

promote healthy lifestyles and/or require individuals to meet particular health goals, the employer must make reasonable accommodations to the extent required by the ADA; that is, the employer must make “modifications or adjustments that enable a covered entity’s employee with a disability to enjoy equal benefits and privileges of employment as are enjoyed by its other similarly situated employees without disabilities” unless “such covered entity can demonstrate that the accommodation would impose an undue hardship on the operation of its business.” 29 CFR 1630.2(o)(1)(iii); 29 CFR 1630.9(a). In addition, if the employer’s wellness program provides (directly, through reimbursement, or otherwise) medical care (including genetic counseling), the program may constitute a group health plan and must comply with the special requirements for wellness programs that condition rewards on an individual satisfying a standard related to a health factor, including the requirement to provide an individual with a “reasonable alternative (or waiver of the otherwise applicable standard)” under HIPAA, when “it is unreasonably difficult due to a medical condition to satisfy” or “medically inadvisable to attempt to satisfy” the otherwise applicable standard. See section 9802 of the Internal Revenue Code (26 U.S.C. 9802, 26 CFR 54.9802–1 and 54.9802–3T), section 702 of the Employee Retirement Income Security Act of 1974 (ERISA) (29 U.S.C. 1182, 29 CFR 2590.702 and 2590.702–1), and section 2705 of the PHSA (45 CFR 146.121 and 146.122), as amended by section 1201 of the Affordable Care Act.

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(c) * * *

(2) A covered entity does not violate this section when, consistent with paragraph (b)(2) of this section, it requests, requires, or purchases genetic information or information about the manifestation of a disease, disorder, or pathological condition of an individual’s family member who is receiving health or genetic services on a voluntary basis. For example, an employer does not unlawfully acquire genetic information about an employee when it asks the employee’s family member who is receiving health services from the employer if her diabetes is under control. Nor does an employer unlawfully acquire genetic information about an employee when it seeks information—through a medical questionnaire, a medical examination, or both—about the current or past health status of the employee’s family

member who is covered by the employer’s group health plan and is completing a health risk assessment on a voluntary basis in connection with the family member’s receipt of health or genetic services (including health or genetic services provided as part of a wellness program) offered by the employer in compliance with paragraph (b)(2) of this section.

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■ 3. In § 1635.11, revise paragraphs (b)(1)(iii) and (iv) to read as follows:

§ 1635.11 Construction.

* * * * *

(b) * * *

(1) * * *

(iii) Section 702(a)(1)(F) of ERISA (29 U.S.C. 1182(a)(1)(F)), section 2705(a)(6) of the Public Health Service Act (PHSA), as amended by section 1201 of the Affordable Care Act and section 9802(a)(1)(F) of the Internal Revenue Code (26 U.S.C. 9802(a)(1)(F)), which prohibit a group health plan or a health insurance issuer in the group or individual market from discriminating against individuals in eligibility and continued eligibility for benefits based on genetic information; or

(iv) Section 702(b)(1) of ERISA (29 U.S.C. 1182(b)(1)), section 2705(b)(1) of the PHSA, as amended by section 1201 of the Affordable Care Act and section 9802(b)(1) of the Internal Revenue Code (26 U.S.C. 9802(b)(1)), as such sections apply with respect to genetic information as a health status-related factor, which prohibit a group health plan or a health insurance issuer in the group or individual market from discriminating against individuals in premium or contribution rates under the plan or coverage based on genetic information.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R10–OAR–2015–0258; FRL–9936–31–Region 10]

Approval and Promulgation of Implementation Plans; Idaho: Interstate Transport of Ozone

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Clean Air Act (CAA) requires each State Implementation Plan (SIP) to contain adequate provisions

prohibiting emissions that will have certain adverse air quality effects in other states. On June 28, 2010, the State of Idaho made a submittal to the Environmental Protection Agency (EPA) to address these requirements. The EPA is proposing to approve the submittal as meeting the requirement that each SIP contain adequate provisions to prohibit emissions that will contribute significantly to nonattainment or interfere with maintenance of the 2008 ozone National Ambient Air Quality Standard (NAAQS) in any other state.

DATES: Written comments must be received on or before November 30, 2015.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R10–OAR–2015–0258, by any of the following methods:

- <http://www.regulations.gov>: Follow the on-line instructions for submitting comments.
- **Email:** R10-Public_Comments@epa.gov
- **Mail:** Kristin Hall, EPA Region 10, Office of Air, Waste and Toxics (AWT–150), 1200 Sixth Avenue, Suite 900, Seattle, WA 98101
- **Hand Delivery/Courier:** EPA Region 10 9th Floor Mailroom, 1200 Sixth Avenue, Suite 900, Seattle, WA 98101. Attention: Kristin Hall, Office of Air, Waste and Toxics, AWT–150. Such deliveries are only accepted during normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–R10–OAR–2015–0258. The EPA’s policy is that all comments received will be included in the public docket without change and may be made available online at <http://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through <http://www.regulations.gov> or email. The <http://www.regulations.gov> Web site is an “anonymous access” system, which means the EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to the EPA without going through <http://www.regulations.gov> your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit

an electronic comment, the EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If the EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, the EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the <http://www.regulations.gov> index. Although listed in the index, some information is not publicly available, e.g., CBI or other information the disclosure of which 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. Publicly available docket materials are available either electronically in <http://www.regulations.gov> or in hard copy during normal business hours at the Office of Air, Waste and Toxics, EPA Region 10, 1200 Sixth Avenue, Seattle, WA 98101.

FOR FURTHER INFORMATION CONTACT: Kristin Hall at (206) 553-6357, hall.kristin@epa.gov, or the above EPA, Region 10 address.

SUPPLEMENTARY INFORMATION: Throughout this document wherever “we,” “us,” or “our” is used, it is intended to refer to the EPA. Information is organized as follows:

Table of Contents

- I. Background
- II. State Submittal
- III. EPA Evaluation
- IV. Proposed Action
- V. Statutory and Executive Order Reviews

I. Background

On March 12, 2008, the EPA revised 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). The CAA requires states to submit, within three years after promulgation of a new or revised standard, SIPs meeting the applicable “infrastructure” elements of sections 110(a)(1) and (2). One of these applicable infrastructure elements, CAA section 110(a)(2)(D)(i), requires SIPs to contain “good neighbor” provisions to prohibit certain adverse air quality effects on neighboring states due to interstate transport of pollution. There are four sub-elements within CAA section 110(a)(2)(D)(i). This action addresses the first two sub-elements of the good neighbor provisions, at CAA section 110(a)(2)(D)(i)(I). These sub-

elements require that each SIP for a new or revised standard contain adequate provisions to prohibit any source or other type of emissions activity within the state from emitting air pollutants that will “contribute significantly to nonattainment” or “interfere with maintenance” of the applicable air quality standard in any other state. We note that the EPA has addressed the interstate transport requirements of CAA section 110(a)(2)(D)(i)(I) for the eastern portion of the United States in several past regulatory actions.¹ We most recently promulgated the Cross-State Air Pollution Rule (CSAPR), which addressed CAA section 110(a)(2)(D)(i)(I) in the eastern portion of the United States.² CSAPR addressed multiple national ambient air quality standards, but did not address the 2008 8-hour ozone standard.³

In CSAPR, the EPA used detailed air quality analyses to determine whether an eastern state’s contribution to downwind air quality problems was at or above specific thresholds. If a state’s contribution did not exceed the specified air quality screening threshold, the state was not considered “linked” to identified downwind nonattainment and maintenance receptors and was therefore not considered to significantly contribute to or interfere with maintenance of the standard in those downwind areas. If a state exceeded that threshold, the state’s emissions were further evaluated, taking into account both air quality and cost considerations, to determine what, if any, emissions reductions might be necessary. For the reasons stated below, we believe it is appropriate to use the same approach we used in CSAPR to establish an air quality screening threshold for the evaluation of interstate transport requirements for the 2008 ozone standard.

In CSAPR, the EPA proposed an air quality screening threshold of one percent of the applicable NAAQS and requested comment on whether one percent was appropriate.⁴ The EPA evaluated the comments received and ultimately determined that one percent was an appropriately low threshold because there were important, even if relatively small, contributions to identified nonattainment and maintenance receptors from multiple

upwind states. In response to commenters who advocated a higher or lower threshold than one percent, the EPA compiled the contribution modeling results for CSAPR to analyze the impact of different possible thresholds for the eastern United States. The EPA’s analysis showed that the one-percent threshold captures a high percentage of the total pollution transport affecting downwind states, while the use of higher thresholds would exclude increasingly larger percentages of total transport. For example, at a five percent threshold, the majority of interstate pollution transport affecting downwind receptors would be excluded.⁵ In addition, the EPA determined that it was important to use a relatively lower one-percent threshold because there are adverse health impacts associated with ambient ozone even at low levels.⁶ The EPA also determined that a lower threshold such as 0.5 percent would result in modest increases in the overall percentages of fine particulate matter and ozone pollution transport captured relative to the amounts captured at the one-percent level. The EPA determined that a “0.5 percent threshold could lead to emission reduction responsibilities in additional states that individually have a very small impact on those receptors—an indicator that emission controls in those states are likely to have a smaller air quality impact at the downwind receptor. We are not convinced that selecting a threshold below one percent is necessary or desirable.”⁷

In the final CSAPR, the EPA determined that one percent was a reasonable choice considering the combined downwind impact of multiple upwind states in the eastern United States, the health effects of low levels of fine particulate matter and ozone pollution, and the EPA’s previous use of a one-percent threshold in CAIR. The EPA used a single “bright line” air quality threshold equal to one percent of the 1997 8-hour ozone standard, or 0.08 ppm.⁸ The projected contribution from each state was averaged over multiple days with projected high modeled ozone, and then compared to the one-percent threshold. We concluded that this approach for setting and applying the air quality threshold for ozone was appropriate because it provided a robust metric, was consistent with the approach for fine particulate matter

¹ NO_x SIP Call, 63 FR 57371 (October 27, 1998); Clean Air Interstate Rule (CAIR), 70 FR 25172 (May 12, 2005); Cross-State Air Pollution Rule (CSAPR), 76 FR 48208 (August 8, 2011).

² 76 FR 48208.

³ CSAPR addressed the 1997 8-hour ozone, and the 1997 and 2006 fine particulate matter NAAQS.

⁴ CSAPR proposal, 75 FR 45210, 45237 (August 2, 2010).

⁵ See also Air Quality Modeling Final Rule Technical Support Document, Appendix F; Analysis of Contribution Thresholds.

⁶ CSAPR, 76 FR 48208, 48236–37 (August 8, 2011).

⁷ Id.

⁸ Id.

used in CSAPR, and because it took into account, and would be applicable to, any future ozone standards below 0.08 ppm.⁹

II. State Submittal

CAA sections 110(a)(1) and (2) and section 110(l) require that revisions to a SIP be adopted by the State after reasonable notice and public hearing. The EPA has promulgated specific procedural requirements for SIP revisions in 40 CFR part 51, subpart F. These requirements include publication of notices by prominent advertisement in the relevant geographic area, a public comment period of at least 30 days, and an opportunity for a public hearing.

On June 28, 2010, Idaho submitted a SIP to address the interstate transport requirements of CAA section 110(a)(2)(D)(i)(I) for the ozone NAAQS. The Idaho submittal included documentation of a public comment period from May 11, 2010 through June 10, 2010, and opportunity for public hearing. We find that the process followed by Idaho in adopting the submittal complies with the procedural requirements for SIP revisions under CAA section 110 and the EPA's implementing regulations.

With respect to the requirements in CAA section 110(a)(2)(D)(i)(I), the Idaho submittal referred to applicable rules in the Idaho SIP, meteorological and technical characteristics of areas with ozone nonattainment problems in surrounding states, data on nitrogen oxides (NO_x) and volatile organic compound (VOC) emissions from Idaho sources, satellite monitoring data, and the impacts of terrain and prevailing wind direction on the potential for transport of ozone precursors. The Idaho submittal concluded that given the relatively low amount of NO_x emitted by Idaho sources, the general lack of substantial concentrations of VOCs in areas surrounding Idaho, the impacts of significant terrain features on the movement of pollutants, and technical information on the two areas in states bordering Idaho that are having ozone attainment and maintenance problems (Upper Green River Basin, Wyoming and Clark County, Nevada), it is reasonable to conclude that emissions of ozone precursors from Idaho sources will not significantly contribute to nonattainment or interfere with maintenance of the 2008 ozone NAAQS in any other state.

The Idaho submittal provided further information to support this conclusion by citing major source permitting regulations approved into the Idaho SIP

that require new sources and modifications to protect the ambient air quality standards, including the 2008 ozone NAAQS. With respect to existing sources, the Idaho submittal stated that stationary source operating rules in the Idaho SIP require an owner or operator to demonstrate that the source does not cause or contribute to a violation of any ambient air quality standard.

III. EPA Evaluation

On August 4, 2015, the EPA issued a Notice of Data Availability (NODA) containing air quality modeling data that applies the CSAPR approach to contribution projections for the year 2017 for the 2008 8-hour ozone NAAQS.¹⁰ The moderate area attainment date for the 2008 ozone standard is July 11, 2018. In order to demonstrate attainment by this attainment deadline, states will use 2015 through 2017 ambient ozone data. Therefore, 2017 is an appropriate future year to model for the purpose of examining interstate transport for the 2008 ozone NAAQS. The EPA used photochemical air quality modeling to project ozone concentrations at air quality monitoring sites to 2017 and estimated state-by-state ozone contributions to those 2017 concentrations. This modeling used the Comprehensive Air Quality Model with Extensions (CAMx version 6.11) to model the 2011 base year, and the 2017 future base case emissions scenarios to identify projected nonattainment and maintenance sites with respect to the 2008 ozone NAAQS in 2017. The EPA used nationwide state-level ozone source apportionment modeling (CAMx Ozone Source Apportionment Technology/Anthropogenic Precursor Culpability Analysis technique) to quantify the contribution of 2017 base case NO_x and volatile VOC emissions from all sources in each state to the 2017 projected receptors. The air quality model runs were performed for a modeling domain that covers the 48 contiguous United States and adjacent portions of Canada and Mexico. The NODA and the supporting technical documents have been included in the docket for this action.

The modeling data released in the NODA on July 23, 2015, is the most up-to-date information the EPA has developed to inform our analysis of upwind state linkages to downwind air quality problems. For purposes of evaluating Idaho's interstate transport

SIP submittal with respect to the 2008 8-hour ozone standard, the EPA is proposing that states whose contributions are less than one percent to downwind nonattainment and maintenance receptors are considered non-significant. The modeling indicates that Idaho's largest contribution to any projected downwind nonattainment site is 0.23 ppb and Idaho's largest contribution to any projected downwind maintenance-only site is 0.35 ppb.¹¹ These values are below the one percent screening threshold of 0.75 ppb, and therefore there are no identified linkages between Idaho and 2017 downwind projected nonattainment and maintenance sites. Note that the EPA has not done an assessment to determine the applicability for the use of the one percent screening threshold for western states that contribute above the one percent threshold. There may be additional considerations that may impact regulatory decisions regarding "potential" linkages in the west identified by the modeling.

IV. Proposed Action

As discussed in Section II, Idaho concluded based on its own technical analysis that emissions from the State do not significantly contribute to nonattainment or interfere with maintenance of the 2008 ozone standard in any other state. The EPA's modeling, discussed in Section III, confirms this finding. Based on the modeling data and the information and analysis provided in Idaho's June 28, 2010 submittal, we are proposing to approve the submittal for purposes of meeting the CAA section 110(a)(2)(D)(i)(I) requirements for the 2008 ozone standard. The EPA's modeling confirms the results of the State's analysis: Idaho does not significantly contribute to nonattainment or interfere with maintenance of the 2008 ozone standard in any other state.

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 CAA 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:

¹⁰ See 80 FR 46271 (August 4, 2015) (Notice of Availability of the Environmental Protection Agency's Updated Ozone Transport Modeling Data for the 2008 Ozone National Ambient Air Quality Standard (NAAQS)).

¹¹ 80 FR 46271 at page 46276, Table 3.

⁹ Id.

- Is not a “significant regulatory action” subject to review by the Office of Management and Budget under Executive Order 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 it does not involve technical standards; 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 rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements.

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

Dated: October 15, 2015.

Dennis J. McLerran,

Regional Administrator, Region 10.

[FR Doc. 2015–27594 Filed 10–29–15; 8:45 am]

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