We are also proposing to approve, but not incorporate by reference, the revised version of WAC 173–400–260 *Conflict of Interest,* state effective July 1, 2016. Consistent with prior actions on the Washington SIP, the EPA reviews and approves state and local clean air agency submissions to ensure they provide adequate enforcement authority and other general authority to implement and enforce the SIP. However, regulations describing such agency enforcement and other general authority are typically not incorporated by reference so as to avoid potential conflict with the EPA's independent authorities. Therefore, we propose to approve, WAC 173–400–260 into the Washington SIP, but not incorporate the provision by reference.

IV. Incorporation by Reference

In this rule, 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 regulations in the table in section III above. The EPA has made, and will continue to make, these materials generally available through *www.regulations.gov* and/or at the EPA Region 10 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

V. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this proposed 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 proposed 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);
- 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 the EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

The SIP is not approved to apply on any Indian reservation land in Washington except as specifically noted below and is also not approved to apply 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). Washington's SIP is approved to apply on non-trust land within the exterior boundaries of the Puyallup Indian Reservation, also known as the 1873 Survey Area. Under the *Puyallup Tribe of Indians Settlement Act of 1989,* 25 U.S.C. 1773, Congress explicitly provided state and local agencies in Washington authority over activities on non-trust lands within the 1873 Survey Area. Consistent with EPA policy, the EPA provided a consultation opportunity to the Puyallup Tribe in a letter dated July 13, 2016.

List of Subjects in 40 CFR Part 52

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

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

Dated: August 1, 2016.

Michelle L. Pirzadeh,

Acting Regional Administrator, Region 10.

[FR Doc. 2016–19031 Filed 8–11–16; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R08–OAR–2016–0366; FRL–9950–36–Region 8]

Approval and Promulgation of State Implementation Plan Revisions to Primary Air Quality Standards, Minor Source Baseline Date, Incorporation by Reference, and 2008 Ozone NAAQS Infrastructure Requirements for CAA Section 110(a)(2)(C) and (D)(i)(II); Wyoming

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve State Implementation Plan (SIP) revisions submitted by the State of Wyoming on May 28, 2015 and November 6, 2015. The amendments update the version of the Code of Federal Regulations (CFR) incorporated by reference into the rules of the State of Wyoming for Chapter 2, Section 12; Chapter 3, General Emission Standards, Section 9; and Chapter 6, Prevention of Significant Deterioration, Section 4. The May 28, 2015 submittal updates a citation to a **Federal Register** article (*i.e.,* **Federal Register** notice) under the definition of ''tpy CO_2 equivalent emissions (CO_2e),'' and lists a new minor source baseline date for fine particulate. The State also proposes to update the primary air quality standards for particulate matter ($PM_{2.5}$) to reflect federal updates that went into effect in January 2013. The updated primary $PM_{2.5}$ standard is 12 micrograms per cubic meter ($\mu g/m^3$) annual arithmetic mean concentration, which is lowered from its previous level of 15 $\mu g/m^3$. The EPA is also proposing approval of portions of the State's February 6, 2014 2008 ozone National Ambient Air Quality Standards (NAAQS) infrastructure certification regarding prevention of significant deterioration (PSD) and the good neighbor provision. The EPA is not taking action on the Chapter 6, Permitting Requirements, Section 14 portion of the May 24, 2012 submittal because it has been superseded by a November 6, 2015 submittal (81 FR 35271). The EPA is not

taking action on a May 24, 2012 submittal or a March 8, 2013 submittal because they have been superseded by the May 28, 2015 submittal.

DATES: Written comments must be received on or before September 12, 2016.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R08–OAR–2016–0366, 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: Jody Ostendorf, Air Program, U.S. Environmental Protection Agency (EPA), Region 8, Mail Code 8P–AR, 1595 Wynkoop Street, Denver, Colorado 80202–1129, (303) 312–7814, *ostendorf.jody@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. Analysis of the State Submittals

In this proposed rulemaking, we are proposing to approve three submittals into Wyoming's SIP.

May 28, 2015 Submittals

The first May 28, 2015 submittal updates Chapter 3, General Emission Standards, Section 9, Incorporation by reference, to adopt by reference the July 1, 2013 Code of Federal Regulations. This submittal supersedes previously submitted updates to Section 9, Incorporation by reference. The EPA proposes to approve this submittal.

The second May 28, 2015 submittal updates Chapter 6, Section 4, Prevention of significant deterioration (PSD) program. The submittal updates a citation to a **Federal Register** article (*i.e.,* **Federal Register** notice) under the definition of ''tpy CO_2 equivalent emissions (CO_2e).'' The article is available for public inspection and can be obtained online at *http://www.gpo.gov/fdsys/pkg/FR-2013-11-29/pdf/2013-27996.pdf* or at a cost from the Department of Environmental Quality, Division of Air Quality, Cheyenne Office. Contact information for the Cheyenne Office can be obtained at: *http://deq.state.wy.us.* The EPA is proposing to approve this update.

The submittal also lists a new minor source baseline date of December 12, 2012 for fine particulate for Sweetwater County. On October 20, 2010, the EPA published a final rulemaking titled ''Prevention of Significant Deterioration (PSD) for $PM_{2.5}$—Increments, Significant Impact Levels (SILs) and Significant Monitoring Concentration'' (75 FR 64864). This rulemaking revised 40 CFR 51.166(b)(14)(ii) (Definition of Minor Source Baseline Date) to add a trigger date of October 20, 2011 for $PM_{2.5}$. A minor source baseline date means the earliest date after the trigger date on which a major stationary source or a major modification subject to 40 CFR 52.21, or 40 CFR 51.166, submits a complete permit application under the relevant PSD regulations. The EPA is proposing to approve Sweetwater County's minor source baseline date of December 12, 2012.

The submittal also proposed to update Chapter 6, Section 14, Incorporation by reference, to adopt by reference from the July 1, 2013 CFR. This submittal and previously submitted updates to Section 14, Incorporation by reference have been superseded by a November 6, 2015 rulemaking (81 FR 35271). The EPA is not acting on any updates to Chapter 6, Section 14, Incorporation by reference.

November 6, 2015 Submittal

The November 6, 2015 submittal proposes to revise Chapter 2, Section 2, Ambient standards for particulate matter, which establishes standards of ambient air quality for particulate matter as necessary to protect public health and welfare. This revision updates the primary ambient air quality standards for $PM_{2.5}$ to reflect federal updates that went into effect in January 2013. The updated primary $PM_{2.5}$ standard is 12 $\mu g/m^3$ annual arithmetic mean concentration, which is lowered from its previous level of 15 $\mu g/m^3$. The EPA proposes to approve this revision.

The submittal also proposes to update Chapter 12, Incorporation by reference, to adopt by reference the July 1, 2014 CFR. This submittal supersedes previously submitted updates to the Chapter 12, Incorporation by reference. The EPA proposes to approve this submittal.

February 6, 2014, 2008 Ozone NAAQS Infrastructure Certification

On March 12, 2008, the EPA promulgated a new NAAQS for ozone, revising the levels of the primary and secondary 8-hour ozone standards from 0.08 parts per million (ppm) to 0.075 ppm (73 FR 16436, March 27, 2008).

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 SIP already meet those requirements. The EPA is acting upon the certification from Wyoming that addresses the infrastructure requirements of CAA Sections 110(a)(1) and 110(a)(2)(C) and (D)(i)(II) prong 3 for the 2008 ozone NAAQS. The requirement for states to make a SIP submission of this type arises out of CAA Section 110(a)(1). Pursuant to Section 110(a)(1), states must make SIP submissions ''within 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),'' 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.

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, substantive program provisions, and both authority and substantive programs. The EPA does not believe that an action on a state's infrastructure SIP submission is necessarily the appropriate type of action 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 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'').

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. 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 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.

In this action, the EPA is addressing 110(a)(2)(C), programs for enforcement of control measures and for construction or modification of stationary sources, and 110(a)(2)(D)(i)(II) element 3 for the 2008 ozone NAAQS. The EPA is addressing all other elements for the 2008 ozone NAAQS in a separate rulemaking.

The Wyoming Department of Environmental Quality (Department or WDEQ) submitted certification of Wyoming's infrastructure SIP for the 2008 ozone NAAQS on February 6, 2014. Wyoming's infrastructure certification demonstrates how the State, where applicable, has plans in place that meet the requirements of Section 110 for the 2008 ozone NAAQS. The Wyoming Air Quality Standards and Regulations (WAQSR) referenced in the State's submittal are publicly available at *http://soswy.state.wy.us/Rules/default.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.

1. *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 ozone NAAQS. 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,[1] 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 Element (C), 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) may also be satisfied by demonstrating the air agency has a complete PSD permitting program that correctly addresses 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 GHG's, 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.

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

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.[2] 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) and (D)(i)(II) prong 3 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 Utah 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 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) and (D)(i)(II). 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) and (D)(i)(II) prong 3.

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 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.), 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) or (D)(i)(II) prong 3 with respect to the PSD requirements promulgated by the 2008 Implementation rule does not conflict with the court's opinion.

The court's decision with respect to the 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 $PM_{2.5}$. As a result, the EPA is proposing to approve Wyoming's infrastructure SIP for the 2008 ozone NAAQS with respect to the requirement in Section

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

110(a)(2)(C) to include a permit program in the SIP 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 ozone NAAQS with respect to the general requirement in Section 110(a)(2)(C) to include a program in the SIP that regulates the enforcement, modification, and construction of any stationary source as necessary to assure that the NAAQS are achieved.

2. *Interstate Transport:* CAA Section 110(a)(2)(D)(i)(I) requires SIPs to include provisions prohibiting any source or other type of emissions activity in one state from emitting any air pollutant in amounts that will contribute significantly to nonattainment, or interfere with maintenance, of the NAAQS in another state (known as the ''good neighbor'' provision). The two provisions of this section are referred to as prong 1 (significant contribution to nonattainment) and prong 2 (interfere with maintenance). Section 110(a)(2)(D)(i)(II) requires 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 to prevent significant deterioration of air quality (prong 3) or to protect visibility (prong 4). In this action, the EPA is addressing prong 3 with regard to the 2008 ozone NAAQS. The EPA will address all other transport prongs in a separate rulemaking.

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 new source review (NSR) pollutants and that satisfies the requirements of the EPA's PSD implementation rules.[3] 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 Utah's infrastructure SIP for the 2008 ozone 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).

In-state sources not subject to PSD for a particular NAAQS because they are in a nonattainment area for that standard may also have the potential to interfere with PSD in an attainment or unclassifiable area of another state.[4] 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.[5]

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 Ozone NAAQS.

III. What action is the EPA taking today?

The EPA is proposing to approve State Implementation Plan (SIP) revisions submitted by the State of Wyoming on May 28, 2015 and November 6, 2015. The amendments update the version of the CFR incorporated by reference into the rules of the State of Wyoming for Chapter 2, Ambient Standards for Particulate Matter, Section 12; and Chapter 3, General Emission Standards, Section 9. The EPA is also proposing to approve updates to a citation to a **Federal Register** article (*i.e.,* **Federal Register** notice) under the definition of ''tpy CO_2 equivalent emissions (CO_2e),'' and a new minor source baseline date for fine particulate for Sweetwater County of December 12, 2012 into WAQSR Chapter 6, Section 4. The EPA proposes to approve an update to the primary air quality standards for particulate matter $(PM)_{2.5}$ that reflects federal updates that went into effect in January 2013 into WAQSR Chapter 2, Section 2. The EPA proposes to approve infrastructure elements (C) and (D)(i)(II)prong for the 2008 ozone NAAQS from the State's February 6, 2014 certification. Finally, the EPA is not taking action on the Chapter 6, Permitting Requirements, Section 14 portion of the May 24, 2012 submittal, the March 8, 2013 submittal, or the May 28, 2015 submittal because they have been superseded by a November 6, 2015 submittal (81 FR 35271).

IV. Incorporation by Reference

In this rule, 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 Administrative Rules of Wyoming pertaining to General Emission Standards, Prevention of Significant Deterioration and Ambient Standards for $PM_{2.5}$, as discussed in Section II. The EPA has made, and will continue to make, these documents generally available electronically 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).

V. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely approves 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);
- 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.*);

[3] See EPA's ''Guidance on Infrastructure State Implementation Plan (SIP) Elements under Clean Air Act Sections 110(a)(1) and (2),'' September 13, 2013, at 31.

[4] Id. at 31.

[5] See WAQSR Chapter 6, Section 13.

- 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).

List of Subjects in 40 CFR Part 52

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

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

Dated: July 28, 2016.

Shaun L. McGrath,

Regional Administrator, Region 8.

[FR Doc. 2016–18869 Filed 8–11–16; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R08–OAR–2016–0016; FRL–9950–37–Region 8]

Approval and Promulgation of Air Quality Implementation Plans; State of Colorado; Motor Vehicle Inspection and Maintenance, Clean Screen Program and the Low Emitter Index, On-Board Diagnostics, and Associated Revisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing approval of three State Implementation Plan (SIP) revisions submitted by the State of Colorado. The revisions involve amendments to Colorado's Regulation Number 11 ''Motor Vehicle Emissions Inspection Program.'' The revisions address the implementation of the Low Emitter Index component of Regulation No. 11's Clean Screen Program, the implementation of the On-Board Diagnostics component of Regulation No. 11, and several other associated revisions. The EPA is proposing approval of these SIP revisions in accordance with the requirements of section 110 of the Clean Air Act (CAA).

DATES: Written comments must be received on or before September 12, 2016.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R08–OAR–2016–0016 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: Tim Russ, Air Program, EPA, Region 8, Mailcode 8P–AR, 1595 Wynkoop, Denver, Colorado 80202–1129, (303) 312–6479, *russ.tim@epa.gov.*

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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 in 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;