§ 230.163B Exemption from section 5(b)(1) and section 5(c) of the Act for certain communications to qualified institutional buyers or institutional accredited investors

(a)(1) Attempted compliance with this rule does not act as an exclusive election and the issuer also may claim the availability of any other applicable exemption or exclusion. Reliance on this rule does not affect the availability of any other exemption or exclusion from the requirements of section 5 of the Act (15 U.S.C. 77e).

(2) This rule is not available for any communication that, although in technical compliance with this rule, is part of a plan or scheme to evade the requirements of section 5 of the Act.

(b)(1) An issuer, or any person authorized to act on behalf of an issuer, may engage in oral or written communications with potential investors that are, or that it reasonably believes are, qualified institutional buyers, as defined in § 230.144A, or institutions that are accredited investors, as defined in §§ 230.501(a)(1), (a)(2), (a)(3), (a)(7), or (a)(8), or any successor thereto, to determine whether such investors might have an interest in a contemplated registered securities offering, either prior to or following the date of filing of a registration statement with respect to such securities with the Commission. Communications under this rule shall be exempt from section 5(b)(1) (15 U.S.C. 77e(b)(1)) and section 5(c) of the Act (15 U.S.C. 77e(c)).

(2) Any oral or written communication by an issuer, or any person authorized to act on behalf of an issuer, made in reliance on this rule will be deemed an ''offer'' as defined in section 2(a)(3) of the Act (15 U.S.C.77b(a)(3)).

(3) Any oral or written communication by an issuer, or any person authorized to act on behalf of an issuer, made in reliance on this rule is not required to be filed pursuant to § 230.424(a) or § 230.497(a) of Regulation C under the Act or section 24(b) of the Investment Company Act of 1940 (15 U.S.C. 80a–24(b)) and the rules and regulations thereunder.

■ 3. In § 230.405 amend the definition of ''Free writing prospectus'' by revising paragraphs (2) and (3) and adding paragraph (4) to read as follows:

§ 230.405 Definitions of terms.

* * * * *

Free writing prospectus.

* * * * *

(2) A written communication used in reliance on Rule 167 and Rule 426 (§ 230.167 and § 230.426);

(3) A written communication that constitutes an offer to sell or solicitation of an offer to buy such securities that falls within the exception from the definition of prospectus in clause (a) of section 2(a)(10) of the Act; or

(4) A written communication used in reliance on Rule 163B.

* * * * *

By the Commission.

Dated: February 19, 2019.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2019–03098 Filed 2–27–19; 8:45 am]

BILLING CODE 8011–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R08–OAR–2018–0593; FRL–9989–63–Region 8]

Approval and Promulgation of Air Quality Implementation Plans; Colorado; Revisions to Regulation Number 3

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing approval of State Implementation Plan (SIP) revisions submitted by the State of Colorado on February 25, 2015. We are also proposing approval of two SIP revisions submitted by the State of Colorado on May 24, 2017. These SIP revisions are necessary for Colorado to incorporate current federal prevention of significant deterioration (PSD) and nonattainment new source review (N–NSR) regulations. The intended effect of this action is to strengthen Colorado's SIP. The EPA is taking this action pursuant to section 110 of the Clean Air Act (CAA).

DATES: Written comments must be received on or before April 1, 2019.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R08–OAR–2018–0593, to the Federal Rulemaking Portal: *https://www.regulations.gov.* Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *www.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.*

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

FOR FURTHER INFORMATION CONTACT: Kevin Leone, Air Program, EPA, Region 8, Mailcode 8P–AR, 1595 Wynkoop Street, Denver, Colorado, 80202–1129, (303) 312–6227, *leone.kevin@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document wherever ''we,'' ''us,'' or ''our'' is used, we mean the EPA.

I. Background

On February 25, 2015, the State of Colorado submitted SIP revisions to Colorado Air Quality Control Commission Regulation Number 3. On October 12, 2017 (82 FR 47380), the EPA finalized approval of portions the February 25, 2015 submittal, specifically: (1) Colorado's revisions to fine particulate matter ($PM_{2.5}$) significant impact level (SIL) and significant monitoring concentration (SMC) provisions; (2) Revisions to Colorado's air pollution emission notices; and (3) Revisions to public notice requirements located in Regulation Number 3, Part B. Therefore, we do not need to take action on these portions of Colorado's February 25, 2015 submittal since they were acted on

previously. In addition, we are not acting on revisions to Regulation Number 3, Part C (concerning operating permits) because it is not part of the SIP. The remaining portions of the February 25, 2015 submittal include revisions to the state's PSD program, in particular the definitions of CO2e and regulated NSR pollutant, and the addition of plantwide applicability limit (PAL) provisions for GHGs. We describe these revisions and related EPA rulemakings in detail in the next section.

On March 24, 2017, the State of Colorado submitted two sets of SIP revisions to Colorado Air Quality Control Commission Regulation Number 3. The first submittal pertains to the June 23, 2014, U.S. Supreme Court decision in *Utility Air Regulatory Group (UARG)* v. *EPA.* The second addresses nonattainment NSR applicability in (among other things) ozone nonattainment areas that have been classified or reclassified as serious, severe, or extreme. We also describe these revisions and related EPA rulemakings in detail in the next section.

II. Analysis of Submittals

February 25, 2015 Submittal

Revisions to the Definition of CO2e

On November 29, 2013, the EPA published a final rulemaking titled: ''2013 Revisions to the Greenhouse Gas Reporting Rule (Rule) and Final Confidentiality Determinations for New or Substantially Revised Data Elements'' (78 FR 71904). In 87 FR 71904, the EPA amended the Rule's table of global warming potentials (GWPs) to revise the values of certain greenhouse gases, which are codified in 40 CFR part 98, subpart A, Table A–1, (Part 98). Part 98 was initially promulgated on October 31, 2009 (74 FR 56260) and requires reporting of GHG's from certain facilities and suppliers. In this action, Colorado is updating its definition of CO2e to incorporate the applicable GWPs in Part 98 in effect as of November 29, 2013. The State's amendment is consistent with the EPA's regulations and we propose to approve the updated definition.

Revisions to the Definition of Regulated NSR Pollutant

In this action, Colorado is updating its definition of ''Regulated NSR Pollutant'' in response to an October 25, 2012 rulemaking by the EPA titled: ''Implementation of New Source Review (NSR) Program for Particulate Matter less than 2.5 micrometers ($PM_{2.5}$): Amendment to the definition of 'Regulated NSR Pollutant' Concerning Condensable Particulate Matter (77 FR 65107).'' In that rulemaking, the EPA removed a general requirement in the definition of ''Regulated NSR Pollutant'' to include condensable particulate matter (PM) when measuring one of the emission-related indicators for PM known as ''particulate matter emissions'' in the context of PSD and NSR regulations. The rulemaking did not change the requirement for measurement of condensable PM for two other emissions-related indicators for emissions of PM particles with an aerodynamic diameter of less than or equal to 10 micrometers (PM_{10} emissions) and $PM_{2.5}$ emissions. The update to Colorado's definition of ''Regulated NSR Pollutant'' is consistent with the EPA's October 25, 2012 rulemaking and we therefore propose to approve it.

Colorado is also revising its definition of ''Regulated NSR Pollutant'' with regards to GHGs. The EPA defines ''Regulated NSR Pollutant'' to include any pollutant subject to any standard promulgated under the Clean Air Act Section 111. Colorado's revised definition of ''Regulated NSR Pollutant'' excludes, for the purposes of the definition, GHG from being considered as subject to any standard promulgated under the Clean Air Act Section 111. The State notes that GHGs continue to be a regulated NSR pollutant under the next portion of the definition, as a ''pollutant subject to regulation.'' Colorado's revision stems from their concern that the EPA did not revise the definition of ''Regulated NSR pollutant'' when promulgating CAA section 111(b) standards (known as New Source Performance Standards) for GHG emissions from new, modified, and reconstructed electric utility generating units. See 80 FR 64510 (Oct. 23, 2015). We note that the October 23, 2015 action addressed this by promulgating 40 CFR 60.5515, which clarifies the meaning within the PSD definition ''regulated NSR pollutant'' of the phrase ''subject to any standard promulgated under section 111 of the Act'' for GHGs. Colorado's revision achieves the same result with respect to the NSPS for electric utility generating units. We therefore propose to approve it.

GHG PALs

On July 12, 2012, the EPA published a final rulemaking titled ''Prevention of Significant Deterioration and Title V Greenhouse Gas Tailoring Rule Step 3 and GHG Plantwide Applicability Limits'' (77 FR 41051.) This rulemaking represented Step 3 of the EPA's phased-in approach to permitting sources of GHG emissions as stated in the GHG Tailoring Rule. The rulemaking promulgated revisions to the federal PSD program in 40 CFR 52.21 for better implementation of the GHG Tailoring Rule by providing for PALs for GHG emissions. A PAL establishes a site-specific plantwide emission level for a pollutant that allows the source to make changes at the facility without triggering the requirements of the PSD program, provided that emissions do not exceed the PAL level. 77 FR 41051, 41052. This streamlining approach provides for the use of GHG PALs on either a mass (tons per year) or CO2e basis, which includes the option to use the CO2e based increases provided in the subject to regulation applicability thresholds in setting the PAL, and to allow the PALs to be used as an alternative approach for determining whether a project is a major modification and whether GHG emissions are subject to regulation.

The EPA did not adopt the changes into the regulations for state PSD programs, 40 CFR 51.166, because the changes were not minimum requirements that must be adopted by states in their SIP-approved PSD programs. However, we noted that nothing in the rulemaking was intended to prevent states from adopting the PAL changes in 40 CFR 52.21. into their approved PSD programs. 77 FR 41070.

On April 24, 2014, the EPA approved PSD revisions submitted by the State of Colorado that establish: (1) GHG emissions are a regulated pollutant under Colorado's NSR PSD program, and (2) emission thresholds for determining which new stationary sources and modification projects become subject to Colorado's NSR PSD permitting requirements for their GHG emissions consistent with the Tailoring Rule. (79 FR 22772.) Colorado's February 25, 2015 submittal requests to revise its PSD permitting regulations to correspond to PAL revisions in the EPA's July 12, 2012 rulemaking. Colorado is revising its Part A (General Provisions Applicable to Reporting and Permitting) and Part D (Major Stationary Source New Source Review and Prevention of Significant Deterioration) regulations to incorporate GHG PALs on either a mass basis or a CO2e basis for existing major PSD sources, or any existing GHG-only source. These revisions would allow, among other things, that GHGs shall not be subject to regulation if a stationary source maintains its total source-wide emissions below the GHG PAL level, meets the requirements in Part D, and complies with the PAL permit containing the GHG PAL.

Colorado's incorporation of GHG PALs still applies to determining

whether sources are subject to regulatory emission thresholds in setting the PAL, and in allowing the PALs to be used as an alternative approach for determining whether a project is a major modification and whether GHG emissions are subject to regulation for ''anyway'' sources.

Based on our review, we propose to find that Colorado's revisions are consistent with the EPA's PAL regulations. The docket for this action contains a crosswalk between the revisions in Colorado's May 24, 2017 submittal and the PAL provisions in 40 CFR 52.21 as revised in the EPA's July 12, 2012 rulemaking. The crosswalk shows that Colorado has essentially adopted the GHG PAL revisions unchanged, as suggested by the preamble to the July 12, 2012 rulemaking.

May 24, 2017 Submittal

Revisions to Regulation Number 3, Part A

On June 3, 2010, the EPA published a final rule, known as the GHG Tailoring Rule, which phased in permitting requirements for GHG emissions from stationary sources under the CAA PSD permitting program in three steps (75 FR 31514.) Under its interpretation of the CAA at the time, the EPA determined it was necessary to avoid an unmanageable increase in the number of sources that would be required to obtain PSD permits under the CAA because the sources emitted or had the potential to emit GHGs above the applicable major source and major modification thresholds. In Step 1 of the GHG Tailoring Rule, the EPA limited application of PSD requirements to sources only if they were subject to PSD ''anyway'' due to the emissions of other non-GHG pollutants. These sources were referred to as ''anyway'' sources. In Step 2 of the GHG Tailoring Rule, the EPA applied the PSD permitting requirements under the CAA to sources that were classified as major based solely on their GHG emissions or potential to emit GHGs, and to modifications of otherwise major sources that require a PSD permit because they increased only GHG emissions above the level in the EPA regulations.

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 (DC 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. 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.'' 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) and 52.21(b)(49)(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.''

In accordance with the D.C. Circuit's amended judgment, on August 19, 2015, the EPA published a final rulemaking titled: ''Prevention of Significant Deterioration and Title V Permitting for Greenhouse Gases: Removal of Vacated Elements.'' In this rulemaking, the EPA removed GHG Tailoring Rule Step 2 PSD permitting requirements in 40 CFR 51.166(b)(48)(v) and 40 CFR 52.21(b)(49)(v) from the CFR.

In response to the court's decision and the subsequent EPA rulemaking, the May 24, 2017 submittal revises the definition of ''subject to regulation'' by removing Regulation 3, Part A, Section I.B.44.e. from the regulation. The removal is consistent with the EPA's revised definition of ''subject to regulation''; we therefore propose to approve it.

Revisions to Regulation Number 3, Part D

Colorado is revising their definition of ''major stationary source'' contained in Regulation Number 3, Part D, Section II, the nonattainment NSR program, to include the ozone nonattainment area major source thresholds. This revision is consistent with the federal definition for ''major stationary source'' located in 40 CFR 51.165(a)(1)(iv)(A)(1). Colorado's current definition of ''major stationary source'' does not contain thresholds for determining what is a major source based on ozone nonattainment area classification. Thus, if an ozone nonattainment area were ever classified, or reclassified as serious, severe, or extreme, Colorado would need to adopt the same lower major source thresholds that would apply on a federal basis before permitting new or modified sources. Therefore, should a Colorado moderate ozone nonattainment area ever be reclassified to a more stringent classification, this revision to the definition of ''major stationary source'' ensures consistency with the federal definition and provides regulatory certainty if Colorado's ozone nonattainment area should ever be reclassified. We propose to approve these changes as they are consistent with the EPA's regulation.

Colorado is also revising their definition of ''major emissions unit'' in the PAL provisions for the PSD program. The federal definition for ''major emissions unit'' located in 40 CFR 51.166(w)(2)(iv)(b) contains both a meaning of the phrase and an example of when an emissions unit would be a major emissions unit for volatile organic compounds (VOC) if the emissions unit were located in a serious ozone nonattainment area. The revision removes the example from Colorado's provision. We propose to approve this change to the SIP because the state has updated the definition of ''major stationary source'' in the nonattainment NSR program to reflect the thresholds for serious, severe, and extreme ozone nonattainment areas, and the first part of Colorado's definition for ''major emissions unit'' refers to this updated definition.

Colorado is also revising their definition of ''significant'' in the nonattainment NSR program. Currently, Colorado's definition of ''significant'' does not contain emissions rates pertaining to serious, severe, or extreme ozone nonattainment areas. Colorado's revision to their definition of ''significant'' is consistent with the serious, severe, or extreme ozone thresholds located in 40 CFR 51.165(a)(1)(x). The EPA proposes to approve this change.

III. What are the changes that EPA is proposing to approve?

Except for the revisions the EPA acted on previously in 82 FR 47380, we are

proposing to approve all of the changes as submitted by the State of Colorado on February 25, 2015, and May 24, 2017, as outlined in Tables 1 and 2 below.

TABLE 1—LIST OF FEBRUARY 2015 COLORADO REVISIONS THAT EPA IS PROPOSING TO APPROVE

Revised sections in February 25, 2015 submission proposed for approval
Regulation Number 3, Part A:
I.B.10, I.B.23., I.B.25.c., I.B.28, I.B.28.e., I.B.43., I.B.44.b., I.B.44.c., I.B.44.e., V.C.6–8., V.C.12., V.I.1.
Regulation Number 3, Part B:
N/A.
Regulation Number 3, Part C:
N/A.
Regulation Number 3, Part D:
I.A.2., I.A.3., I.B.1., I.B.2., I.B.3., I.C., II.A.1.d., II.A.2, II.A.4., II.A.4.e.–f., II.A.5.c.,II.A.13.a., II.A.13.a.(i)–(ii), II.A.13.b., II.A.13.b.(i)–(ii), II.A.16.–22., II.A.22.a–c.,II.A.23–31., II.A.32–35, II.A.36–39, .., , II.A.40.a.–c., II.A.40.d, II.A.40.e.–g., II.A.41–45.,., II.A.46, II.A.46.a–b, II.A.47, II.A.47.a–b, II.A.48, V.A.3.c, V.A.7.c., V.A.7.c.(i)(C)., V.A.7.c.(v)., VI.A.6.,VI.B.5., VI.B.5.a.(iii).,VI.B.5.e.; XV.A.1.; XV.A.2.; XV.A.2.c–d; XV.A.3; XV.B; XV.B.1; XV.B.4.; XV.C.1.; XV.C.1.a.; XV.C.1.d.; XV.C.1.g; XV.D.; XV.E.1.; XV.E.4; XV.E.6.; XV.E.6.a.; XV.E.6.b; XV.E.6.c.; XV.F.; XV.F.1.; XV.F.3.; XV.F.5.; XV.F.6.; XV.F.7.; XV.F.11; XV.G.2.b.; XV.H.1.a.; XV.H.4.; XV.H.5.; XV.I.1.; XV.I.2.; XV.I.4.c.(i)–(ii); XV.J.1.; XV.J.1.a.; XV.J.1.b.; XV.K.1.a: XV.N.1.b; XV.N.1.d.; and XV.N.2.

TABLE 2—LIST OF MAY 2017 COLORADO REVISIONS THAT EPA IS PROPOSING TO APPROVE

Revised sections in May 24, 2017 submissions proposed for approval
Regulation Number 3, Part A:
I.B.44.e.
Regulation Number 3, Part B:
N/A.
Regulation Number 3, Part C:
N/A.
Regulation Number 3, Part D:
II.A.22.b II.A.25.b; II.A.44.a.

IV. Incorporation by Reference

In this document, 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 amendments described in section III. The EPA has made, and will continue to make, these materials generally available through *www.regulations.gov* and 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 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 action merely proposes to approve 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, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide 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).

In addition, 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 proposed 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, Greenhouse gases, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

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

Dated: February 22, 2019.

Douglas Benevento,

Regional Administrator, EPA Region 8.

[FR Doc. 2019–03545 Filed 2–27–19; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2018–0806; FRL–9990–17–Region 9]

Air Plan Approval; Hawaii; Infrastructure SIP

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve a state implementation plan (SIP) submission from the State of Hawaii regarding certain Clean Air Act (CAA or ''Act'') requirements related to the interstate transport for the 2008 ozone national ambient air quality standards (NAAQS). The interstate transport requirements consist of several elements; this proposal pertains only to 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 and interference with maintenance of the 2008 ozone NAAQS in other states. We are taking comments on this proposal and plan to follow with a final action.

DATES: Any comments must arrive by April 1, 2019.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R09–OAR–2018–0806 at *https://www.regulations.gov.* For comments submitted at *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, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Tom Kelly, EPA Region IX, (415) 972–3856, *kelly.thomasp@epa.gov*.

SUPPLEMENTARY INFORMATION: Throughout this document, ''we,'' ''us'' and ''our'' refer to the EPA.

Table of Contents

I. Background

Section 110(a)(1) of the CAA requires states to submit SIPs meeting the applicable requirements of section 110(a)(2) within three years after promulgation of a new or revised NAAQS or within such shorter period as the EPA may prescribe. Section 110(a)(2) requires states to address structural SIP elements such as requirements for monitoring, basic program requirements, and legal authority that are designed to provide for implementation, maintenance, and enforcement of the NAAQS. The EPA refers to the SIP submissions required by these provisions as ''infrastructure SIP'' submissions. Section 110(a) imposes the obligation upon states to make a SIP submission to the EPA for a new or revised NAAQS, but the contents of individual state submissions may vary depending upon the facts and circumstances. This proposed rule pertains to the infrastructure SIP requirements for interstate transport of air pollution.

A. Interstate Transport

Section 110(a)(2)(D)(i) of the CAA 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, or interfere with measures required to prevent significant deterioration of air quality or to protect visibility in any other state. This proposed rule addresses the two requirements under section 110(a)(2)(D)(i)(I), which we refer to as prong 1 (significant contribution to nonattainment of the NAAQS in any other state) and prong 2 (interference with maintenance of the NAAQS in any other state).[1] The EPA refers to SIP revisions addressing the requirements of section 110(a)(2)(D)(i)(I) as ''good neighbor SIPs'' or ''interstate transport SIPs.''

On March 12, 2008, the EPA revised the levels of the primary and secondary 8-hour ozone NAAQS, setting them at 0.075 parts per million. In 2015, the EPA issued an informational memo regarding interstate transport SIP requirements for the 2008 ozone NAAQS (''Ozone Transport Memo'').[2] The Ozone Transport Memo, following the approach used in the original Cross State Air Pollution Rule (CSAPR),[3] provided data identifying ozone monitoring sites in the continental United States (U.S.) that were projected to be in nonattainment or have maintenance problems for the 2008 ozone NAAQS in 2018. In 2016, the EPA updated our ozone transport modeling through the Cross-State Air Pollution Rule Update (''CSAPR Update'').[4] As part of this action, we changed the modeled year to 2017, aligning it with the relevant attainment dates for the 2008 ozone NAAQS as required by the D.C. Circuit's decision in *North Carolina* v. *EPA*.[5] This CSAPR modeling did not include the island state of Hawaii and thus a different approach is used in this proposal.

B. State Submittal

The Hawaii Department of Health (HDOH) submitted its proposed good

[1] This proposed action does not address the two elements of the interstate transport SIP provision in CAA section 110(a)(2)(D)(i)(II) regarding interference with measures required to prevent significant deterioration of air quality or to protect visibility in another state or elements associated with section 110(a)(2)(D)(ii) regarding interstate pollution abatement and international air pollution.

[2] Memorandum dated January 22, 2015, from Stephen D. Page, Director, Office of Air Quality Planning and Standards, EPA, to Regional Air Division Directors, Regions 1–10, ''Information on Interstate Transport 'Good Neighbor' Provision for the 2008 Ozone National Ambient Air Quality Standards (NAAQS) under Clean Air Act (CAA) Section 110(a)(2)(D)(i)(I).''

[3] 76 FR 48208 (August 8, 2011).

[4] 81 FR 74504 (October 26, 2016). The modeling results are found in the ''Ozone Transport Policy Analysis Final Rule TSD,'' EPA, August 2016, and an update to the affiliated final CSAPR Update ozone design value and contributions spreadsheet, entitled Copy of final_csapr_update_ozone_design_values_contributions.xlsx.

[5] 531 F.3d 896, 911–12 (D.C. Cir. 2008) (holding that EPA must coordinate interstate transport compliance deadlines with downwind attainment deadlines).