heading of this document. FDA will also place on public display any amendments to, or comments on, the petitioner's environmental assessment without further announcement in the **Federal Register**. If, based on its review, the Agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the Agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.51(b).

Dated: November 2, 2016.

Tracey H. Forfa,

Deputy Director, Center for Veterinary Medicine.

[FR Doc. 2016–26922 Filed 11–7–16; 8:45 am]

BILLING CODE 4164–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R08–OAR–2012–0933; FRL–9954–92–Region 8]

Promulgation of State Implementation Plan Revisions; Infrastructure Requirements for the 2008 Lead, 2008 Ozone, 2010 NO_2, 2010 SO_2, and 2012 $PM_{2.5}$ National Ambient Air Quality Standards; Wyoming

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve elements of State Implementation Plan (SIP) revisions from the State of Wyoming to demonstrate the State meets infrastructure requirements of the Clean Air Act (Act or CAA) for the National Ambient Air Quality Standards (NAAQS) promulgated for ozone on March 12, 2008, lead (Pb) on October 15, 2008, nitrogen dioxide (NO_2) on January 22, 2010, sulfur dioxide (SO_2) on June 2, 2010, and fine particulate matter ($PM_{2.5}$) on December 14, 2012. The EPA is also proposing to approve SIP revisions the State submitted regarding state boards. 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: Written comments must be received on or before December 8, 2016.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R08–OAR–2012–0933 at *http://www.regulations.gov*. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *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*.

FOR FURTHER INFORMATION CONTACT: Abby Fulton, Air Program, U.S. Environmental Protection Agency (EPA), Region 8, Mail Code 8P–AR, 1595 Wynkoop Street, Denver, Colorado 80202–1129, (303) 312–6563, *fulton.abby@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

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

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

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

- Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** volume, date, and page number);
- Follow directions and organize your comments;
- Explain why you agree or disagree;
- Suggest alternatives and substitute language for your requested changes;
- Describe any assumptions and provide any technical information and/or data that you used;
- If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced;
- Provide specific examples to illustrate your concerns, and suggest alternatives;
- Explain your views as clearly as possible, avoiding the use of profanity or personal threats; and,
- Make sure to submit your comments by the comment period deadline identified.

II. Background

On March 12, 2008, the EPA promulgated a new NAAQS for ozone, revising the levels of the primary and secondary eight-hour ozone standards from 0.08 parts per million (ppm) to 0.075 ppm (73 FR 16436, March 27, 2008). Subsequently, on October 15, 2008, the EPA revised the level of the primary and secondary Pb NAAQS from 1.5 micrograms per cubic meter ($\mu g/m^3$) to 0.15 $\mu g/m^3$ (73 FR 66964, Nov. 12, 2008). On January 22, 2010, the EPA promulgated a new one-hour primary NAAQS for NO_2 at a level of 100 parts per billion (ppb) while retaining the annual standard of 53 ppb. The 2010 NO_2 NAAQS is expressed as the three-year average of the 98th percentile of the annual distribution of daily maximum one-hour average concentrations. The secondary NO_2 NAAQS remains unchanged at 53 ppb (75 FR 6474, Feb. 9, 2010). On June 2, 2010, the EPA promulgated a revised primary SO_2 standard at 75 ppb, based on a three-year average of the annual 99th percentile of one-hour daily maximum concentrations (75 FR 35520, June 22, 2010). Finally, on December 14, 2012, the EPA promulgated a revised annual $PM_{2.5}$ standard by lowering the level to 12.0 $\mu g/m^3$ and retaining the 24-hour $PM_{2.5}$ standard at a level of 35 $\mu g/m^3$ (78 FR 3086, Jan. 15, 2013).

Under sections 110(a)(1) and (2) of the CAA, 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 their existing SIPs for $PM_{2.5}$, ozone, Pb, NO_2, and SO_2 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 $PM_{2.5}$ National Ambient Air Quality Standards" (2007 Memo). On September 25, 2009, the EPA issued an additional guidance document pertaining to the 2006 $PM_{2.5}$ NAAQS entitled "Guidance on SIP Elements Required Under Sections 110(a)(1) and (2) for the 2006 24-Hour Fine Particle ($PM_{2.5}$) 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).

III. What is the scope of this rulemaking?

The EPA is acting upon the SIP submissions from Wyoming that address the infrastructure requirements of CAA sections 110(a)(1) and 110(a)(2) for the 2008 ozone, 2008 Pb, 2010 NO_2, 2010 SO_2, and 2012 $PM_{2.5}$ 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 three 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.

The EPA has historically referred to these SIP submissions made for the purpose of satisfying the requirements of CAA sections 110(a)(1) and 110(a)(2) as "infrastructure SIP" submissions. Although the term "infrastructure SIP" does not appear in the CAA, the EPA uses the term to distinguish this particular type of SIP submission from submissions that are intended to satisfy other SIP requirements under the CAA, such as "nonattainment SIP" or "attainment plan SIP" submissions to address the nonattainment planning requirements of part D of title I of the CAA; "regional haze SIP" submissions required by the EPA rule to address the visibility protection requirements of CAA section 169A; and nonattainment new source review (NSR) permit program submissions to address the permit requirements of CAA, title I, part D.

Section 110(a)(1) addresses the timing and general requirements for infrastructure SIP submissions, and section 110(a)(2) provides more details concerning the required contents of these submissions. The list of required elements provided in section 110(a)(2) contains a wide variety of disparate provisions, some of which pertain to required legal authority, some of which pertain to required substantive program provisions, and some of which pertain to requirements for both authority and substantive program provisions.[1] The EPA therefore believes that while the timing requirement in section 110(a)(1) is unambiguous, some of the other statutory provisions are ambiguous. In particular, the EPA believes that the list of required elements for infrastructure SIP submissions provided in section 110(a)(2) contains ambiguities concerning what is required for inclusion in an infrastructure SIP submission.

Examples of some of these ambiguities and the context in which the EPA interprets the ambiguous portions of section 110(a)(1) and 110(a)(2) are discussed at length in our notice of proposed rulemaking: Promulgation of State Implementation Plan Revisions; Infrastructure Requirements for the 1997 and 2006 $PM_{2.5}$, 2008 Lead, 2008 Ozone, and 2010 NO_2 National Ambient Air Quality Standards; South Dakota (79 FR 71040, Dec. 1, 2014) under "III. What is the Scope of this Rulemaking?"

With respect to certain other issues, the EPA does not believe that an action on a state's infrastructure SIP submission is necessarily the appropriate type of action in which to address possible deficiencies in a state's existing SIP. These issues include: (i) Existing provisions related to excess emissions from sources during periods of startup, shutdown, or malfunction (SSM) that may be contrary to the CAA and the EPA's policies addressing such excess emissions; (ii) existing provisions related to "director's variance" or "director's discretion" that may be contrary to the CAA because they purport to allow revisions to SIP-approved emissions limits while limiting public process or not requiring further approval by the EPA; and (iii) existing provisions for Prevention of Significant Deterioration (PSD) programs that may be inconsistent with current requirements of the EPA's "Final NSR Improvement Rule," 67 FR 80186, Dec. 31, 2002, as amended by 72 FR 32526, June 13, 2007 ("NSR Reform").

IV. 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 is contained in the next section.

Two elements identified in section 110(a)(2) are not governed by the three-year submission deadline of section 110(a)(1) and are therefore not addressed in this action. These elements relate to part D of Title I of the CAA, and submissions to satisfy them are not due within three years after promulgation of a new or revised NAAQS, but rather are

[1] For example: Section 110(a)(2)(E)(i) provides that states must provide assurances that they have adequate legal authority under state and local law to carry out the SIP; section 110(a)(2)(C) provides that states must have a SIP-approved program to address certain sources as required by part C of title I of the CAA; and section 110(a)(2)(G) provides that states must have legal authority to address emergencies as well as contingency plans that are triggered in the event of such emergencies.

due at the same time nonattainment area plan requirements are due under section 172. The two elements are: (1) Section 110(a)(2)(C) to the extent it refers to permit programs (known as "nonattainment NSR") required under part D, and (2) section 110(a)(2)(I), pertaining to the nonattainment planning requirements of part D. As a result, this action does not address infrastructure elements related to the nonattainment NSR portion of section 110(a)(2)(C) or related to 110(a)(2)(I). Furthermore, the EPA interprets the CAA section 110(a)(2)(J) provision on visibility as not being triggered by a new NAAQS because the visibility requirements in part C, title 1 of the CAA are not changed by a new NAAQS.

V. How did Wyoming address the infrastructure elements of sections 110(a)(1) and (2)?

The Wyoming Department of Environmental Quality (Department or WDEQ) submitted certification of Wyoming's infrastructure SIP for the 2008 Pb NAAQS on October 12, 2011; 2008 ozone NAAQS on February 6, 2014; 2010 NO_2 NAAQS on January 24, 2014; 2010 SO_2 NAAQS on March 6, 2015; and 2012 $PM_{2.5}$ on June 24, 2016. Infrastructure SIPs were taken out for public notice and Wyoming provided an opportunity for public hearing, as indicated in the cover letter of each certification (available within this docket). Wyoming's infrastructure certifications demonstrate how the State, where applicable, has plans in place that meet the requirements of section 110 for the 2008 Pb, 2008 ozone, 2010 NO_2, 2010 SO_2, and 2012 $PM_{2.5}$ NAAQS. These plans reference the Wyoming Air Quality Standards and Regulations (WAQSR) and Wyoming Statutes. These submittals are available within the electronic docket for today's proposed action at *www.regulations.gov*. The WAQSR and Wyoming Statutes referenced in the submittals are publicly available at *http://soswy.state.wy.us/Rules/default.aspx* and *http://legisweb.state.wy.us/LSOWEB/wyStatutes.aspx*. Air pollution control regulations and statutes that have been previously approved by the EPA and incorporated into the Wyoming SIP can be found at 40 CFR 52.2620.

VI. Analysis of the State Submittals

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

The State's submissions for the 2008 Pb, 2008 ozone 2010 NO_2, 2010 SO_2, and 2012 p.m.$_{2.5}$ infrastructure requirements cite three non-regulatory documents (*e.g.,* Control Strategy, Source Surveillance, and Compliance Schedule) which were approved by EPA on May 31, 1972 (37 FR 10842). The State's submissions also cite regulatory documents included in Chapters 1, 3, 4, 8, 10 and 13 of the WAQSR. The SIP approved non-regulatory documents cited in combination with multiple SIP-approved state air quality regulations within WAQSR and cited in Wyoming's certifications, provide enforceable emission limitations and other control measures, means of techniques, schedules for compliance, and other related matters necessary to meet the requirements of the CAA section 110(a)(2)(A) for the 2008 Pb, 2008 ozone, 2010 NO_2, 2010 SO_2 and 2012 $PM_{2.5}$ NAAQS, subject to the following clarifications.

First, this infrastructure element does not require the submittal of regulations or emission limitations developed specifically for attaining the 2008 Pb, 2008 ozone 2010 NO_2, 2010 SO_2 and 2012 $PM_{2.5}$ NAAQS. Wyoming's certifications (contained within this docket) generally list provisions and enforceable control measures within its SIP which regulate pollutants through various programs. This includes its stationary source permit program which requires sources to demonstrate that emissions will not cause or contribute to a violation of any NAAQS. This suffices, in the case of Wyoming, to meet the requirements of section 110(a)(2)(A) for the 2008 Pb, 2008 ozone 2010 NO_2, 2010 SO_2 and 2012 $PM_{2.5}$ NAAQS.

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

Finally, in this action, the EPA is also not proposing to approve or disapprove any existing state provision with regard to excess emissions during SSM of operations at a facility. A number of states have SSM provisions which are contrary to the CAA and existing EPA guidance[2] and the agency is addressing such state regulations separately (80 FR 33840, June 12, 2015).

Therefore, the EPA is proposing to approve Wyoming's infrastructure SIP for the 2008 Pb, 2008 ozone 2010 NO_2, 2010 SO_2 and 2012 $PM_{2.5}$ NAAQS with respect to the general requirement in section 110(a)(2)(A) to include enforceable emission limitations and other control measures, means, or techniques to meet the applicable requirements of this element.

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

The State's submissions cite five non-regulatory documents (*e.g.,* Air Quality Surveillance, Air Quality Surveillance Network, Implementation Plan for Lead, Wyoming Ambient Air Monitoring Network Plan, and the EPA Performance Partnership Agreement). The State's submissions also cite regulatory documents included in Chapters 1 and 2 of the WAQSR. Provisions contained in Chapter 6, Section 2(b)(i) of the WAQSR provide the legal authority and framework for the Air Quality Division (AQD) Administrator to require that permit applicants submit adequate monitoring data. Additionally, Chapter 6, Section 2(f)(iv) enables the AQD Administrator to impose reasonable conditions upon an approval to construct, modify, or operate, including ambient air quality monitoring. Additionally, the State of Wyoming submits data to the EPA's Air Quality System database in accordance with 40 CFR 58.16. Finally, Wyoming's 2015 Annual Monitoring Network Plan was approved through a letter dated September 24, 2015 (available within the docket). The State provides the EPA with prior notification when changes to its monitoring network or plan are being considered.

We find that Wyoming's SIP and practices are adequate for the ambient air quality monitoring and data system requirements and therefore propose to approve the infrastructure SIP for the

[2] Steven Herman, Assistant Administrator for Enforcement and Compliance Assurance, and Robert Perciasepe, Assistant Administrator for Air and Radiation, Memorandum to the EPA Air Division Directors, "State Implementation Plans (SIPs): Policy Regarding Emissions During Malfunctions, Startup, and Shutdown." (September 20, 1999).

2008 Pb, 2008 ozone, 2010 NO_2, 2010 SO_2 and 2012 $PM_{2.5}$ NAAQS for this element.

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

To generally meet the requirements of section 110(a)(2)(C), the State is required to have SIP-approved PSD, nonattainment NSR, and minor NSR permitting programs that are adequate to implement the 2008 Pb, 2010 NO_2, 2010 SO_2 and 2012 $PM_{2.5}$ NAAQS. The EPA already proposed approval of section 110(a)(2)(C) for the 2008 ozone NAAQS in a separate rulemaking at 81 FR 53365 (Aug. 12, 2016). As explained elsewhere in this action, the EPA is not evaluating nonattainment related provisions, such as the nonattainment NSR program required by part D of the Act. The EPA is evaluating the State's PSD program as required by part C of the Act, and the State's minor NSR program as required by section 110(a)(2)(C).

Enforcement of Control Measures Requirement

Wyoming's Rule (02) II, Legal Authority, which the EPA approved into Wyoming's SIP,[3] allows 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 prevention of significant deterioration requirements.

PSD Requirements

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. Wyoming has shown that it currently has a PSD program in place that covers all regulated NSR pollutants, including greenhouse gases (GHGs).

On July 25, 2011 (76 FR 44265), we approved a revision to the Wyoming 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 Wyoming 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) 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."[4] 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 is planning to take additional steps to revise the federal PSD rules in light of the Supreme Court and subsequent D.C. Circuit opinion. Some states have begun to revise their existing SIP-approved PSD programs in light of these court decisions, and some states may prefer not to initiate this process until they have more information about the planned revisions to the EPA's PSD regulations. The EPA is not expecting states to have revised their PSD programs in anticipation of the EPA's planned actions to revise its PSD program rules in response to the court decisions.

At present, the EPA has determined that Wyoming's SIP is sufficient to satisfy Elements (C), (D)(i)(II) prong 3 and (J) with respect to GHGs. This is because 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 EPA most recently approved revisions to Wyoming's PSD program on December 6, 2013 (78 FR 73445). The approved Wyoming 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 Wyoming'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 $PM_{2.5}$. 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 ($PM_{2.5}$)" (73 FR 28321) (2008 Implementation Rule). On October 20, 2010 the EPA promulgated the rule, "Prevention of Significant Deterioration (PSD) for Particulate Matter Less Than 2.5

[3] *See* 40 CFR 52.2620(e), Rule No. (02) II; 41 FR 36652 (Aug. 31, 1976) (approving Wyoming's revisions to its SIP).

[4] *See* 77 FR 41066 (July 12, 2012) (rulemaking for definition of "anyway" sources).

Micrometers ($PM_{2.5}$)—Increments, Significant Impact Levels (SILs) and Significant Monitoring Concentration (SMC)" (75 FR 64864). The EPA regards adoption of these $PM_{2.5}$ 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. 2013), issued a judgment that remanded the EPA's 2007 and 2008 rules implementing the 1997 $PM_{2.5}$ 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 particulate matter nonattainment areas.

The 2008 Implementation Rule addressed by *Natural Resources Defense Council,* "Implementation of New Source Review (NSR) Program for Particulate Matter Less Than 2.5 Micrometers ($PM_{2.5}$)," (73 FR 28321, May 16, 2008), promulgated NSR requirements for implementation of $PM_{2.5}$ in nonattainment areas (nonattainment NSR) 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 $PM_{2.5}$ attainment and unclassifiable areas to be affected by the court's opinion. 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 Wyoming'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 nonattainment NSR 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 nonattainment NSR 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 $PM_{2.5}$ is contained in the EPA's October 20, 2010 rule, "Prevention of Significant Deterioration (PSD) for Particulate Matter Less Than 2.5 Micrometers ($PM_{2.5}$)—Increments, Significant Impact Levels (SILs) and Significant Monitoring Concentration (SMC)" (75 FR 64864). The EPA regards adoption of the $PM_{2.5}$ increments as a necessary requirement when assessing a PSD program for the purposes of Element (C). On July 25, 2011 (76 FR 44265), the EPA approved SIP revisions that revised Wyoming's PSD program which incorporated the 2008 Implementation Rule. The EPA approved revisions to reflect the 2010 $PM_{2.5}$ Increment Rule on December 6, 2013 (78 FR 73445). Therefore, Wyoming's SIP approved PSD program meets current requirements for $PM_{2.5}$.

Therefore, the EPA is proposing to approve Wyoming's infrastructure SIP for the 2008 Pb, 2008 ozone, 2010 NO_2, 2010 SO_2 and 2012 $PM_{2.5}$ 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.

Minor NSR

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 Chapter 6, Section 2 of the WAQSR. The EPA previously approved Wyoming's minor NSR program into the SIP (at that time as Chapter 1, Section 21), and has subsequently approved revisions to the program, and at those times there were no objections to the provisions of this program. (See, for example, 47 FR 5892, February 9, 1982). Since then, 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.

The EPA is proposing to approve Wyoming's infrastructure SIP for the 2008 Pb, 2010 NO_2, 2010 SO_2 and 2012 $PM_{2.5}$ 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.

4. *Interstate transport:* The interstate transport provisions in CAA section 110(a)(2)(D)(i) require each state to submit a SIP that prohibits emissions that will have certain adverse air quality effects in other states. CAA section 110(a)(2)(D)(i) identifies four distinct prongs related to the impacts of air pollutants transported across state lines. The two prongs under 110(a)(2)(D)(i)(I) require SIPs to contain adequate provisions to prohibit any source or other type of emissions activity within the state from emitting air pollutants that will (prong 1) contribute significantly to nonattainment in any other state with respect to any such national primary or secondary NAAQS, and (prong 2) interfere with maintenance by any other state with respect to the same NAAQS. The two prongs under 110(a)(2)(D)(i)(II) require SIPs to contain adequate provisions to prohibit emissions that will interfere with measures required to be included in the applicable implementation plan for any other state under part C (prong 3) to prevent significant deterioration of air quality or (prong 4) to protect visibility. In this action, the EPA is only addressing prong 3 of CAA section 110(a)(2)(D)(i)(II) for the 2008 Pb, 2010 SO_2, 2010 NO_2 and 2012 $PM_{2.5}$ NAAQS. All other transport prongs will be addressed in separate rulemaking actions.

Evaluation of Interference With Measures To Prevent Significant Deterioration (PSD)

With regard to the PSD portion of CAA section 110(a)(2)(D)(i)(II), this requirement 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 rules.[5] As noted in the discussion for infrastructure element (C) earlier in this notice, the EPA is proposing to approve CAA section 110(a)(2) element (C) for Wyoming's infrastructure SIP for the 2008 Pb, 2010 NO_2, 2010 SO_2, and 2012 $PM_{2.5}$ NAAQS with respect to PSD requirements. As discussed in detail in that section, Wyoming's SIP meets the current PSD-related requirements of section 110(a)(2)(C). For this reason, we are also proposing to approve Wyoming's infrastructure SIP as meeting the 110(a)(2)(D)(i)(II) prong 3 (PSD) requirements for the 2008 Pb, 2010 NO_2, 2010 SO_2 and 2012 $PM_{2.5}$ NAAQS.

In-state sources not subject to PSD for a particular NAAQS because they are in

[5] See 2013 Memo at 31.

a nonattainment area for that standard may also have the potential to interfere with PSD in an attainment or unclassifiable area of another state.[6] One way a state may satisfy prong 3 with respect to these sources is by citing an air agency's EPA-approved nonattainment NSR provisions addressing any pollutants for which the state has designated nonattainment areas. Wyoming has a SIP-approved nonattainment NSR program which ensures regulation of major sources and major modifications in nonattainment areas, and therefore satisfies prong 3 with regard to this requirement.[7]

The EPA is proposing to approve the infrastructure SIP submission with regard to the requirements of prong 3 of section 110(a)(2)(D)(i)(II) for the 2008 Pb, 2010 NO_2, 2010 SO_2 and 2012 $PM_{2.5}$ NAAQS.

5. *Interstate and International transport provisions:* 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, respectively). Specifically, section 126(a) of the CAA requires major new or modified sources to notify affected, nearby states of the source's potential impacts on air pollution. Sections 126(b) and (c) pertain to petitions affected states may seek from the Administrator of the EPA (Administrator) regarding sources violating the "interstate transport" provisions of section 110(a)(2)(D)(i). Section 115 of the CAA similarly pertains to international transport of air pollution.

As required by 40 CFR 51.166(q)(2)(iv), Wyoming's SIP-approved PSD program requires major new or modified sources to provide notice to states whose air quality may be impacted by the emissions of sources subject to PSD.[8] This suffices to meet the notice requirement of section 126(a).

Wyoming has no pending obligations under sections 126(c) or 115(b) of the CAA; therefore, its SIP currently meets the requirements of those sections. In summary, the SIP meets the requirements of CAA section 110(a)(2)(D)(ii), and the EPA is therefore proposing approval of this element for the 2008 Pb, 2008 ozone, 2010 NO_2, 2010 SO_2 and 2012 $PM_{2.5}$ NAAQS.

6. *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) also 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."

a. Sub-Elements (i) and (iii): Adequate Personnel, Funding, and Legal Authority Under State Law To Carry Out Its SIP, and Related Issues

The provisions contained in Articles 1 and 2 of the Wyoming Environmental Quality Act (WEQA) (Chapter 11, Title 35 of the Wyoming Statutes) give the State adequate authority to carry out its SIP obligations with respect to the 2008 Pb, 2008 ozone, 2010 NO_2, 2010 SO_2 and 2012 $PM_{2.5}$ NAAQS.

With respect to funding, the State receives sections 103 and 105 grant funds through its Performance Partnership Grant along with required state matching funds to provide funding necessary to carry out Wyoming's SIP requirements.

Wyoming's Performance Partnership Agreement (available within the docket) with the EPA 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. Annually, states update these grant commitments based on current SIP requirements, air quality planning, and applicable requirements related to the NAAQS. Wyoming satisfactorily met all commitments agreed to in the Air Planning Agreement for fiscal year 2015. Furthermore, WAQSR Chapter 6, Section 2(a)(v), Permit for construction, modification, and 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 rules and commitments provide evidence that the Wyoming DEQ has adequate personnel (*see* non-regulatory document, Resources Document, cited in Wyoming's certifications), funding, and legal authority to carry out the State's implementation plan and related issues.

With respect to section 110(a)(2)(E)(iii), the State does not rely upon any other local or regional government, agency or instrumentality for implementation of the SIP. Therefore, we propose to approve Wyoming's SIP as meeting the requirements of section 110(a)(2)(E)(i) and (E)(iii) for the 2008 Pb, 2008 ozone, 2010 NO_2, 2010 SO_2 and 2012 $PM_{2.5}$ NAAQS.

b. 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 contains 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 any significant portion of their income from persons subject to permits or enforcement orders" under the CAA; 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."

In our December 6, 2013 (78 FR 73445) action, we disapproved Wyoming's March 26, 2008 and August 19, 2011 infrastructure SIP submissions for the 1997 and 2006 $PM_{2.5}$ NAAQS for CAA Section 110(a)(2)(E)(ii) because the Wyoming SIP did not contain provisions meeting requirements of CAA section 128(a)(1) or (2). Under section 110(c)(1)(B), this disapproval started a two-year clock for the EPA to promulgate a federal implementation plan (FIP) to address the deficiency.

On May 31, 2016, the EPA received a submission from the State of Wyoming to address the requirements of section 128 by adopting revisions to Chapter 1, Section 16 of the Wyoming Department of Environmental Quality General Rules of Practice and Procedure. The Wyoming Environmental Quality Council approved these revisions on March 2, 2016. A copy of the submission, which includes as revisions, the addition of Section 16, Air Quality Division, State Implementation Plan, to Chapter 1, is available within this docket. These rules address board composition and conflict of interest requirements of section 128(a)(1) and (2). We propose to approve this new rule language as meeting the requirements of section 128 for the reasons explained in more detail below. Because this revision meets the requirements of section 128, we also propose to approve the State's infrastructure SIP submissions for element 110(a)(2)(E)(ii). The State submitted the provisions to meet section 128 separately, but section 128 is not

[6] Id. at 31.

[7] See WAQSR Chapter 6, Section 13.

[8] See WAQSR Chapter 6, Section 2.

NAAQS-specific and once the State has met the requirements of section 128, that is sufficient for purposes of section 110(a)(2)(E)(ii) for all NAAQS. If we finalize this proposed approval for the 2008 Pb, 2008 ozone, 2010 NO_2, 2010 SO_2 and 2012 $PM_{2.5}$ NAAQS, this will also resolve the prior disapproval for element 110(a)(2)(E)(ii) for the 1997 and 2006 $PM_{2.5}$ NAAQS and terminate the EPA's FIP obligation.

We are proposing to approve the State's May 31, 2016 SIP submission as meeting the requirements of section 128 because we believe that it complies with the statutory requirements and is consistent with the EPA's guidance recommendations concerning section 128. In 1978, the EPA issued a guidance memorandum recommending ways states could meet the requirements of section 128, including suggested interpretations of certain key terms in section 128.[9] In this proposed notice, we discuss additional relevant aspects of section 128. We first note that, in the conference report of the 1977 amendments to the CAA, the conference committee stated, "[i]t is the responsibility of each state to determine the specific requirements to meet the general requirements of [section 128]."[10] This legislative history indicates that Congress intended states to have some latitude in adopting SIP provisions with respect to section 128, so long as states meet the statutory requirements of the section. We also note that Congress explicitly provided in section 128 that states could elect to adopt more stringent requirements, as long as the minimum requirements of section 128 are met.

In implementing section 128, the EPA has identified a number of key considerations relevant to evaluation of a SIP submission. The EPA has identified these considerations in the 1978 guidance and in subsequent rulemaking actions on SIP submissions relevant to section 128, whether as SIP revisions for this specific purpose or as an element of broader actions on infrastructure SIP submissions for one or more NAAQS.

Each state must meet the requirements of section 128 through provisions that the EPA approves into the state's SIP and are thus made federally enforceable. Section 128 explicitly mandates that each SIP "shall contain requirements" that satisfy subsections 128(a)(1) and 128(a)(2). A mere narrative description of state statutes or rules, or of a state's current or past practice in constituting a board or body and in disclosing potential conflicts of interest, is not a requirement contained in the SIP and does not satisfy the plain text of section 128.

Subsection 128(a)(1) applies only to states that have a board or body that is composed of multiple individuals and that, among its duties, approves permits or enforcement orders under the CAA. It does not apply in states that have no such multi-member board or body that performs these functions, and where instead a single head of an agency or other similar official approves permits or enforcement orders under the CAA. This flows from the text of section 128, for two reasons. First, as subsection 128(a)(1) refers to a majority of members of the board or body in the plural, we think it reasonable to read subsection 128(a)(1) as not creating any requirements for an individual with sole authority for approving permits or enforcement orders under the CAA. Second, subsection 128(a)(2) explicitly applies to the head of an executive agency with "similar powers" to a board or body that approves permits or enforcement orders under the CAA, while subsection 128(a)(1) omits any reference to heads of executive agencies. We infer that subsection 128(a)(1) should not apply to heads of executive agencies who approve permits or enforcement orders. States with no multi-member board or body that performs these functions, and instead have a single head of an agency or other similar official who approves CAA permits or enforcement orders, can satisfy the requirements of CAA 128(a)(1) with a negative declaration to that effect.

Subsection 128(a)(2) applies to all states, regardless of whether the state has a multi-member board or body that approves permits or enforcement orders under the CAA. Although the title of section 128 is "State boards," the language of subsection 128(a)(2) explicitly applies where the head of an executive agency, rather than a board or body, approves permits or enforcement orders. In instances where the head of an executive agency delegates his or her power to approve permits or enforcement orders, or where statutory authority to approve permits or enforcement orders is nominally vested in another state official, the requirement to adequately disclose potential conflicts of interest still applies. In other words, the EPA interprets section 128(a)(2) to apply to all states, regardless of whether a state board or body approves permits or enforcement orders under the CAA or whether a head of a state agency (or his/her delegates) performs these duties. Thus, all state SIPs must contain provisions that require adequate disclosure of potential conflicts of interest in order to meet the requirements of subsection 128(a)(2). The question of which entities or parties must be subject to such disclosure requirements must be evaluated by states and the EPA in light of the specific facts and circumstances of each state's regulatory structure.

A state may satisfy the requirements of section 128 by submitting for adoption into the SIP a provision of state law that closely tracks or mirrors the language of the applicable provisions of section 128. A state may take this approach in two ways. First, the state may adopt the language of subsections 128(a)(1) and 128(a)(2) verbatim. Under this approach, the state will be able to meet the continuing requirements of section 128 without any additional, future SIP revisions, even if the state adds or removes authority, either at the state or local level, to individual or to boards or bodies to approve permits or enforcement orders under the CAA so long as the state continues to meet section 128 requirements.

Second, the state may modify the language of subsections 128(a)(1) (if applicable) and 128(a)(2) to name the particular board, body, or individual official with approval authority. In this case, if the state subsequently modifies that authority, the state may have to submit a corresponding SIP revision to meet the continuing requirements of section 128. If the state chooses to not mirror the language of section 128, the state may adopt state statutes and/or regulations that functionally impose the same requirements as those of section 128, including definitions for key terms such as those recommended in the EPA's 1978 guidance. While either of these approaches would meet the minimum requirements of section 128, the statute also explicitly authorizes states to adopt more stringent requirements, for example, to impose additional requirements for recusal of board members from decisions, above and beyond the explicit board composition requirements. Although such recusal alone does not meet the requirements of section 128, states have the authority to require such recusal over and above the explicit requirements of section 128. These approaches give states flexibility in implementing section 128, while still ensuring consistency with the statute.

[9] Memorandum from David O. Bickart, Deputy General Counsel, to Regional Air Directors, Guidance to States for Meeting Conflict of Interest Requirements of Section 128 (Mar. 2, 1978).

[10] H.R. Rep. 95–564 (1977), reprinted in 3 *Legislative History of the Clean Air Act Amendments of 1977*, 526–27 (1978).

As previously explained, the EPA interprets subsection 128(a)(1) to apply only to states that have a board or body with multiple members that, among its duties, approves permits or enforcement orders under the Act. Wyoming's Environmental Quality Act establishes the Environmental Quality Council (EQC or Council), a separate agency of state government. See Wyoming Statutes 35–11–111(a). The members of the Council are appointed by the Governor. Among the duties of the Council are conducting hearings in any case contesting the administration or enforcement of any law, rule, regulation, standard or order issued or administered by DEQ or by any division of DEQ. *Id.* at 35–11–112(a)(iii). In particular, a person subject to a DEQ order may request a hearing before the Council. *Id.* at 35–11–701(c)(ii)–(iv). The Council must also conduct hearings in any case contesting the grant, denial, suspension, revocation or renewal of any permit authorized or required by the Environmental Quality Act. *Id.* at 35–11–112(a)(iv). Under Article 2, Air Quality, and Article 8, Permits, of the Environmental Quality Act, any applicant for an air permit may petition the Council for a hearing to contest DEQ's decision on the permit. See *id.* at 35–11–208; 35–11–802.

Given the duties and authorities of the Council, the Council appears to be a "board or body which approves permits or enforcement orders" under the CAA.[11] As the EPA has explained in other rulemaking actions, *e.g.,* 78 FR 32613 (May 31, 2013), we interpret section 128(a)(1) to mean that boards that are the potential final decisionmaker via permit and enforcement order appeals "approve" those permits and enforcement orders. For example, by being the final decisionmaker with respect to questions such as whether a source receives a permit and the specific contents of such a permit, the Council is an entity that approves the permit within the meaning of 128(a)(1). Thus, the EQC is subject to the requirements of 128(a)(1). Wyoming's May 31, 2016 submission includes a provision in the Wyoming DEQ Chapter 1, General Rules of Practice and Procedure Section 16(a)(i), Air Quality Division, State Implementation Plan, which provides that the Council "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 Air Quality permits or enforcement orders, as required by the Clean Air Act, Section 128(a)(1)." We propose to approve this submission as satisfying the requirements of subsection 128(a)(1).

The State's May 31, 2016 submittal includes requirements that Council members "disclose any potential conflicts of interest in a public meeting of the Council as required by the Clean Air Act, Section 128(a)(2)." Thus, Wyoming's submittal addresses disclosure of potential conflicts of interest from Council members that approve permits and enforcement orders under the Act. We therefore propose to approve this submission as satisfying the requirements of subsection 128(a)(2).

In summary, the EPA proposes to approve Wyoming's May 31, 2016 submittal into the SIP to meet the requirements of section 128 of the Act. We also propose to approve Wyoming's infrastructure SIP with respect to the requirements of Section 110(a)(2)(E)(ii) for 2008 Pb, 2008 ozone, 2010 NO_2, 2010 SO_2 and 2012 $PM_{2.5}$ NAAQS.

7. *Stationary source monitoring system:* Section 110(a)(2)(F) requires: (i) "The installation, maintenance, and replacement of equipment, and the implementation of other necessary steps, by owners or operators of stationary sources to monitor emissions from such sources; (ii) periodic reports on the nature and amounts of emissions and emissions-related data from such sources; and (iii) correlation of such reports by the State agency with any emission limitations or standards established pursuant to [the Act], which reports shall be available at reasonable times for public inspection."

Wyoming's SIP approved monitoring provision cited by Wyoming in its certifications (WAQSR Chapter 6, Section 2, Permit requirements for construction, modification, and operation), pertains to its program of periodic emissions testing and plant inspections of stationary sources, and related testing requirements and protocols (including periodic reporting) to assure compliance with emissions limits. Additionally, WAQSR Chapter 7, Section 2 (Continuous monitoring requirements for existing sources), requires certain sources to install and maintain continuous emission monitors to assure compliance with emission limitations.

Furthermore, Wyoming 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. States report emissions data for the six criteria pollutants and their associated precursors—nitrogen oxides, sulfur dioxide, ammonia, lead, carbon monoxide, particulate matter and volatile organic compounds. Many states also voluntarily report emissions of hazardous air pollutants. Wyoming made its latest update to the NEI in May 2016. The EPA compiles the emissions data, supplementing it where necessary, and releases it to the general public through the Web site *https://www.epa.gov/air-emissions-inventories.*

Based on the analysis above, we propose to approve the Wyoming SIP as meeting the requirements of CAA section 110(a)(2)(F) for the 2008 Pb, 2008 ozone, 2010 NO_2, 2010 SO_2 and 2012 $PM_{2.5}$ NAAQS.

8. *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 EPA Administrator has authority to bring suit to immediately restrain an air pollution source that presents an "imminent and substantial endangerment to public health or welfare, or the environment."[12] 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. We propose to find that Wyoming's infrastructure SIP submittals provide for authority for the State comparable to that granted to the EPA Administrator to act in the face of an imminent and substantial endangerment to the public's health or welfare, or the environment.

[11] See, *e.g.,* 78 FR 32613 (May 31, 2013), for a discussion of the phrase "board or body which approves permits or enforcement orders."

[12] A discussion of the requirements for meeting CAA section 303 is provided in our notice of proposed rulemaking: Promulgation of State Implementation Plan Revisions; Infrastructure Requirements for the 1997 and 2006 $PM_{2.5}$, 2008 Lead, 2008 Ozone, and 2010 NO_2 National Ambient Air Quality Standards; South Dakota (79 FR 71040, Dec. 1, 2014) under "VI. Analysis of State Submittals, 8. Emergency powers."

Wyoming's SIP certifications with regard to the section 110(a)(2)(G) emergency order requirements cite EPA approved provisions (WAQSR Chapter 12, Section 2, Air pollution emergency episodes) which establish a basis for the Division to issue notices to the public relating to levels of air pollution from "alerts," "warnings," and "emergencies" to prevent "a substantial threat to the health of persons" if "such [pollution] levels are sustained or exceeded" in places that are attaining or have attained such pollution levels. WAQSR Chapter 12, Section 2(a) allows for the broad application of this provision to "air pollutants" beyond PM_{10} and SO_2. Sections 35–11–115(a) and (b) of the WEQA also provides the Director power to issue emergency orders "to reduce or discontinue immediately the actions causing the condition of pollution" and institute "a civil action for immediate injunctive relief to halt any activity" presenting an "immediate and substantial danger to human or animal health or safety."

Furthermore, as stated in Wyoming's 2012 $PM_{2.5}$ certification, WEQA Section 35–11–901(a) authorizes the DEQ to seek a penalty or injunction from a court of competent jurisdiction for "[a]ny person who violates, or any director, officer or agent of a corporate permittee who willfully and knowingly authorizes, orders or carries out the violation of any provision of this act, or any rule, regulation, standard or permit adopted hereunder or who violates any determination or order of the council pursuant to this act or any rule, regulation, standard permit, license or variance. . ."

While no single Wyoming statute mirrors the authorities of CAA section 303, we propose to find that the combination of WEQA and WAQSR provisions previously discussed provide for authority comparable to section 303. Section 303 authorizes the Administrator to immediately bring suit to restrain and issue emergency orders when necessary, and 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. Therefore, we propose that Wyoming's SIP submittals sufficiently meet the requirements of CAA 110(a)(2)(G) because they demonstrate that Wyoming has authority comparable to CAA section 303.

States must also have adequate contingency plans adopted into their SIP to implement the air agency's emergency episode authority (as previously discussed). This can be done by submitting a plan that meets the applicable requirements of 40 CFR part 51, subpart H for the relevant NAAQS if the NAAQS is covered by those regulations. The EPA approved Wyoming's Emergency Episode Plan on February 9, 1982 at 47 FR 5892. We find that Wyoming's Emergency Episode Plan and air pollution emergency rules (WAQSR Chapter 12, Section 2, Air pollution emergency episodes) include PM_{10} [13] and SO_2 [14]; establish stages of episode criteria; provide for public announcement whenever any episode stage has been determined to exist; and specify emission control actions to be taken at each episode stage, consistent with the EPA emergency episode SIP requirements set forth at 40 CFR part 51 subpart H (prevention of air pollution emergency episode) for particulate matter, ozone, NO_2, and SO_2.

As noted in the 2011 Memo "based on [the] EPA's experience to date with the Pb NAAQS and designating Pb nonattainment areas, [the] EPA expects that an emergency episode associated with Pb emissions would be unlikely and, if it were to occur, would be the result of a malfunction or other emergency situation at a relatively large source of Pb" (page 14).[15] Accordingly, the EPA believes the central components of a contingency plan would be to reduce emissions from the source at issue and communicate with the public as needed. We note that 40 CFR part 51, subpart H (51.150–51.152) and 40 CFR part 51, appendix L do not apply to Pb.

Based on the above analysis, we propose approval of Wyoming's SIP as meeting the requirements of CAA section 110(a)(2)(G) for the 2008 Pb, 2008 ozone, and 2010 NO_2, 2010 SO_2 and 2012 $PM_{2.5}$ NAAQS.

9. *Future SIP revisions:* Section 110(a)(2)(H) requires that SIPs provide for revision of such plan: (i) "[f]rom 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]."

The general provisions in Article 1 of the WEQA (Article 1, Chapter 11, Title 35 of the Wyoming Statutes) and the particular provision in Article 2, section 35–11–202 of the Wyoming Statutes, gives the Director sufficient authority to meet the requirements of CAA section 110(a)(2)(H). Therefore, we propose to approve Wyoming's SIP as meeting the requirements of CAA section 110(a)(2)(H).

10. *Consultation with government officials, public notification, PSD and visibility protection:* Section 110(a)(2)(J) requires that each SIP "meet the applicable requirements of section 121 of this title (relating to consultation), section 127 of this title (relating to public notification), and part C of this subchapter (relating to PSD of air quality and visibility protection)."

In its certifications, the State cites one non-regulatory document relative to consultation with government officials (*e.g.*, Consultation, approved by EPA July 2, 1979 (44 FR 38473)) to meet the requirements of CAA section 121. The State has demonstrated that it has the authority and rules in place to provide a process of consultation with general purpose local governments, designated organizations of elected officials of local governments and any Federal Land Manager having authority over federal land to which the SIP applies, consistent with the requirements of CAA section 121 (*see* Wyoming's non-regulatory document, Intergovernmental Cooperation). Furthermore, the non-regulatory document, Public Notification of Air Quality, approved by EPA July 2, 1979 (44 FR 38473), cited by Wyoming, meets the general requirements of CAA section 127 to

[13] The EPA has not yet promulgated regulations for ambient levels pertaining to priority levels for $PM_{2.5}$ under the 2012 NAAQS (2013 Memo, p. 47). The EPA's September 25, 2009 Memo (available within the docket) suggested that states with areas that have had a $PM_{2.5}$ exceedance greater than 140.4 mg/m3 should develop and submit an emergency episode plan. If no such concentration was recorded in the last three years, the guidance suggested that the State can rely on its general emergency authorities. In this rulemaking, we continue to view these suggestions as appropriate in assessing Wyoming's SIP for this element. Wyoming has not had such a recorded $PM_{2.5}$ level and thus an emergency episode plan for $PM_{2.5}$ is not necessary. The SIP therefore meets the requirements of CAA section 110(a)(2)(G) for the 2012 $PM_{2.5}$ NAAQS.

[14] As stated in Wyoming's 2012 $PM_{2.5}$ infrastructure SIP certification, "WAQSR Chapter 12, Emergency Controls, establishes a basis for the Division to issue air pollution alerts, warnings, or emergencies in order to prevent the occurrence of an air pollution emergency stemming from the effects of air pollutants on the health of persons. While guidance for the issuance of alerts, warnings, or emergencies is established specifically for PM_{10} and SO_2, the chapter does not limit its purview to these two pollutants—and could encompass other pollutants such as $PM_{2.5}$." Furthermore, Wyoming is not required to have a specific contingency plan for particulate matter, ozone, NO_2, or SO_2 (*see* 40 CFR 52.2621).

[15] 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)."

notify the public when the NAAQS have been exceeded.

Wyoming's SIP regulations for its PSD program were first federally-approved and made part of the SIP on September 6, 1979 (44 FR 51977). The EPA has further evaluated the State's SIP-approved PSD program in section VI.3 which discusses element 110(a)(2)(C) of this proposed action. As explained in that section, we propose to approve Wyoming's infrastructure SIPs for the 2008 Pb, 2010 NO_2, 2010 SO_2 and 2012 $PM_{2.5}$ NAAQS with respect to the requirement in element (C) to have a permit program as required by Part C of the Act. We similarly propose to approve the infrastructure SIPs for the 2008 Pb, 2010 NO_2, 2010 SO_2 and 2012 $PM_{2.5}$ NAAQS with respect to the requirement in element (J) that the SIP meet the applicable requirements of Part C with respect to PSD.

Finally, with regard to the applicable requirements for visibility protection, the EPA recognizes states are subject to visibility and regional haze program requirements under part C of the Act. In the event of the establishment of a new NAAQS, however, the visibility and regional haze program requirements under part C do not change. Thus, we find that there are no applicable visibility requirements under section 110(a)(2)(J) when a new NAAQS becomes effective.

Based on the above analysis, we propose to approve the Wyoming SIP as meeting the requirements of CAA section 110(a)(2)(J) for the 2008 Pb, 2008 ozone, 2010 NO_2, 2010 SO_2 and 2012 $PM_{2.5}$ NAAQS.

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

Wyoming's PSD program requires that estimates of ambient air concentrations be based on applicable air quality models specified in appendix W of 40 CFR part 51, and that modification or substitution of a model specified in appendix W must be approved by the Administrator (see WAQSR Chapter 6, Section 2(b)(iv)). Additionally, WAQSR Chapter 6, Section 2(f)(iv) authorizes the AQD Administrator to impose any reasonable conditions upon an approval to construct, modify or operate, including modeling ". . . to determine the effect which emissions from a source may have, or is having, on air quality in any area which may be affected by emissions from such source." Furthermore, the WEQA 35–11–1101(b) and Wyoming's PPA provide Wyoming with the authority to submit air quality modeling date to the Administrator.[16] As a result, the SIP provides for such air quality modeling as the Administrator has prescribed.

Therefore, we propose to approve the Wyoming SIP as meeting CAA section 110(a)(2)(K) for the 2008 Pb, 2008 ozone, 2010 NO_2, 2010 SO_2 and 2012 $PM_{2.5}$ NAAQS.

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

WAQSR Chapter 6, Section 2, paragraph (o) and WEQA sections 35–11–211(a), Fees, require applicants of construction permits to pay the costs for DEQ to review and act on the permit applications. We also note that fees collected under Wyoming's approved title V permit program (64 FR 8523, Feb, 22, 1990) are sufficient to implement and enforce the program (*see* 59 FR 48802, Sept. 23, 1994). Therefore we propose to approve the submissions as submitted by the State for the 2008 Pb, 2008 ozone, 2010 NO_2, 2010 SO_2 and 2012 $PM_{2.5}$ NAAQS.

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

The non-regulatory document, Intergovernmental Cooperation, cited in Wyoming's submittals meets the requirements of CAA section 110(a)(2)(M). We propose to approve Wyoming's SIP as meeting these requirements for the 2008 Pb, 2008 ozone, 2010 NO_2, 2010 SO_2 and 2012 $PM_{2.5}$ NAAQS.

VII. What action is the EPA taking?

In this action, the EPA is proposing to approve infrastructure elements for the 2008 Pb, 2008 ozone, 2010 NO_2, 2010 SO_2 and 2012 $PM_{2.5}$ NAAQS from the State's certifications as shown in Table 1. Elements we propose no action on are reflected in Table 2. Finally, the EPA is proposing to approve a new Wyoming DEQ General Rules of Practice and Procedures submitted on May 31, 2016 to satisfy requirements of element (E)(ii),which refers to requirements related to state boards.

A comprehensive summary of infrastructure elements, and additions to the Wyoming DEQ Rules of Practice and Procedures organized by the EPA's proposed rule action are provided in Table 1 and Table 2.

TABLE 1—LIST OF WYOMING INFRASTRUCTURE ELEMENTS AND REVISIONS THAT THE EPA IS PROPOSING TO APPROVE

Proposed for approval
October 12, 2011 submittal—2008 Pb NAAQS: (A), (B), (C), (D)(i)(II) prong 3, (D)(ii), (E), (F), (G), (H), (J), (K), (L) and (M).
March 6, 2015 submittal—2010 SO_2 NAAQS: (A), (B), (C), (D)(i)(II) prong 3, (D)(ii), (E), (F), (G), (H), (J), (K), (L) and (M).
February 6, 2014 submittal—2008 Ozone NAAQS: (A), (B), (D)(ii), (E), (F), (G), (H), (J), (K), (L) and (M).
January 24, 2014 submittal—2010 NO_2 NAAQS: (A), (B), (C), (D)(i)(II) prong 3, (D)(ii), (E), (F), (G), (H), (J), (K), (L) and (M).
June 24, 2016 submittal—2012 $PM_{2.5}$ NAAQS: (A), (B), (C), (D)(i)(II) prong 3, (D)(ii), (E), (F), (G), (H), (J), (K), (L) and (M).
May 31, 2016 submittal—New Rules to Wyoming DEQ General Rules of Practice and Procedure, CAA Section 128: Chapter 1, General Provisions, Section 16, Air Program State Implementation Plan.

[16] *See* Email from Michael Morris "Question Regarding iSIP Element K- Submission of Air Quality Modeling Data" September 15, 2016, available within docket.

TABLE 2—LIST OF WYOMING INFRASTRUCTURE ELEMENTS AND REVISIONS THAT THE EPA IS PROPOSING TO TAKE NO ACTION ON

Proposed for no action (revision to be made in separate rulemaking action.)
January 19, 2012 submittal—2008 Pb NAAQS: (D)(i)(I) prongs 1 and 2, (D)(i)(II) prong 4.
February 6, 2014 submittal—2008 Ozone NAAQS: (D)(i) prongs 1–4 and (C) (proposed action on (D)(i)(II) prong 3 and (C) at 81 FR 53365, Aug. 12, 2016).
January 31, 2013 submittal—2010 NO_2 NAAQS: (D)(i)(I) prongs 1 and 2, (D)(i)(II) prong 4.
June 2, 2013 submittal—2010 SO_2 NAAQS: (D)(i)(I) prongs 1 and 2, (D)(i)(II) prong 4.
December 22, 2015 submittal—2012 $PM_{2.5}$ NAAQS: (D)(i)(I) prongs 1 and 2, (D)(i)(II) prong 4.

VIII. Incorporation by Reference

In this rulemaking, the EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is proposing to incorporate by reference the Wyoming Department of Environmental Quality General Rules of Practice and Procedure, Chapter 1, General Provisions, Section 16, Air Program State Implementation Plan Chapter 1, General Provisions, Section 16, Air Program State Implementation Plan pertaining to state board requirements VI.6. b. *Sub-element (ii): State boards,* of this preamble. The EPA has made, and will continue to make, these documents generally available through *www.regulations.gov* and/or at the EPA Region 8 office (please contact the person identified in the "For Further Information Contact" section of this preamble for more information).

IX. Statutory and Executive Orders Review

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 proposed action merely approves some state law as meeting federal requirements and disapproves other state law because it does not meet federal requirements; this proposed action does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, Oct. 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, Aug. 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, Feb. 16, 1994).

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 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: October 20, 2016.

Shaun L. McGrath,

Regional Administrator, Region 8.

[FR Doc. 2016–26860 Filed 11–7–16; 8:45 am]

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 10 and 11

[PS Docket No. 15–91; PS Docket No. 15–94; FCC 16–127]

Wireless Emergency Alerts; Amendments to the Commission's Rules Regarding the Emergency Alert System

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document proposes revisions to Wireless Emergency Alert (WEA) rules to improve WEA, leveraging advancements in technology to improve WEA's multimedia, multilingual and geo-targeting capabilities, as well as lessons learned from alert originators' experience since WEA was initially deployed. This document also proposes steps to improve the availability of information about WEA, both to empower consumers to make informed choices about the emergency information that they will receive, as well as to promote transparency for emergency management agencies and other WEA stakeholders. By this action, the Commission affords interested parties an opportunity to participate more fully in WEA, and to enhance the utility of WEA as an alerting tool.

DATES: Comments are due on or before December 8, 2016 and reply comments are due on or before January 9, 2017.

ADDRESSES: You may submit comments, identified by PS Docket No. 15–91, P.S. Docket No. 15–94, FCC 16–127, by any of the following methods: