6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R08-OAR-2013-0561, FRL-9945-57-Region 8]

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

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve elements of State Implementation Plan (SIP) revisions from the State of Utah to demonstrate the State meets infrastructure requirements of the Clean Air Act (Act or CAA) for the National Ambient Air Quality Standards (NAAQS) promulgated for ozone on March 12, 2008, lead (Pb) on October 15, 2008, nitrogen dioxide (NO_2) on January 22, 2010, sulfur dioxide (SO_2) on June 2, 2010 and fine particulate matter ($PM_{2.5}$) on December 14, 2012. The EPA is also proposing to approve SIP revisions the State submitted regarding state boards. Section 110(a) of the CAA requires that each state submit a SIP for the implementation, maintenance, and enforcement of each NAAQS promulgated by the EPA.

DATES: Written comments must be received on or before **[Insert date 30 days after publication in the FEDERAL REGISTER]**.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R08-OAR-2013-0561 at http://www.regulations.gov. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from Regulations.gov. The EPA may publish

any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (i.e., on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit http://www2.epa.gov/dockets/commenting-epa-dockets.

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

SUPPLEMENTARY INFORMATION:

I. General Information

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

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

so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

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

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

II. Background

On March 12, 2008, the EPA promulgated a new NAAQS for ozone, revising the levels of the primary and secondary 8-hour ozone standards from 0.08 parts per million (ppm) to 0.075 ppm (73 FR 16436, March 27, 2008). Subsequently, on October 15, 2008, the EPA revised the level of the primary and secondary Pb NAAQS from 1.5 micrograms per cubic meter ($\mu g/m^3$) to 0.15 $\mu g/m^3$ (73 FR 66964, Nov. 12, 2008). On January 22, 2010, the EPA promulgated a new 1-hour primary NAAQS for NO_2 at a level of 100 parts per billion (ppb) while retaining the annual

standard of 53 ppb. The 2010 NO_2 NAAQS is expressed as the three-year average of the 98th percentile of the annual distribution of daily maximum one-hour average concentrations. The secondary NO_2 NAAQS remains unchanged at 53 ppb (75 FR 6474, Feb. 9, 2010). On June 2, 2010, the EPA promulgated a revised primary SO_2 standard at 75 ppb, based on a three-year average of the annual 99th percentile of one-hour daily maximum concentrations (75 FR 35520, June 22, 2010). Finally, on December 14, 2012, the EPA promulgated a revised annual $PM_{2.5}$ standard by lowering the level to 12.0 μg/m^3 and retaining the 24-hour $PM_{2.5}$ standard at a level of 35 μg/m^3 (78 FR 3086, Jan. 15, 2013).

Under sections 110(a)(1) and (2) of the CAA, states are required to submit infrastructure SIPs to ensure their SIPs provide for implementation, maintenance and enforcement of the NAAQS. These submissions must contain any revisions needed for meeting the applicable SIP requirements of section 110(a)(2), or certifications that their existing SIPs for $PM_{2.5}$, ozone, Pb, NO_2, and SO_2 already meet those requirements. The EPA highlighted this statutory requirement in an October 2, 2007, guidance document entitled "Guidance on SIP Elements Required Under Sections 110(a)(1) and (2) for the 1997 8-hour Ozone and $PM_{2.5}$ National Ambient Air Quality Standards" (2007 Memo). On September 25, 2009, the EPA issued an additional guidance document pertaining to the 2006 $PM_{2.5}$ NAAQS entitled "Guidance on SIP Elements Required Under Sections 110(a)(1) and (2) for the 2006 24-Hour Fine Particle ($PM_{2.5}$) National Ambient Air Quality Standards (NAAQS)" (2009 Memo), followed by the October 14, 2011, "Guidance on Infrastructure SIP Elements Required Under Sections 110(a)(1) and (2) for the 2008 Lead (Pb) National Ambient Air Quality Standards (NAAQS)" (2011 Memo). Most recently, the EPA issued "Guidance on Infrastructure State Implementation Plan (SIP) Elements under Clean Air

Act Sections 110(a)(1) and (2)" on September 13, 2013 (2013 Memo).

III. What is the Scope of this Rulemaking?

The EPA is acting upon the SIP submissions from Utah that address the infrastructure requirements of CAA sections 110(a)(1) and 110(a)(2) for the 2008 ozone, 2008 Pb, 2010 NO_2, 2010 SO_2, and 2012 $PM_{2.5}$ NAAQS. The requirement for states to make a SIP submission of this type arises out of CAA section 110(a)(1). Pursuant to section 110(a)(1), states must make SIP submissions "within three years (or such shorter period as the Administrator may prescribe) after the promulgation of a national primary ambient air quality standard (or any revision thereof)," and these SIP submissions are to provide for the "implementation, maintenance, and enforcement" of such NAAQS. The statute directly imposes on states the duty to make these SIP submissions, and the requirement to make the submissions is not conditioned upon the EPA taking any action other than promulgating a new or revised NAAQS. Section 110(a)(2) includes a list of specific elements that "[e]ach such plan" submission must address.

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

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

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

With respect to certain other issues, the EPA does not believe that an action on a state's infrastructure SIP submission is necessarily the appropriate type of action in which to address possible deficiencies in a state's existing SIP. These issues include: (i) existing provisions related

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

to excess emissions from sources during periods of startup, shutdown, or malfunction (SSM) that may be contrary to the CAA and the EPA's policies addressing such excess emissions; (ii) existing provisions related to "director's variance" or "director's discretion" that may be contrary to the CAA because they purport to allow revisions to SIP-approved emissions limits while limiting public process or not requiring further approval by the EPA; and (iii) existing provisions for Prevention of Significant Deterioration (PSD) programs that may be inconsistent with current requirements of the EPA's "Final NSR Improvement Rule," 67 FR 80186, Dec. 31, 2002, as amended by 72 FR 32526, June 13, 2007 ("NSR Reform").

IV. What Infrastructure Elements are Required Under Sections 110(a)(1) and (2)?

CAA section 110(a)(1) provides the procedural and timing requirements for SIP submissions after a new or revised NAAQS is promulgated. Section 110(a)(2) lists specific elements the SIP must contain or satisfy. These infrastructure elements include requirements such as modeling, monitoring, and emissions inventories, which are designed to assure attainment and maintenance of the NAAQS. The elements that are the subject of this action are listed below.

- 110(a)(2)(A): Emission limits and other control measures.
- 110(a)(2)(B): Ambient air quality monitoring/data system.
- 110(a)(2)(C): Program for enforcement of control measures.
- 110(a)(2)(D): Interstate transport.
- 110(a)(2)(E): Adequate resources and authority, conflict of interest, and oversight of local governments and regional agencies.
- 110(a)(2)(F): Stationary source monitoring and reporting.

- 110(a)(2)(G): Emergency powers.
- 110(a)(2)(H): Future SIP revisions.
- 110(a)(2)(J): Consultation with government officials; public notification; and PSD and visibility protection.
- 110(a)(2)(K): Air quality modeling/data.
- 110(a)(2)(L): Permitting fees.
- 110(a)(2)(M): Consultation/participation by affected local entities.

A detailed discussion of each of these elements is contained in the next section.

Two elements identified in section 110(a)(2) are not governed by the three year submission deadline of section 110(a)(1) and are therefore not addressed in this action. These elements relate to part D of Title I of the CAA, and submissions to satisfy them are not due within three years after promulgation of a new or revised NAAQS, but rather are due at the same time nonattainment area plan requirements are due under section 172. The two elements are: (1) section 110(a)(2)(C) to the extent it refers to permit programs (known as "nonattainment NSR") required under part D, and (2) section 110(a)(2)(I), pertaining to the nonattainment planning requirements of part D. As a result, this action does not address infrastructure elements related to the nonattainment NSR portion of section 110(a)(2)(C) or related to 110(a)(2)(I). Furthermore, the EPA interprets the CAA section 110(a)(2)(J) provision on visibility as not being triggered by a new NAAQS because the visibility requirements in part C, title 1 of the CAA are not changed by a new NAAQS.

V. How Did Utah Address the Infrastructure Elements of Sections 110(a)(1) and (2)?

The Utah Department of Environmental Quality (Department or UDEQ) submitted

certification of Utah's infrastructure SIP for the 2008 Pb NAAQS on January 19, 2012; 2008 ozone NAAQS on January 31, 2013; 2010 NO_2 NAAQS on January 31, 2013; 2010 SO_2 NAAQS on June 2, 2013; and 2012 $PM_{2.5}$ on December 4, 2015. Utah's infrastructure certifications demonstrate how the State, where applicable, has plans in place that meet the requirements of section 110 for the 2008 Pb, 2008 ozone, 2010 NO_2, 2010 SO_2 and 2012 $PM_{2.5}$ NAAQS. These plans reference the Utah Code Annotated (UCA), Utah Administrative Code (UAC) rules, and the Utah SIP. These submittals are available within the electronic docket for today's proposed action at www.regulations.gov. The UCA, UAC, and the Utah SIP referenced in the submittals are publicly available at http://le.utah.gov/xcode/code.html, http://www.rules.utah.gov/publicat/code/r307/r307-110.htm and http://www.deq.utah.gov/Laws_Rules/daq/sip/index.htm. Air pollution control regulations and statutes that have been previously approved by the EPA and incorporated into the Utah SIP can be found at 40 CFR 52.2320.

VI. Analysis of the State Submittals

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

The State's submissions for the 2008 Pb, 2008 ozone, 2010 NO_2, 2010 SO_2, and 2012 $PM_{2.5}$ infrastructure requirements cite SIP Section I (*Legal Authority*) which allows the adoption of emission standards and other limits necessary for attainment and maintenance of national

ambient air quality standards. SIP Section I (*Legal Authority)*, in combination with other specific control measures adopted by the Utah Air Quality Board (AQB) and multiple SIP-approved state air quality regulations within the UAC and cited in Utah's certifications, provide enforceable emission limitations and other control measures, means of techniques, schedules for compliance, and other related matters necessary to meet the requirements of the CAA section 110(a)(2)(A) for the 2008 Pb, 2008 ozone, 2010 NO_2, 2010 SO_2 and 2012 $PM_{2.5}$ NAAQS, subject to the following clarifications.

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

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

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

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

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

The State's submissions cite UAC rule R307-110-5, which incorporates by reference SIP Section IV (*Ambient Air Monitoring Program*), and provides a brief description of the purposes of the air monitoring program approved by the EPA in the early 1980s and most recently on June 25, 2003 (68 FR 37744). Utah's annual monitoring network plan (AMNP), is made available by the Department for public review and comment prior to submission to the EPA.

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

In this action, the EPA is acting only on Utah's submittal for 2008 ozone NAAQS for CAA section 110(a)(2)(B). Utah's submittals for other pollutants will be addressed in a separate rulemaking action.

Utah's 2013 AMNP for ozone was approved through a letter dated December 24, 2013 (available within the docket). Additionally, the State of Utah submits ozone data to the EPA's Air Quality System database in accordance with 40 CFR 58.16.

We find that Utah's SIP and practices are adequate for the ambient air quality monitoring and data system requirements and therefore propose to approve the infrastructure SIP for the 2008 ozone NAAQS for this element.

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

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

<u>Enforcement of Control Measures Requirement</u>

The State's submissions for the 2008 Pb, 2008 ozone, 2010 NO_2, 2010 SO_2, and 2012 $PM_{2.5}$ infrastructure requirements cite SIP Section I (*Legal Authority*) which allows for enforcement of applicable laws, regulations, and standards and to seek injunctive relief, and also provides authority to prevent construction, modification, or operation of any stationary source at any location where emissions from such source will prevent the attainment or maintenance of a national standard or interfere with prevention of significant deterioration requirements.

PSD Requirements

With respect to Elements (C) and (J), the EPA interprets the CAA to require each state to make an infrastructure SIP submission for a new or revised NAAQS demonstrating that the air agency has a complete PSD permitting program meeting the current requirements for all regulated NSR pollutants. The requirements of Element D(i)(II) may also be satisfied by demonstrating the air agency has a complete PSD permitting program that correctly addresses all regulated NSR pollutants. Utah has shown that it currently has a PSD program in place that covers all regulated NSR pollutants, including greenhouse gases (GHGs). SIP Section VIII (*Prevention of Significant Deterioration*) applies to all air pollutants regulated under the CAA.

Utah implements the PSD program by, for the most part, incorporating by reference the federal PSD program as it existed on a specific date. The State periodically updates the PSD program by revising the date of incorporation by reference and submitting the change as a SIP revision. On October 25, 2013 (78 FR 63883), we approved portions of a Utah SIP revision that revised the date of incorporation by reference of the federal PSD program to July 1, 2011. As a result, the SIP revisions generally reflect changes to PSD requirements that the EPA has promulgated prior to the revised date of incorporation by reference.

On July 15, 2011 (76 FR 41712), we approved portions of a Utah SIP revision that revised the date of incorporation by reference of the federal PSD program. That revision addressed the PSD requirements of the Phase 2 Ozone Implementation Rule promulgated in 2005 (70 FR 71612). As a result, the approved Utah PSD program meets current requirements for ozone.

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. 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) issued an amended judgment vacating the regulations that implemented Step 2 of the EPA's PSD and Title V Greenhouse Gas Tailoring Rule, but not the regulations that implement Step 1 of that rule. Step 1 of the Tailoring Rule covers sources that are required to obtain a PSD permit based on emissions of pollutants other than GHGs. Step 2 applied to sources that emitted only GHGs above the thresholds triggering the requirement to obtain a PSD permit. The amended judgment preserves, without the need for additional rulemaking by the EPA, the application of the BACT requirement to GHG

emissions from Step 1 or "anyway" sources.[3] With respect to Step 2 sources, the D.C. Circuit's amended judgment vacated the regulations at issue in the litigation, including 40 CFR 51.166(b)(48)(v), "to the extent they require a stationary source to obtain a PSD permit if greenhouse gases are the only pollutant (i) that the source emits or has the potential to emit above the applicable major source thresholds, or (ii) for which there is a significant emission increase from a modification."

The EPA is planning to take additional steps to revise the federal PSD rules in light of the Supreme Court and subsequent D.C. Circuit opinions. Some states have begun to revise their existing SIP-approved PSD programs in light of these court decisions, and some states may prefer not to initiate this process until they have more information about the planned revisions to the EPA's PSD regulations. The EPA is not expecting states to have revised their PSD programs in anticipation of the EPA's planned actions to revise its PSD program rules in response to the court decisions.

At present, the EPA has determined Utah's SIP is sufficient to satisfy Elements (C), (D)(i)(II) element 3, and (J) with respect to GHGs. This is because the PSD permitting program previously approved by the EPA into the SIP continues to require that PSD permits issued to "anyway sources" contain limitations on GHG emissions based on the application of BACT. The EPA most recently approved revisions to Utah's PSD program on February 6, 2014 (79 FR 7070). The approved Utah PSD permitting program still contains some provisions regarding Step 2 sources that are no longer necessary in light of the Supreme Court decision and D.C. Circuit amended judgment. Nevertheless, the presence of these provisions in the previously-approved

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

plan does not render the infrastructure SIP submission inadequate to satisfy Elements (C), (D)(i)(II), and (J). The SIP contains the PSD requirements for applying the BACT requirement to greenhouse gas emissions from "anyway sources" that are necessary at this time. The application of those requirements is not impeded by the presence of other previously-approved provisions regarding the permitting of Step 2 sources. Accordingly, the Supreme Court decision and subsequent D.C. Circuit judgment do not prevent the EPA's approval of Utah's infrastructure SIP as to the requirements of Elements (C), (D)(i)(II) and (J).

Finally, we evaluate the PSD program with respect to current requirements for $PM_{2.5}$. In particular, on May 16, 2008, the EPA promulgated the rule, "Implementation of the New Source Review Program for Particulate Matter Less Than 2.5 Micrometers ($PM_{2.5}$)" (73 FR 28321). On October 20, 2010 the EPA promulgated the rule, "Prevention of Significant Deterioration (PSD) for Particulate Matter Less Than 2.5 Micrometers ($PM_{2.5}$)—Increments, Significant Impact Levels (SILs) and Significant Monitoring Concentration (SMC)" (75 FR 64864). The EPA regards adoption of these $PM_{2.5}$ rules as a necessary requirement when assessing a PSD program for the purposes of element (C).

On January 4, 2013, the U.S. Court of Appeals, in *Natural Resources Defense Council v. EPA*, 706 F.3d 428 (D.C. Cir.), issued a judgment that remanded the EPA's 2007 and 2008 rules implementing the 1997 $PM_{2.5}$ NAAQS. The court ordered the EPA to "repromulgate these rules pursuant to Subpart 4 consistent with this opinion." *Id.* at 437. Subpart 4 of part D, Title 1 of the CAA establishes additional provisions for particulate matter nonattainment areas.

The 2008 Implementation rule addressed by *Natural Resources Defense Council*, "Implementation of New Source Review (NSR) Program for Particulate Matter Less Than 2.5

Micrometers ($PM_{2.5}$)," (73 FR 28321, May 16, 2008), promulgated NSR requirements for implementation of $PM_{2.5}$ in nonattainment areas (nonattainment NSR) and attainment/unclassifiable areas (PSD). As the requirements of Subpart 4 only pertain to nonattainment areas, the EPA does not consider the portions of the 2008 Implementation rule that address requirements for $PM_{2.5}$ attainment and unclassifiable areas to be affected by the court's opinion. Moreover, the EPA does not anticipate the need to revise any PSD requirements promulgated in the 2008 Implementation rule in order to comply with the court's decision. Accordingly, the EPA's proposed approval of Utah's infrastructure SIP as to elements C or J with respect to the PSD requirements promulgated by the 2008 Implementation rule does not conflict with the court's opinion.

The court's decision with respect to the nonattainment NSR requirements promulgated by the 2008 Implementation rule also does not affect the EPA's action on the present infrastructure action. The EPA interprets the Act to exclude nonattainment area requirements, including requirements associated with a nonattainment NSR program, from infrastructure SIP submissions due three years after adoption or revision of a NAAQS. Instead, these elements are typically referred to as nonattainment SIP or attainment plan elements, which would be due by the dates statutorily prescribed under subpart 2 through 5 under part D, extending as far as 10 years following designations for some elements.

The second PSD requirement for $PM_{2.5}$ is contained in the EPA's October 20, 2010 rule, "Prevention of Significant Deterioration (PSD) for Particulate Matter Less Than 2.5 Micrometers ($PM_{2.5}$)—Increments, Significant Impact Levels (SILs) and Significant Monitoring Concentration (SMC)" (75 FR 64864). The EPA regards adoption of the $PM_{2.5}$ increments as a

necessary requirement when assessing a PSD program for the purposes of element (C).

On March 14, 2012, Utah submitted revisions to the PSD program that adopt by reference federal provisions of 40 CFR part 52, section 21, as they existed on July 1, 2011. As that date is after the effective date of the two rules, the submission incorporates those requirements. The EPA approved the necessary portions of Utah's March 14, 2012 submission on October 25, 2013 (78 FR 63883). Utah's SIP-approved PSD program meets current requirements for $PM_{2.5}$. The EPA therefore is proposing to approve Utah's SIP for the 2008 ozone, 2008 Pb, 2010 NO_2, 2010 SO_2 and 2012 $PM_{2.5}$ NAAQS with respect to the requirement in section 110(a)(2)(C) to include a permit program in the SIP as required by part C of the Act.

Minor NSR

The State has a SIP-approved minor NSR program, adopted under section 110(a)(2)(C) of the Act. The minor NSR program is found in section II of the Utah SIP, and was approved by the EPA as section 2 of the SIP (68 FR 37744, June 25, 2003). Since approval of the minor NSR program, the State and the EPA have relied on the program to assure that new and modified sources not captured by the major NSR permitting programs do not interfere with attainment and maintenance of the NAAQS. Utah's minor NSR program, as approved into the SIP, covers the construction and modification of stationary sources of regulated NSR pollutants, including $PM_{2.5}$, lead, and ozone and its precursors.

The EPA is proposing to approve Utah's infrastructure SIP for the 2008 Pb, 2008 ozone, 2010 NO_2, 2010 SO_2 and 2012 $PM_{2.5}$ NAAQS with respect to the general requirement in section 110(a)(2)(C) to include a program in the SIP that regulates the enforcement, modification, and construction of any stationary source as necessary to assure that the NAAQS are achieved.

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

Evaluation of Interference with Measures to Prevent Significant Deterioration (PSD)

With regard to the PSD portion of CAA section 110(a)(2)(D)(i)(II), this requirement may be met by a state's confirmation in an infrastructure SIP submission that new major sources and major modifications in the state are subject to a comprehensive EPA-approved PSD permitting program in the SIP that applies to all regulated new source review (NSR) pollutants and that

satisfies the requirements of the EPA's PSD implementation rules.[4] As noted in the discussion for infrastructure element (C) earlier in this notice, the EPA is proposing to approve CAA section 110(a)(2) element (C) for Utah's infrastructure SIP for the 2008 Pb, 2008 ozone, 2010 NO_2, 2010 SO_2, and 2012 $PM_{2.5}$ NAAQS with respect to PSD requirements. As discussed in detail in that section, Utah's SIP meets the current PSD-related requirements of section 110(a)(2)(C). For this reason, we are also proposing to approve Utah's infrastructure SIP as meeting the 110(a)(2)(D)(i)(II) element 3 (PSD) requirements for 2006 24-hour $PM_{2.5}$ NAAQS.

In-state sources not subject to PSD for a particular NAAQS because they are in a nonattainment area for that standard may also have the potential to interfere with PSD in an attainment or unclassifiable area of another state.[5] One way a state may satisfy element 3 with respect to these sources is by citing an air agency's EPA-approved nonattainment NSR provisions addressing any pollutants for which the state has designated nonattainment areas. Utah has a SIP-approved nonattainment NSR program which ensures regulation of major sources and major modifications in nonattainment areas, and therefore satisfies element 3 with regard to this requirement.[6]

The EPA is proposing to approve the infrastructure SIP submission with regard to the requirements of element 3 of section 110(a)(2)(D)(i) for the 2006 $PM_{2.5}$, 2008 Pb, 2008 Ozone, 2010 NO_2, 2010 SO_2 and 2012 $PM_{2.5}$ NAAQS.

5. **Interstate and International transport provisions:** CAA section 110(a)(2)(D)(ii) requires SIPs to include provisions ensuring compliance with the applicable requirements of

[4] See 2013 Memo at 31.
[5] Id. at 31.
[6] See R307-403.

CAA sections 126 and 115 (relating to interstate and international pollution abatement). Specifically, CAA section 126(a) requires new or modified major sources to notify neighboring states of potential impacts from the source.

Section 126(a) of the CAA requires notification to affected, nearby states of major proposed new (or modified) sources. Sections 126(b) and (c) pertain to petitions affected states may seek from the Administrator of the EPA (Administrator) regarding sources violating the "interstate transport" provisions of section 110(a)(2)(D)(i). Section 115 of the CAA similarly pertains to international transport of air pollution.

As required by 40 CFR 51.166(q)(2)(iv), Utah's SIP-approved PSD program requires notice to states whose air quality may be impacted by the emissions of sources subject to PSD.[7] This suffices to meet the notice requirement of section 126(a).

Utah has no pending obligations under sections 126(c) or 115(b) of the CAA; therefore, its SIP currently meets the requirements of those sections. In summary, the SIP meets the requirements of CAA section 110(a)(2)(D)(ii), and the EPA is therefore proposing approval of this element for the 2008 Pb, 2008 ozone, 2010 NO_2, 2010 SO_2 and 2012 $PM_{2.5}$ NAAQS. The EPA is also proposing to approve the Utah SIP as meeting the requirements of section 110(a)(2)(D)(ii) for the 1997 and 2006 $PM_{2.5}$ NAAQS. Utah submitted an infrastructure certification generally addressing CAA section 110(a)(2)(D) for the 1997 $PM_{2.5}$ NAAQS on December 3, 2007, and 2006 $PM_{2.5}$ NAAQS on September 21, 2010.

6. **Adequate resources:** Section 110(a)(2)(E)(i) requires states to provide "necessary assurances that the State […] will have adequate personnel, funding, and authority under State

[7] See R307-110-9.

law to carry out [the SIP] (and is not prohibited by any provision of federal or state law from carrying out the SIP or portion thereof).” Section 110(a)(2)(E)(ii) also requires each state to “comply with the requirements respecting State boards” under CAA section 128. Section 110(a)(2)(E)(iii) requires states to provide “necessary assurances that, where the State has relied on a local or regional government, agency, or instrumentality for the implementation of any [SIP] provision, the State has responsibility for ensuring adequate implementation of such [SIP] provision.”

a**.** *Sub-elements (i) and (iii): Adequate personnel, funding, and legal authority under state law to carry out its SIP, and related issues***.**

The provisions contained in Chapter 2 of Title 19 of the Utah Code and Utah SIP Section I, *Legal Authority* provide UDAQ and the AQB adequate authority to carry out its SIP obligations with respect to the 2008 Pb, 2008 ozone, 2010 NO_2, 2010 SO_2 and 2012 $PM_{2.5}$ NAAQS. The State receives sections 103 and 105 grant funds through its Performance Partnership Grant along with required state matching funds to provide funding necessary to carry out Utah’s SIP requirements (Utah SIP Section V, *Resources*). Utah’s Performance Partnership Agreement (available within the docket) with the EPA documents resources needed to provide resources to carry out agreed upon environmental program goals, measures, and commitments, including developing and implementing appropriate SIPs for all areas of the State. Annually, states update these grant commitments based on current SIP requirements, air quality planning, and applicable requirements related to the NAAQS. Utah satisfactorily met all commitments agreed to in the Air Planning Agreement for fiscal year 2015. Furthermore, R307-414, *Permits: Fees*

for Approval Orders, requires the owner and operator of each new major source or major modification to pay a fee sufficient to cover reasonable costs of reviewing and acting upon the upon the notice of intent and implementing and enforcing requirements placed on such source by any approval order issued. Collectively, these rules and commitments provide evidence that Utah DAQ has adequate personnel, funding, and legal authority to carry out the State's implementation plan and related issues.

With respect to section 110(a)(2)(E)(iii), the regulations cited by Utah in their certifications (Utah SIP Section VI, *Intergovernmental Cooperation*) and contained within this docket also provide the necessary assurances that the State has responsibility for adequate implementation of SIP provisions by local governments. Therefore, we propose to approve Utah's SIP as meeting the requirements of section 110(a)(2)(E)(i) and (E)(iii) for the 2008 Pb, 2008 ozone, 2010 NO_2 , 2010 SO_2 and 2012 $PM_{2.5}$ NAAQS.

b. *Sub-element (ii): State boards.*

Section 110(a)(2)(E)(ii) requires each state's SIP to contain provisions that comply with the requirements of section 128 of the CAA. Section 128 contains two explicit requirements: (i) that "any board or body which approves permits or enforcement orders under [the CAA] shall have at least a majority of members who represent the public interest and do not derive any significant portion of their income from persons subject to permits or enforcement orders" under the CAA; and (ii) that "any potential conflicts of interest by members of such board or body or the head of an executive agency with similar powers be adequately disclosed."

In our November 25, 2013 (78 FR 63883) action, we disapproved Utah's April 17, 2008 and September 21, 2010 infrastructure SIP submissions for the 1997 and 2006 $PM_{2.5}$ NAAQS for

CAA Section 110(a)(2)(E)(ii) because the Utah SIP did not contain provisions meeting requirements of CAA section 128. Under section 110(c)(1)(B), this disapproval started a two-year clock for the EPA to promulgate a federal implementation plan (FIP) to address the deficiency.

On March 14, 2016, the EPA received a submission from the State of Utah to address the requirements of section 128, containing new rule language approved by the Utah AQB on March 2, 2016**.** A copy of the submission, including the new rules, Conflict of Interest R307-104-1 (*Authority*), R307-104-2 (*Purpose*) and R307-104-3 (*Disclosure of conflict of interest*), is available within this docket. These rules address conflict of interest requirements of section 128(a)(2). We propose to approve this new rule language as meeting the requirements of section 128 for the reasons explained in more detail below. Because this revision meets the requirements of section 128, we also propose to approve the State's infrastructure SIP submissions for element 110(a)(2)(E)(ii). The State submitted the provisions to meet section 128 separately, but section 128 is not NAAQS-specific and once the State has met the requirements of section 128, that is sufficient for purposes of section 110(a)(2)(E)(ii) for all NAAQS. If we finalize this proposed approval for the 2008 Pb, 2008 ozone, 2010 NO_2, 2010 SO_2, and 2012 $PM_{2.5}$ NAAQS, this will also resolve the prior disapproval for element 110(a)(2)(E)(ii) for the 1997 and 2006 $PM_{2.5}$ NAAQS and terminate the EPA's FIP obligation.

We are proposing to approve the State's March 14, 2016 SIP submission as meeting the requirements of section 128 because we believe that it complies with the statutory requirements and is consistent with the EPA's guidance recommendations concerning section 128. In 1978, the EPA issued a guidance memorandum recommending ways states could meet the

requirements of section 128, including suggested interpretations of certain key terms in section 128.[8] In this proposal notice, we discuss additional relevant aspects of section 128. We first note that, in the conference report of the 1977 amendments to the CAA, the conference committee stated, "[i]t is the responsibility of each state to determine the specific requirements to meet the general requirements of [section 128]."[9] This legislative history indicates that Congress intended states to have some latitude in adopting SIP provisions with respect to section 128, so long as states meet the statutory requirements of the section. We also note that Congress explicitly provided in section 128 that states could elect to adopt more stringent requirements, as long as the minimum requirements of section 128 are met.

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

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

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

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

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

Subsection 128(a)(2) applies to all states, regardless of whether the state has a multi-member board or body that approves permits or enforcement orders under the CAA. Although the title of section 128 is "State boards," the language of subsection 128(a)(2) explicitly applies where the head of an executive agency, rather than a board or body, approves permits or enforcement orders. In instances where the head of an executive agency delegates his or her power to approve permits or enforcement orders, or where statutory authority to approve permits

or enforcement orders is nominally vested in another state official, the requirement to adequately disclose potential conflicts of interest still applies. In other words, the EPA interprets section 128(a)(2) to apply to all states, regardless of whether a state board or body approves permits or enforcement orders under the CAA or whether a head of a state agency (or his/her delegates) performs these duties. Thus, all state SIPs must contain provisions that require adequate disclosure of potential conflicts of interest in order to meet the requirements of subsection 128(a)(2). The question of which entities or parties must be subject to such disclosure requirements must be evaluated by states and the EPA in light of the specific facts and circumstances of each state's regulatory structure.

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

Second, the state may modify the language of subsections 128(a)(1) (if applicable) and 128(a)(2) to name the particular board, body, or individual official with approval authority. In this case, if the state subsequently modifies that authority, the state may have to submit a corresponding SIP revision to meet the continuing requirements of section 128. If the state chooses to not mirror the language of section 128, the state may adopt state statutes and/or

regulations that functionally impose the same requirements as those of section 128, including definitions for key terms such as those recommended in the EPA's 1978 guidance. While either of these approaches would meet the minimum requirements of section 128, the statute also explicitly authorizes states to adopt more stringent requirements, for example to impose additional requirements for recusal of board members from decisions, above and beyond the explicit board composition requirements. Although such recusal alone does not meet the requirements of section 128, states have the authority to require that over and above the explicit requirements of section 128. These approaches give states flexibility in implementing section 128, while still ensuring consistency with the statute.

As previously explained, the EPA interprets subsection 128(a)(1) to apply only to states that have a board or body with multiple members that, among its duties, approves permits or enforcement orders under the Act. In its 2012 $PM_{2.5}$ NAAQS certification, the State asserts that there is no such multi-member board or body, citing Utah Code section 19-2-104, *Powers of the board*. Subsection 19-2-104(7) specifies that the Utah AQB lacks authority over permits, and subsection 19-2-104(3) gives the Utah AQB authority only to recommend that the Director issue and enforce orders. The EPA proposes to determine that the Utah AQB does not approve permits or enforcement orders under the Act, and as a result, Utah need not submit any provisions to address the requirements of section 128(a)(1).[10] However, the EPA interprets subsection 128(a)(2) to apply to all states, regardless of whether the state has a multi-member board that

[10] In 2012, the Utah Legislature amended state law to generally transfer authority of the Utah AQB over permits and enforcement orders to the Director of Utah DAQ and Executive Director of Utah DEQ. See 78 FR 52477, 52482 (Aug. 23, 2013).

approves permits or enforcement orders. As a result, 128(a)(2) applies to Utah, and, as previously explained, must be met through SIP-approved, federally enforceable provisions.

The EPA has evaluated Utah's submittal containing R307-104-1 (*Authority*), R307-104-2 (*Purpose*) and R307-104-3 (*Disclosure of conflict of interest*) (available within this docket) from the State in light of the requirements of section 128, these key considerations previously noted, and the recommendations in the 1978 guidance. To meet the requirements of subsection 128(a)(2), the State's R307-104-3 (*Disclosure of conflict of interest*), includes disclosure of conflicts of interest requirements applying to "any member of the board or body which approves permits or enforcement orders, the head of the Utah [DAQ] with similar powers, and the head of the Utah [DEQ] with similar powers." Under Utah's administrative procedures, the Director of Utah DAQ has the initial authority to issue air permits and enforcement orders, and the Executive Director of Utah DEQ has the ultimate authority to resolve administrative adjudicative proceedings regarding permits and enforcement orders. *See* Utah Code 19-1-301, 19-1-301.5. Thus, Utah's submittal addresses disclosure of potential conflicts of interest from the heads of executive agencies that approve permits and enforcement orders under the Act.

Utah's provisions are also sufficient for adequate disclosure. Under R307-104-3(2), "[e]very individual listed in R307-104-3(1) who is an officer, director, agent, employee, or the owner of a substantial interest in any business entity which is subject to the regulation of the agency by which the individual listed in R307-104-3(1) is employed, shall disclose any position held and the precise nature and value of the interest upon first becoming a public officer or public employee listed in R307-104-3(1), and again whenever his or her position in the business entity changes significantly or if the value of his or her interest in the entity is significantly

increased." This language covers a sufficiently broad range of potential conflicts of interest with any business subject to regulation by Utah DAQ, including permittees and the subjects of enforcement orders. The form of disclosure is also adequate: it is made in a sworn statement to the attorney general and is made publicly available. We propose to find that these procedures provide adequate disclosure of potential conflicts of interest within the meaning of subsection 128(a)(2).

In summary, the EPA proposes to approve Utah's March 14, 2016 submittal into the SIP to meet the requirements of section 128 of the Act. We also propose to approve Utah's infrastructure SIP with respect to the requirements of Section 110(a)(2)(E)(ii) for 2008 Pb, 2008 ozone, 2010 NO_2, 2010 SO_2 and 2012 $PM_{2.5}$ NAAQS.

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

The provisions cited by Utah in SIP Section III *Source Surveillance*, (including R307-150, and R307-165) pertain to its program of periodic emissions testing and plant inspections of stationary sources, and related testing requirements and protocols (including periodic reporting) to assure compliance with emissions limits. R307-170 requires certain large sources to install and maintain continuous emission monitors to assure compliance with emission limitations

established in approval orders and the SIP. In addition, Utah provides for monitoring, recordkeeping, and reporting requirements for sources subject to minor and major source permitting.

Furthermore, Utah is required to submit emissions data to the EPA for purposes of the National Emissions Inventory (NEI). The NEI is the EPA's central repository for air emissions data. The EPA published the Air Emissions Reporting Rule (AERR) on December 5, 2008, which modified the requirements for collecting and reporting air emissions data (73 FR 76539). The AERR shortened the time states had to report emissions data from 17 to 12 months, giving states one calendar-year to submit emissions data. All states are required to submit a comprehensive emissions inventory every three years and report emissions for certain larger sources annually through the EPA's online Emissions Inventory System. States report emissions data for the six criteria pollutants and their associated precursors—nitrogen oxides, sulfur dioxide, ammonia, lead, carbon monoxide, particulate matter and volatile organic compounds. Many states also voluntarily report emissions of hazardous air pollutants. Utah made its latest update to the NEI in March 2016. The EPA compiles the emissions data, supplementing it where necessary, and releases it to the general public through the website https://www.epa.gov/air-emissions-inventories.

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

8. **Emergency powers:** Section 110(a)(2)(G) of the CAA requires infrastructure SIPs to "provide for authority comparable to that in [CAA section 303] and adequate contingency plans

to implement such authority[.]"

Under CAA section 303, the EPA Administrator has authority to bring suit to immediately restrain an air pollution source that presents an "imminent and substantial endangerment to public health or welfare, or the environment."[11] If such action may not practicably assure prompt protection, then the Administrator has authority to issue temporary administrative orders to protect the public health or welfare, or the environment, and such orders can be extended if the EPA subsequently files a civil suit. We propose to find that Utah's infrastructure SIP submittals provide for authority for the State comparable to that granted to the EPA Administrator to act in the face of an imminent and substantial endangerment to the public's health or welfare, or the environment.

Utah's SIP submittals with regard to the section 110(a)(2)(G) emergency order requirements cite the EPA approved provisions (State SIP Section I *Legal Authority* codified at R307-110-2) to abate pollutant emissions on an emergency basis to prevent substantial endangerment to the health of persons. Utah Code 19-2-116(3)(a) also provides the director the power to "initiate an action for appropriate injunctive relief… when it appears necessary for the protection of health and welfare." Utah Code 19-2-112(1)(a) provides authority to the "executive director, with the concurrence of the governor" to order people "causing or contributing to… air pollution to reduce or discontinue immediately the emission of air pollutants" if the "executive director finds that a generalized condition of air pollution exists and that it creates an emergency requiring immediate action to protect human health or safety." Utah Code 19-2-112(2)(a)

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

describes how in instances of an "absence of a generalized condition of air pollution" referred to in subsection (1), the executive director may still commence adjudicative proceedings as long as the executive director "finds that emissions from the operation of one or more air pollutant sources is causing imminent danger to human health or safety."

In regard to imminent and substantial endangerment to the environment, Utah's Emergency Management Act allows the Governor to issue rules and regulations having the "full force and effect of law" during a state of emergency. Additionally, Utah Code 53-2a-209(1) allows the Governor to suspend rules and regulations of state agencies that would prevent the ability to adequately deal with such disasters. *See* Utah Code 53-2a-209(3).

While no single Utah statute mirrors the authorities of CAA section 303, we propose to find that the combination of Utah Code, UAC Rules, and Utah's Emergency Management Act provisions previously discussed provide for authority comparable to section 303. Section 303 authorizes the Administrator to immediately bring suit to restrain and issue emergency orders when necessary, to enable the Administrator to take prompt administrative action against any person causing or contributing to air pollution that presents an imminent and substantial endangerment to public health or welfare, or the environment. Therefore, we propose that Utah's SIP submittals sufficiently meet the requirements of CAA 110(a)(2)(G) because they demonstrate that Utah has authority comparable to CAA section 303.

States must also have adequate contingency plans adopted into their SIP to implement the air agency's emergency episode authority (as previously discussed). This can be done by submitting a plan that meets the applicable requirements of 40 CFR part 51, subpart H for the relevant NAAQS if the NAAQS is covered by those regulations. The EPA approved Utah's State

SIP Section VII (*Prevention of Air Pollution Emergency Episodes*), codified at R307-110-8, most recently on February 14, 2006 at 71 FR 7679. We find that Utah's air pollution emergency rules include PM_{10}[12], ozone, NO_2, and SO_2; establish stages of episode criteria; provide for public announcement whenever any episode stage has been determined to exist; and specify emission control actions to be taken at each episode stage, consistent with the EPA emergency episode SIP requirements set forth at 40 CFR part 51 subpart H (prevention of air pollution emergency episode) for particulate matter, ozone, NO_2, and SO_2.

As noted in the 2011 Memo "based on [the] EPA's experience to date with the Pb NAAQS and designating Pb nonattainment areas, [the] EPA expects that an emergency episode associated with Pb emissions would be unlikely and, if it were to occur, would be the result of a malfunction or other emergency situation at a relatively large source of Pb" (page 14).[13] Accordingly, the EPA believes the central components of a contingency plan would be to reduce emissions from the source at issue and communicate with the public as needed. We note that 40 CFR part 51, subpart H (51.150–51.152) and 40 CFR part 51, Appendix L do not apply to Pb.

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

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

[13] October 14, 2011, "Guidance on Infrastructure SIP Elements Required Under Sections 110(a)(1) and (2) for the 2008 Lead (Pb) National Ambient Air Quality Standards (NAAQS)."

9. **Future SIP revisions:** Section 110(a)(2)(H) requires that SIPs provide for revision of such plan: (i) "[f]rom time to time as may be necessary to take account of revisions of such national primary or secondary ambient air quality standard or the availability of improved or more expeditious methods of attaining such standard[;] and (ii) except as provided in paragraph (3)(C), whenever the Administrator finds on the basis of information available to the Administrator that the [SIP] is substantially inadequate to attain the [NAAQS] which it implements or to otherwise comply with any additional requirements under this [Act]."

Utah SIP Section I cites 19-2-104 and 19-2-109 of the Utah Code. Sections 19–2–104 and 19-2-109 give the AQB sufficient authority to meet the requirements of CAA section 110(a)(2)(H). Therefore, we propose to approve Utah's SIP as meeting the requirements of CAA section 110(a)(2)(H).

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

In its certifications, the State cites SIP Section I (*Legal Authority*) adopting requirements for transportation consultation, SIP Section VI (*Intergovernmental Cooperation*), and SIP Section XII (*Transportation Conformity Consultation)* to meet the requirements of CAA section 121. The State has demonstrated that it has the authority and rules in place to provide a process of consultation with general purpose local governments, designated organizations of elected officials of local governments and any Federal Land Manager having authority over federal land

to which the SIP applies, consistent with the requirements of CAA section 121 (*see* 59 FR 2988, Jan. 20, 1994). Furthermore, SIP section XVI, cited by Utah, meets the general requirements of CAA section 127 to notify the public when the NAAQS have been exceeded.

The State has a SIP-approved PSD program that incorporates by reference the federal program at 40 CFR 52.21; these provisions are located in R307–405–2 of the UAC. The EPA has further evaluated Utah's SIP-approved PSD program in this proposed action under VI.3 of this notice which analyzes whether the Utah SIP has met CAA section 110(a)(2)(C). There, we propose approval with respect to the PSD requirements of element (C); we likewise do so here with respect to the PSD requirements of element (J).

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

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

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

data related to such air quality modeling to the Administrator."

UAC rule R307-405-13 incorporates by reference the air quality model provisions of 40 CFR 52.21(l), which includes the air quality model requirements of appendix W of 40 CFR part 51, pertaining to the Guideline on Air Quality Models. Additionally, Utah Code 19-104(1)(a)-(b) provide the AQB with the authority to propose and finalize rules that require air quality modeling for the purpose of predicting the effect on ambient air quality relating to NAAQS. As a result, the SIP provides for such air quality modeling as the Administrator has prescribed.

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

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

UAC rule R307-414, *Permits: Fees for Approval Orders,* requires the owner and operator of each new major source or major modification to pay a fee sufficient to cover the reasonable costs of reviewing and acting upon the notice of intent and implementing and enforcing requirements placed on such source by any approval order issued. The EPA approved R307-414 most recently on February 14, 2006 at 71 FR 7679. SIP Section I (*Legal Authority*) "identifies

the statutory authority to charge a fee to major sources to cover permit and enforcement expenses…" SIP Section I was codified at R307-10-2 and the EPA approved it most recently on June 25, 2003 at 68 FR 37744.

We also note that all the State's certifications cite R307-415 which is the regulation that provides for collection of permitting fees under Utah's approved title V permit program (60 FR 30192, June 8, 1995). As discussed in that approval, the State demonstrated that the fees collected were sufficient to administer the program.

Therefore we propose to approve the submissions as supplemented by the State for the 2008 Pb, 2008 ozone, 2010 NO_2, 2010 SO_2 and 2012 $PM_{2.5}$ NAAQS.

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

The provisions cited in Utah's SIP submittals (SIP Section VI (*Intergovernmental Cooperation*) codified at R307-110-7 and SIP Section XII (*Transportation Conformity Consultation*) codified at R307-110-20, contained within this docket) meet the requirements of CAA section 110(a)(2)(M).We propose to approve Utah's SIP as meeting these requirements for the 2008 Pb, 2008 ozone, 2010 NO_2, 2010 SO_2 and 2012 $PM_{2.5}$ NAAQS.

VII. What Action is the EPA Taking?

In this action, the EPA is proposing to approve infrastructure elements for the 2008 Pb, 2008 ozone, 2010 NO_2, 2010 SO_2 and 2012 $PM_{2.5}$ NAAQS from the State's certifications as shown in Table 1. Elements we propose no action on are reflected in Table 2. Finally, the EPA is

proposing to approve a new UAC submitted on March 14, 2016 to satisfy requirements of element (E)(ii),which refers to requirements related to state boards.

A comprehensive summary of infrastructure elements, and revisions and additions to the UAC organized by the EPA's proposed rule action are provided in Table 1 and Table 2.

TABLE 1. LIST OF UTAH INFRASTRUCTURE ELEMENTS AND REVISIONS THAT THE EPA IS PROPOSING TO APPROVE

Proposed for Approval
December 3, 2007 submittal – **1997 $PM_{2.5}$ NAAQS:** (D)(ii)
September 21, 2010 submittal – **2006 $PM_{2.5}$ NAAQS:** (D)(ii)
January 19, 2012 submittal – **2008 Pb NAAQS:** (A), (C), (D)(i)(II) element 3, (D)(ii), (E), (F), (G), (H), (J), (K), (L) and (M).
June 2, 2013 submittal - **2010 SO_2 NAAQS:** (A), (C), (D)(i)(II) element 3, (D)(ii), (E), (F), (G), (H), (J), (K), (L) and (M).
January 31, 2013 submittal - **2008 Ozone NAAQS:** (A), (B), (C), (D)(i)(II) element 3, (D)(ii), (E), (F), (G), (H), (J), (K), (L) and (M).
January 31, 2013 submittal- **2010 NO_2 NAAQS:** (A), (C), (D)(i)(II) element 3, (D)(ii), (E), (F), (G), (H), (J), (K), (L) and (M).
December 4, 2015 submittal- **2012 $PM_{2.5}$ NAAQS:** (A), (C), (D)(i)(II) element 3, (D)(ii), (E), (F), (G), (H), (J), (K), (L) and (M).
March 14, 2016 submittal – **New Rules to UAC Rules, CAA Section 128** R307-104-1, R307-104-2 and R307-104-3.

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

Proposed for No Action (Revision to be made in separate rulemaking action.)
January 19, 2012 submittal - **2008 Pb NAAQS:** (B), (D)(i)(I) elements 1 and 2, (D)(i)(II) element 4.
January 31, 2013 submittal – **2008 Ozone NAAQS:** (D)(i)(I) elements 1 and 2, (D)(i)(II) element 4.

January 31, 2013 submittal – **2010 NO_2 NAAQS:** (B), (D)(i)(I) elements 1 and 2, (D)(i)(II) element 4.
June 2, 2013 submittal – **2010 SO_2 NAAQS:** (B), (D)(i)(I) elements 1 and 2, (D)(i)(II) element 4.
December 22, 2015 submittal – **2012 $PM_{2.5}$ NAAQS:** (B), (D)(i)(I) elements 1 and 2, (D)(i)(II) element 4.

VIII. Incorporation by Reference

In this rule, the EPA is proposing to include in a final the 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 Utah Administrative Code Rules pertaining to state board requirements VI.6. b. *Sub-element (ii): State boards,* of this preamble. The EPA has made, and will continue to make, these documents generally available electronically through www.regulations.gov and/or in hard copy at the appropriate EPA office (see the ADDRESSES section of this preamble for more information).

IX. Statutory and Executive Orders Review

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable federal regulations (42 USC 7410(k), 40 CFR 52.02(a)). Thus, in reviewing SIP submissions, the EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this proposed action merely approves some state law as meeting federal requirements and disapproves other state law because it does not meet federal requirements; this proposed action does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, Oct. 4, 1993);

- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 USC 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 USC 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 (Public Law 104-4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, Aug. 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 USC 272 note) because application of those requirements would be inconsistent with the CAA; and,
- Does not provide the EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, Feb. 16, 1994).

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

67249, November 9, 2000).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, 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: April 13, 2016.

Debra H. Thomas,
Acting Regional Administrator,
Region 8.

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