

(e) *Expedited processing.* Within 10 days (excluding Saturdays, Sundays and legal holidays) after receipt of a request for expedited processing, the Chief FOIA Officer or his/her designee will:

\* \* \* \* \*

■ 8. Amend § 3004.44 by revising paragraph (a) to read as follows:

**§ 3004.44 Appeals.**

(a) The Commission may review any decision of the Chief FOIA Officer or his/her designee on its own initiative.

\* \* \* \* \*

■ 9. Revise § 3004.60 to read as follows:

**§ 3004.60 Chief Freedom of Information Act Officer.**

The Commission designates the General Counsel of the Commission as the Chief FOIA Officer. The Chief FOIA Officer shall be responsible for the administration of and reporting on the Commission's Freedom of Information Act program.

By the Commission.

**Darcie S. Tokioka,**  
*Acting Secretary.*

[FR Doc. 2019-21431 Filed 10-3-19; 8:45 am]

**BILLING CODE 7710-FW-P**

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

[EPA-R08-OAR-2019-0047; FRL-10000-48-Region 8]

**Approval and Promulgation of Implementation Plans; Montana; Regional Haze 5-Year Progress Report State Implementation Plan**

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

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is finalizing approval of Montana's Regional Haze Progress Report ("Progress Report"), submitted by the State of Montana through the Montana Department of Environmental Quality (MDEQ) on November 7, 2017, as a revision to the Montana Regional Haze State Implementation Plan (SIP). Montana's Progress Report addresses requirements of the Clean Air Act (CAA or Act) and the Federal Regional Haze Rule that require each state to submit periodic reports describing progress towards reasonable progress goals (RPGs) established for regional haze and a determination of the adequacy of the state's existing SIP addressing regional haze (regional haze plan). The EPA is finalizing approval of Montana's

determination that the State's regional haze plan is adequate to meet these RPGs for the first implementation period covering through 2018.

**DATES:** This rule is effective on November 4, 2019.

**ADDRESSES:** The EPA has established a docket for this action under Docket ID No. EPA-R08-OAR-2019-0047. All documents in the docket are listed on the <https://www.regulations.gov> website. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available through <https://www.regulations.gov>, or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional availability information.

**FOR FURTHER INFORMATION CONTACT:** Kate Gregory, Air and Radiation Division, EPA, Region 8, Mailcode 8ARD-IO, 1595 Wynkoop Street, Denver, Colorado 80202-1129, (303) 312-6175, [gregory.kate@epa.gov](mailto:gregory.kate@epa.gov).

**SUPPLEMENTARY INFORMATION:**

Throughout this document "we," "us," and "our" means the EPA.

**I. Background**

States are required to submit a progress report in the form of a SIP revision for the first implementation period that evaluates progress towards the RPGs for each mandatory Class I Federal area<sup>1</sup> (Class I area) within the state and for each Class I area outside the state which may be affected by emissions from within the state (40 CFR 51.308(g)). In addition, the provisions of 40 CFR 51.308(h) require states to submit, at the same time as the 40 CFR 51.308(g) progress report, a determination of the adequacy of the state's existing regional haze plan. The first progress report is due 5 years after submittal of the initial regional haze plan. Montana declined to submit a regional haze SIP covering all required elements in the EPA's Regional Haze Rule, which resulted in the EPA administration of the majority of the Regional Haze program in the State since the effective date of the Federal

<sup>1</sup> Areas designated as mandatory Class I Federal areas consist of national parks exceeding 6000 acres, wilderness areas and national memorial parks exceeding 5000 acres, and all international parks that were in existence on August 7, 1977 (42 U.S.C. 7472(a)). These areas are listed at 40 CFR part 81, subpart D.

Implementation Program (FIP) of October 18, 2012.<sup>2</sup>

On November 7, 2017, Montana submitted its Progress Report which, among other things, detailed the progress made in the first implementation period toward the long-term strategy (LTS) outlined in the State's regional haze plan, the visibility improvement measured at the twelve Class I areas within Montana, and a determination of the adequacy of the State's existing regional haze plan.

In a notice of proposed rulemaking (NPRM) published on July 9, 2019 (84 FR 32682), the EPA proposed to approve Montana's Progress Report. The details of Montana's submission and the rationale for the EPA's actions are explained in the NPRM.

**II. Response to Comments**

Comments on the proposed rulemaking were due on or before August 8, 2019. The EPA received a total of three public comment submissions on the proposed approval. All public comments received on this rulemaking action are available for review by the public and may be viewed by following the instructions for access to docket materials as outlined in the **ADDRESSES** section of this preamble. After reviewing the comments, the EPA has determined that two of the comment submissions are outside the scope of our proposed action and/or fail to identify any material issue necessitating a response. We received one comment letter from the Montana Environmental Information Center (MEIC) and the National Parks Conservation Association (NPCA), containing three significant comments that we are responding to here. Below is a summary of those comments and the EPA's responses.

*Comment:* In a comment letter dated August 8, 2019, the MEIC and NPCA stated that one of the nitrogen oxides (NO<sub>x</sub>) control technologies included in Montana's report is the SmartBurn® technology at Colstrip that "reduce[s] NO<sub>x</sub> emissions by '80% to 86%.'" <sup>3</sup> The commenters assert these reductions are anecdotal, do not represent an enforceable emission limit, and cannot be relied on to show actual reductions for NO<sub>x</sub> sufficient to satisfy requirements for Montana to make

<sup>2</sup> 77 FR 57864 (September 18, 2012).

<sup>3</sup> It is unclear whether the commenter understands SmartBurn® technology to be capable of (1) reducing NO<sub>x</sub> between 80% and 86%, or (2) improving NO<sub>x</sub> reductions from 80% to 86% (i.e., by six percentage points). It is also unclear whether the commenter understands these reductions to be relative to the emission rates immediately prior to the SmartBurn® modifications or some even earlier baseline.

reasonable progress towards restoring clean air to Class I areas. The commenters assert EPA should not rely on these anecdotal reductions to demonstrate compliance, rather they argue the reductions must be incorporated into the facility's permit and actual compliance monitoring must be required.

**Response:** Each state is required to submit periodic progress reports in accordance with the requirements of 40 CFR 51.308(g) as well as a determination of the adequacy of the state's existing regional haze plan in accordance with the requirements of 40 CFR 51.308(h). To the extent the comment asserts that certain emission reductions should be included in Montana's implementation plan in order to make reasonable progress and addresses the enforceability of the reductions, these issues concern the requirements of 40 CFR 51.308(d) and/or 40 CFR 51.308(e) and are outside the scope of this action.<sup>4</sup> Compliance with and enforcement of the emission reductions mentioned in the comment that are not included in a state's implementation plan are not covered by 40 CFR 51.308(g) unless EPA makes a finding that the plan is not sufficient. We are not making that finding here.

The RPGs are not enforceable.<sup>5</sup> Montana has determined, and the EPA agrees, that to the extent Montana is not meeting its RPGs, the State's failure to meet the RPGs is attributable to wildfire. The United States Court of Appeals for the Ninth Circuit vacated the portions of the Montana FIP setting BART emissions limits for Colstrip Units 1 and 2.<sup>6</sup> Therefore, commenter's assertion that Montana cannot meet its RPGs because they depend on vacated BART measures is a given—the RPGs currently include the effects of measures that are not part of the LTS. That is, the current RPGs are not necessarily a proper reflection of the entire suite of determinations that may be necessary for Montana to make reasonable progress and may need to be revisited once the vacated determinations have been addressed. This obligation remains outstanding and is outside the scope of this action.

We think it is reasonable that Montana submitted a progress report addressing the elements of the plan that

are in place and enforceable. To the extent that Montana has properly evaluated the contents of its implementation plan and assessed the progress the State is making with regard to its partial implementation plan, Montana has fulfilled its obligations under 40 CFR 51.308(g).

In sum, Montana has met the applicable legal requirements because the RPGs in the FIP are not necessarily reflective of what is necessary for Montana to make reasonable progress, but to the extent of the measures in the implementation plan, Montana has satisfied all its requirements for reporting on implementation and progress. This is a reasonable approach given where Montana is regarding development of its regional haze implementation plan.

While neither the SmartBurn® controls employed at Colstrip nor the scheduled closure of Colstrip Units 1 and 2 are relevant to the evaluation under 40 CFR 51.308(g), we note the following: The comments are made in relation to Chapter 2 of the Montana progress report<sup>7</sup> that provides a description of the status of implementation of all measures included in the implementation plan for achieving RPGs as required by 40 CFR 51.308(g)(1). Chapter 2 of the progress report refers to the application of SmartBurn® at Colstrip Unit 2, which is subject to BART, and Colstrip Units 3 and 4, which are subject to consideration of controls under reasonable progress. The content of the LTS, including any control measures selected as BART or under reasonable progress provisions, determines the RPGs (typically by means of photochemical modeling). The RPGs are a projected outcome, rather than visibility conditions established directly, and the Regional Haze Rule provides that the RPGs are not directly enforceable.<sup>8</sup> The rule further explains that the RPGs will be considered by the Administrator in evaluating the adequacy of the measures in the implementation plan to achieve the progress goal adopted by the State, which we have done in evaluating the State's Progress Report. Thus, we disagree with commenters apparent assertion that RPGs are enforceable.

Moreover, the LTS does not currently include BART requirements for Colstrip Units 1 and 2 because, as discussed previously, these requirements were vacated and remanded by the United States Court of Appeals for the Ninth

Circuit.<sup>9</sup> In addition, in our 2012 FIP, the EPA did not establish any additional controls for Units 3 and 4 under reasonable progress.<sup>10</sup> There are currently no control measures required by the LTS for Colstrip in the implementation plan for which Montana could have provided the status. Accordingly, there is no deficiency in the progress report regarding the requirements of 40 CFR 51.308(g)(1) as they pertain to the Colstrip facility.

Though not central to our response, we are also providing background information regarding the NO<sub>x</sub> reductions achieved with various SmartBurn® configurations that have been installed on Colstrip Unit 2, and separately on Units 3 and 4, which the State discusses generally in its SIP submittal. SmartBurn, LLC is a company that offers NO<sub>x</sub> reduction technologies such as combustion optimization and overfire air. The Title V operating permit for Colstrip<sup>11</sup> indicates that NO<sub>x</sub> controls on Unit 2 are comprised of an Alstom LNCFS™ II system (low-NO<sub>x</sub> concentric firing system and separated overfire air [SOFA]) modified with a Smartburn® Low NO<sub>x</sub> combustion system.<sup>12</sup> The SmartBurn® modifications were installed on Unit 2 in 2015. Emissions data in EPA's Air Markets Program Database (AMPD) indicate that after 2015, the annual emission rate for Unit 2 decreased from 0.321 lb/MMBtu to 0.154 lb/MMBtu, or by 52.0%.<sup>13</sup> Because of the large decrease in the NO<sub>x</sub> emission rate, the EPA assumes that the modifications to Unit 2 in 2015 occurred due to additional air staging with overfire air.

Similarly, the Title V permit indicates that NO<sub>x</sub> controls on Unit 3 and Unit 4 are comprised of an Alstom LNCFS™ III system (LNCFS™ with both close-coupled [CCOFA] and SOFA) modified with a Smartburn® Low NO<sub>x</sub> combustion system.<sup>14</sup> LNCFS™ III was added to Units 3 and 4 in 2007 and 2009, respectively. Emissions data from AMPD indicates that, following the installation of LNCFS™ III (*i.e.*, both CCOFA and SOFA) at Unit 3, the annual emission rate decreased from 0.406 lb/MMBtu to 0.168 lb/MMBtu, or by

<sup>4</sup> Our proposal solicited comments on the requirements of and our proposed determinations regarding 40 CFR 51.308(g) and (h). 84 FR 32682 (July 9, 2019).

<sup>5</sup> 77 FR 23988, 24064–24067 (April 20, 2012).

<sup>6</sup> *National Parks Conservation Association v. EPA*, 788 F.3d 1134 (9th Cir. 2015) (vacating portions of the Montana FIP, 81 FR 57864 (September 18, 2012)).

<sup>7</sup> SmartBurn® is mentioned in Chapter 2, pp 2–5 and 2–8.

<sup>8</sup> 40 CFR 51.308(d)(1)(v).

<sup>9</sup> *NPCA v. EPA*, No. 12–73710, U.S. 9th Cir. (2015).

<sup>10</sup> 77 FR 23988, 24064–24067 (April 20, 2012), 77 FR 57864, 57902–57903 (September 18, 2012).

<sup>11</sup> Colstrip Final Title V Operating Permit #OP0513–14, effective July 17, 2018.

<sup>12</sup> Title V permit, Section 2.

<sup>13</sup> See spreadsheet created by EPA titled “AMPD Colstrip emissions 2000 to mid–2019.xlsx” located in the docket.

<sup>14</sup> Title V permit, Section 2.

58.6%.<sup>15</sup> Comparable reductions were achieved at Unit 4. However, these reductions were achieved by LNCFS™ III before the subsequent SmartBurn® modifications to Unit 3 and Unit 4 in 2016 and 2017, respectively. Emissions data for Unit 3, where the SmartBurn® modifications have been in place slightly longer than on Unit 4, indicate that the annual emission rate decreased from 0.167 lb/MMBtu to 0.150 lb/MMBtu, or by 9.7%, though a clear emissions trend is difficult to identify.<sup>16</sup> The EPA assumes that these reductions are due to combustion optimization (with existing equipment) because the reductions are modest and both SOFA and CCOFA were previously installed.

The emission reductions resulting from SmartBurn® modifications described previously are incorporated into Colstrip's Clean Air Act Title V permit and compliance monitoring is required. The Title V permit includes a 30-day rolling average emission limit of 0.20 lb/MMBtu for Unit 2 with associated compliance measures.<sup>17</sup> Likewise, the Title V permit includes a 30-day rolling average emission limit of 0.18 lb/MMBtu with associated compliance measures for Unit 3 and Unit 4 (individually).<sup>18</sup> As shown by the AMPD emissions data, these emission limits are commensurate with the actual emission rates being achieved with the SmartBurn® modifications at the three units.<sup>19</sup> However, as discussed previously, the EPA agrees that any reductions resulting from SmartBurn® technologies discussed in the progress report are not pertinent to whether the requirements of 40 CFR 51.308(g)(1) have been met. Furthermore, the commenters are mistaken in suggesting that it is sufficient for the emission reductions to be incorporated into a facility permit. Emissions limits or permits must be adopted into the implementation plan to meet the requirements of the Regional Haze Rule.<sup>20</sup>

Finally, in 2016, the owners of Colstrip (including Talen Energy, which also operates Colstrip) entered into a Consent Decree with the Sierra Club and the Montana Environmental Information Center, which requires closure of Colstrip Units 1 and 2 by July 1, 2022<sup>21</sup> and set interim emission limits.<sup>22</sup> This will provide far greater NO<sub>x</sub> reductions at the Colstrip facility than those achieved by the SmartBurn® modifications.

*Comment:* The MEIC and NPCA also assert in the comment letter that the increase in fine particulate matter (PM<sub>2.5</sub>) of 47% in the State is of concern and question the EPA's description of wildfire as nonanthropogenic. The commenters allege that both the EPA and the State are dismissive of the increase in fine PM and that wildfire is increasing due to climate change. Additionally, the commenters state that the Montana Progress Report submission is devoid of discussion related to wildfire as it relates to climate and for these reasons should be rejected by the EPA. The commenters provided a citation in the comments, however, the information cited was not included with the comments submitted.

*Response:* While we agree that the increase in PM<sub>2.5</sub> in the State for the time period listed is notable, we do not agree that we are dismissive of the increase in our proposed action. In our proposed action, we explain that Montana presented data in its Progress Report showing that wildfire activity, as can be examined through monitored pollutants (organic and elemental carbon specifically) and satellite and webcam imagery, are present on the majority of days selected as the 20 percent worst days.<sup>23</sup> This means that webcam imagery and satellite data correlate to monitored pollutant data and demonstrate that wildfire is a main impediment to visibility.

Our description and assessment of wildfire in our proposal is consistent with the definition of wildfire in our

regulations, which when it occurs on wildland—as it has in Montana—is a natural event.<sup>24</sup> The purpose of the regional haze program is to protect visibility and remedy visibility impairment from man-made air pollution. We agree with MDEQ's conclusion that the plan requires no further revision at this time to meet the 2018 RPGs.

*Comment:* Finally, the commenters allege that the State cannot meet its regional haze RPGs in the FIP because the FIP relies on installation of SNCR at Colstrip Units 1 and 2. While MEIC and NPCA acknowledge Talen's announcement that the two units will close, they assert that the EPA should not rely on closure of the EGU as a compliance mechanism unless that closure is incorporated into the SIP.

*Response:* We do not agree with commenters that the lack of SNCR installation at Colstrip will lead to Montana not meeting its RPGs. We address this issue in more detail in response to the first comment summarized.

The regional haze regulations require that the periodic progress report contain not only a description of the status of implementation measures and emission reductions achieved as a result of those measures, but importantly, an evaluation of visibility progress against the 2018 RPGs.<sup>25</sup> The RPGs are intended to reflect the emission reductions in states' LTS. The fact that Montana's long-term strategy may ultimately contain different emissions control technologies for Colstrip than those initially required by the EPA's FIP does not necessarily preclude the State from meeting the RPGs. Furthermore, as is shown in the NPRM for this action and stated previously, monitored pollutants (organic and elemental carbon, specifically) from fire—and not emissions from Colstrip—are the main impediment to visibility in Montana.<sup>27</sup> Additionally, Table 3 in the proposed action, titled "Changes in Montana Total Emissions, Statewide," shows a statewide decrease in NO<sub>x</sub> emissions of 32 percent between 2002 and 2014. Additionally, as indicated in our proposed action, in Table 5, "Visibility Progress in Montana's Class I Areas," all of the IMPROVE monitoring sites within

<sup>15</sup> EPA Spreadsheet.

<sup>16</sup> EPA Spreadsheet.

<sup>17</sup> Title V permit, conditions B.4, B.19, B.27, B.29, B.32, and B.35.

<sup>18</sup> Title V permit, conditions C.14, C.20, C.35, C.41, C.49, C.51, C.53, C.54, C.55, C.57, C.58, and C.59.

<sup>19</sup> EPA spreadsheet. See charts comparing monthly actual emissions to the 30-day rolling average emission limits. Monthly emissions are used as a proxy to 30-day rolling average emission rates.

<sup>20</sup> Under the regional haze rule, a state's long-term strategy must include enforceable emissions limitations, compliance schedules, and other measures as necessary to achieve the RPGs. 40 CFR 51.308(d)(3). Additionally, the BART Guidelines require that states must establish an enforceable emission limit for each subject emission unit at the source and for each pollutant subject to review that

is emitted from the source. Appendix Y to part 51, section V. Section 110(a)(2)(A) of the Clean Air Act also requires that SIPs shall "include enforceable emission limitations . . . as may be necessary or appropriate to meet the applicable requirements of [the Act]." While a state may include emission limitations in Title I construction permits, the emission limits and compliance requirements from a permit must be included in the SIP.

<sup>21</sup> *Sierra Club v. Talen Montana, LLC et al.*, No. 1:13-cv-00032-DLC-JCL, D. Mon. (2016), Doc. 316-1.

<sup>22</sup> The Consent Decree specifies a Unit 1 NO<sub>x</sub> emission limit of 0.20 lb/MMBtu, and a Unit 2 NO<sub>x</sub> emission limit of 0.45 lb/MMBtu (both 30-day rolling average). These limits became effective 30 days after the date of entry by the court, or on October 6, 2016.

<sup>23</sup> Montana Progress Report, pp. 4-8 to 4-13.

<sup>24</sup> EPA's regulations define a wildfire as fires that are started by an unplanned ignition caused by lightning; volcanoes; other acts of nature; unauthorized activity; or accidental, human-caused actions, or a prescribed fire that has developed into a wildfire. A wildfire that predominantly occurs on wildland is a natural event.

<sup>25</sup> See 40 CFR 50.1(n).

<sup>26</sup> 40 CFR 51.308(g)(1)-(3).

<sup>27</sup> Montana Progress Report, p. 3-9.

the State show the State meeting the 2018 RPGs for the 20 percent best days.<sup>28</sup> While only two of the Class I Areas meet the 2018 RPGs on the 20 percent worst days,<sup>29</sup> all Class I areas meet the RPGs when looking at the 20 percent most anthropogenically impaired days. In addition to evaluating the visibility conditions applying the regulatory test that applies to the 2018 RPGs, the EPA supplemented the most anthropogenically impaired days' data in the NPRM for the baseline period, current period, and difference in deciviews using the revised visibility tracking metric described in the EPA's December 2018 guidance document.<sup>30</sup> As explained in the NPRM for this action, though this revised visibility tracking metric is applicable to the second and future implementation periods for regional haze (and therefore not retroactively required for progress reports for the first regional haze planning period), the revised tracking metric's focus on the days with the highest daily anthropogenic impairment shifts focus away from days influenced by fire and dust events, and is therefore a better metric for showing visibility progress especially for Class I areas with strong impacts from fire, as was the case for the Class I areas within and affected by emissions from Montana during the first regional haze planning period. The Class I areas are already meeting the RPGs using the revised visibility metrics. For the reasons cited previously, we do not agree that the lack of SNCR will result in the State failing to meet its regional haze RPGs for 2018.

Though peripheral to our response, we also note that under the EPA's strategic plan's more effective partnerships approach, the EPA has been communicating with the State on implementation of the regional haze program. The EPA notes that in addition to preparing the report that is the subject of this SIP action, the State also intends to develop a SIP to replace EPA's regional haze FIP, including provisions for the regional haze rule and BART requirements for Colstrip Units 1 and 2 vacated by the Ninth Circuit.<sup>31</sup> As of this writing, EPA has reviewed pre-draft SIP submission materials from the State as it develops its SIP. Additionally, on August 29, 2019, the State announced the opportunity for

public comment on the proposed incorporation of air pollutant emission limits, currently in EPA's FIP (40 CFR 52.1396), including limits on Colstrip Units 1 and 2, into a Montana Board of Environmental Review Board Order that may be submitted by the State into the SIP. The EPA intends to continue to work with the State as it develops its SIP for submittal.

### III. Final Action

EPA is finalizing its proposed approval of Montana's November 7, 2017 Progress Report as meeting the applicable regional haze requirements set forth in 40 CFR 51.308(g) and (h).

### IV. 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 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);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866;
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);

- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);

- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

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

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 3, 2019. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

### List of Subjects in 40 CFR Part 52

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

<sup>28</sup> Montana Progress Report, p. 6-1.

<sup>29</sup> Montana Progress Report, p. 6-4.

<sup>30</sup> Technical Guidance on Tracking Visibility Progress for the Second Implementation Period of the Regional Haze Program (December 20, 2018), available at: [https://www.epa.gov/sites/production/files/2018-12/documents/technical\\_guidance\\_tracking\\_visibility\\_progress.pdf](https://www.epa.gov/sites/production/files/2018-12/documents/technical_guidance_tracking_visibility_progress.pdf).

<sup>31</sup> 40 CFR 51.308(d) and (e).

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

Dated: September 25, 2019.

Gregory Sopkin,

Regional Administrator, Region 8.

Title 40 CFR part 52 is amended as follows:

## PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

### Subpart BB—Montana

■ 2. Amend § 52.1370(e) in the table under the centered heading “(1)

Statewide” by adding the entry “Montana regional haze 5-year progress report” following the entry “Montana Code Annotated 2–2–121(2)(e) and 2–2–121(8)” to read as follows:

#### § 52.1370 Identification of plan.

\* \* \* \* \*

(e) \* \* \*

Title/subject	State effective date	Notice of final rule date	NFR citation
(1) Statewide			
* * * * *			
Montana regional haze 5-year progress report .....	11/07/2017	10/4/2019	[Insert <b>Federal Register</b> citation.]
* * * * *			

■ 3. Amend § 52.1387 by adding paragraph (c) to read as follows:

#### § 52.1387 Visibility protection.

\* \* \* \* \*

(c) Montana’s November 7, 2017 Progress Report meets the applicable regional haze requirements set forth in § 51.308(g) and (h).

[FR Doc. 2019–21266 Filed 10–3–19; 8:45 am]

BILLING CODE 6560–50–P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA–R05–OAR–2018–0840; FRL–10000–67–Region 5]

### Air Plan Approval; Wisconsin; Infrastructure SIP Requirements for the 2012 PM<sub>2.5</sub> NAAQS; Interstate Transport

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is approving elements of the State Implementation Plan (SIP) submission from Wisconsin regarding the infrastructure requirements of section 110 of the Clean Air Act (CAA) for the 2012 annual fine particulate matter (PM<sub>2.5</sub>) National Ambient Air Quality Standard (NAAQS or standard). The infrastructure requirements are designed to ensure that the structural components of each state’s air quality management program are adequate to meet the state’s responsibilities under the CAA. This action pertains specifically to infrastructure

requirements in the Wisconsin SIP concerning interstate transport provisions.

**DATES:** This final rule is effective on November 4, 2019.

**ADDRESSES:** EPA has established a docket for this action under Docket ID No. EPA–R05–OAR–2018–0840. All documents in the docket are listed on the [www.regulations.gov](http://www.regulations.gov) website. Although listed in the index, some information is not publicly available, *i.e.*, Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available either through [www.regulations.gov](http://www.regulations.gov) or at the Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Samantha Panock, Environmental Scientist, Attainment Planning and Maintenance Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353–8973, [panock.samantha@epa.gov](mailto:panock.samantha@epa.gov).

#### SUPPLEMENTARY INFORMATION:

Throughout this document whenever “we,” “us,” or “our” is used, we mean EPA. This supplementary information section is arranged as follows:

I. What is being addressed by this document?

II. What comments did we receive on the proposed action?

III. What action is EPA taking?

IV. Statutory and Executive Order Reviews

#### I. What is being addressed by this document?

On November 26, 2018, the Wisconsin Department of Natural Resources (WDNR) submitted a request to EPA for approval of its infrastructure SIP for the 2012 annual PM<sub>2.5</sub> NAAQS. On April 30, 2019, EPA proposed to approve the submission dealing with the first two requirements (otherwise known as “prongs” one and two) of the provision for interstate pollution transport under CAA section 110(a)(2)(D)(i), also known as the “good neighbor” provision.<sup>1</sup>

The November 26, 2018 submittal included a demonstration that Wisconsin’s SIP contains sufficient major programs related to the interstate transport of pollution. Wisconsin’s submittal also included a technical analysis of its interstate transport of pollution relative to the 2012 PM<sub>2.5</sub> NAAQS which demonstrated that current controls are adequate for Wisconsin to show that it meets prongs one and two of the “good neighbor” provision. After review, EPA proposed to approve Wisconsin’s request relating

<sup>1</sup> There are four prongs to the Section 110(a)(2)(D)(i) “good neighbor” provision, which require that state plans: (1) Prohibit any source or other type of emissions activity in one state from contributing significantly to nonattainment of the NAAQS in another state; (2) prohibit any source or other type of emissions activity in one state from interfering with maintenance of the NAAQS in another state; (3) prohibit any source or other type of emissions activity in one state from interfering with measures required to prevent significant deterioration of air quality in another state; and (4) protect visibility in another state.