouting of power," the EPA notes that Wyoming's 2015 ozone NAAQS submittal was reviewed and found adequate to provide for the implementation, maintenance and enforcement of the subject NAAQS. Specifically, as thoroughly discussed in our analysis of the NPRM, Wyoming's SIP-approved Legal Authority Document (37 FR 10832, May 31, 1972) (*see also* 40 CFR 52.2620(e), Rule No. (02) II; 41 FR 36652, Aug. 31, 1976) confirms that the State has adequate legal authority to enforce applicable laws, regulations and standards; to seek injunctive relief; and 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. Commenter has not identified any specific

deficiencies in that finding or identified specific ways in which dams, hydroelectric, solar, or wind power would change that assessment.

Lastly, as to the commenter's request that the EPA check "whether Wyoming has adequate funding to enforce its rules against powerful coal companies and the coal lobby of Wyoming," we note again that during our review of the State's submittal, we found that Wyoming does have adequate funding to carry out its SIP obligations and requirements. Specifically, and reiterating our analysis of Wyoming's submittal, the State receives CAA sections 103 and 105 grant funds through its Performance Partnership Agreement (PPA) along with required state matching funds to provide the funding necessary to carry out Wyoming's SIP requirements. Wyoming's PPA with the EPA (available for review in the docket) documents resources needed to carry out agreed upon environmental program goals, measures, and commitments, including developing and implementing appropriate SIPs for all areas of the State. The EPA and Wyoming annually update these grant commitments based on current SIP requirements, air quality planning, and applicable requirements related to the NAAQS. Furthermore, Wyoming Air Quality Standards and Regulations (WAQSR) Chapter 6, section 2(a)(v), Permit for construction, modification, operation, requires the owner and operator of each new major source or major modification to pay a fee sufficient to cover the cost of reviewing and acting on permit applications. Collectively, these WAQSR rules and PPA commitments provide satisfactory evidence that the State has adequate funding and legal authority to carry out the SIP and related issues. This funding and legal authority extends to all regulated emission sources, independent of any specific industry – be it the coal industry or any other CAA regulated industry.

### **III. Final Action**

The EPA is approving the following CAA section 110(a)(2) infrastructure elements of Wyoming’s January 3, 2019 infrastructure SIP submission for the 2015 ozone NAAQS: (A), (B), (C), (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 not taking action at this time on (D)(i)(I) Prong 1 Interstate transport - significant contribution, and (D)(i)(I) Prong 2 Interstate transport - interference with maintenance; we intend to address (D)(i)(I) Prongs 1 and 2 in a separate, future action.

Finally, the EPA is also disapproving element (D)(i)(II) Prong 4 Interstate transport - visibility. CAA section 110(c)(1) provides that the EPA must promulgate a Federal Implementation Plan (FIP) within two years after finding that a state has failed to make a required submission or disapproving a state’s SIP submission in whole or in part, unless the EPA approves a SIP revision correcting the deficiencies within that two-year period. As explained in our December 4, 2019 NPRM, this disapproval of prong 4 will not incur additional practical consequences for the State or the EPA because the existing FIP<sup>1</sup> already in place, due to preexisting deficiencies, satisfies the prong 4 requirements for this NAAQS. The aforementioned actions are tabulated by section 110(a)(2) elements in Table 1 below.

**TABLE 1: ACTION TAKEN ON WY INFRASTRUCTURE SIP SUBMITTAL**

| <b>2015 Ozone NAAQS Infrastructure SIP Elements</b> | <b>Wyoming</b> |
|---|----------------|
| (A): Emission Limits and Other Control Measures     | A              |
| (B): Ambient Air Quality Monitoring/Data System     | A              |
| (C): Program for Enforcement of Control Measures    | A              |

<sup>1</sup> See 79 FR 5032, January 30, 2014.

|   |    |
|---|----|
| (D)(i)(I): Prong 1 Interstate Transport - significant contribution                              | NA |
| (D)(i)(I): Prong 2 Interstate Transport - interference with maintenance                         | NA |
| (D)(i)(II): Prong 3 Interstate Transport - prevention of significant deterioration              | A  |
| (D)(i)(II): Prong 4 Interstate Transport - visibility   | D  |
| (D)(ii): Interstate and International Pollution Abatement                                       | A  |
| (E): Adequate Resources   | A  |
| (F): Stationary Source Monitoring System  | A  |
| (G): Emergency Episodes   | A  |
| (H): Future SIP revisions   | A  |
| (J): Consultation with Government Officials, Public Notification, PSD and Visibility Protection | A  |
| (K): Air Quality and Modeling/Data  | A  |
| (L): Permitting Fees  | A  |
| (M): Consultation/Participation by Affected Local Entities                                      | A  |

In the table above, the key is as follows:

*A - Approve.*

*D - Disapprove.*

*NA - No Action.* We intend to address the element in a separate rulemaking action.

#### **IV. Statutory and Executive Order Reviews**

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided

that they meet the criteria of the CAA. Accordingly, this 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 Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- This action is not an Executive Order 13771 regulatory action because this action is not significant 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 Clean Air Act; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

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

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

Under section 307(b)(1) of the 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 AFTER 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. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2)).

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

Environmental protection, Air pollution control, Carbon monoxide, Greenhouse gases, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: February 10, 2020.

---

Gregory Sopkin,  
Regional Administrator,  
Region 8.

40 CFR part 52 is amended as follows:

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

1. The authority 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 (e) is amended by adding the entry “(34) XXXIV” in numerical order to read as follows:

**§52.2620 Identification of plan.**

\* \* \* \* \*

(e) \* \* \*

| Rule No.   | Rule title  | State effective date | EPA Effective date  | Final rule citation/date   | Comments   |
|------------|---|----------------------|---|--|--|
| * * * * *  | * * *   |                      |   |  |  |
| (34) XXXIV | Infrastructure SIP for section 110(a)(2) - 2015 Ozone NAAQS | 1/3/2019             | [insert date 30 days after date of publication in the Federal Register] | [insert Federal Register citation], [insert date of publication in the Federal Register] | The EPA is not acting on (D)(i)(I) Prong 1, and (D)(i)(I) Prong 2. The EPA is disapproving (D)(i)(II) Prong 4. |