



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R08-OAR-2016-0107; FRL-9949-98-Region 8]

Approval and Promulgation of Air Quality Implementation Plans; Interstate Transport for Utah

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to take action on portions of six submissions from the State of Utah that are intended to demonstrate that the State Implementation Plan (SIP) meets certain interstate transport requirements of the Clean Air Act (Act or CAA). These submissions address the 2006 and 2012 fine particulate matter (PM_{2.5}) National Ambient Air Quality Standards (NAAQS), 2008 ozone NAAQS, 2008 lead (Pb) NAAQS, 2010 sulfur dioxide (SO₂) NAAQS and 2010 nitrogen dioxide (NO₂) NAAQS. Specifically, the EPA is proposing to approve interstate transport prong 4 for the 2008 Pb and 2010 SO₂ NAAQS, and proposing to disapprove prong 4 for the 2006 PM_{2.5}, 2008 ozone, 2010 NO₂ and 2012 PM_{2.5} NAAQS.

DATES: 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-2016-0107 at <http://www.regulations.gov>. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from [regulations.gov](http://www.regulations.gov). The EPA may publish

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

FOR FURTHER INFORMATION CONTACT: Adam Clark, Air Program, U.S.

Environmental Protection Agency (EPA), Region 8, Mail Code 8P-AR, 1595 Wynkoop Street, Denver, Colorado 80202-1129. (303) 312-7104, clark.adam@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

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

1. Submitting Confidential Business Information (CBI). Do not submit CBI to 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 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 September 21, 2006, the EPA revised the primary 24-hour NAAQS for PM_{2.5} to 35 micrograms per cubic meter ($\mu\text{g}/\text{m}^3$) (71 FR 61144, Oct. 17, 2006). On March 12, 2008, the EPA revised the levels of the primary and secondary 8-hour ozone standards to 0.075 parts per million (ppm) (73 FR 16436, Mar. 27, 2008). On October 15, 2008, the EPA revised the level of the primary and secondary Pb NAAQS to 0.15 $\mu\text{g}/\text{m}^3$ (73 FR 66964, Nov. 12, 2008). On January 22, 2010, the EPA promulgated a new 1-hour primary NAAQS for NO₂ at a level of 100 parts

per billion (ppb) while retaining the annual standard of 53 ppb (75 FR 6474, Feb. 9, 2010). The secondary NO₂ NAAQS remains unchanged at 53 ppb. On June 2, 2010, the EPA promulgated a revised primary 1-hour SO₂ standard at 75 ppb (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/m³ and retaining the 24-hour PM_{2.5} standard at a level of 35 µg/m³ (78 FR 3086, Jan. 15, 2013).

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

CAA section 110(a)(2)(D)(i)(I) requires SIPs to include provisions prohibiting any source or other type of emissions activity in one state from emitting any air pollutant in amounts that will contribute significantly to nonattainment, or interfere with maintenance, of the NAAQS in another state (known as the “good neighbor” provision). The two provisions of this section are referred to as prong 1 (significant contribution to nonattainment) and prong 2 (interfere with maintenance). Section 110(a)(2)(D)(i)(II) requires SIPs to contain adequate provisions to prohibit emissions that will interfere with measures required to be included in the applicable

implementation plan for any other state under part C to prevent significant deterioration of air quality (prong 3) or to protect visibility (prong 4).

In this action, the EPA is addressing prong 4 with regard to the 2006 and 2012 PM_{2.5}, 2008 ozone, 2008 Pb, 2010 SO₂ and 2010 NO₂ NAAQS. The EPA addressed prongs 1 and 2 for the 2008 ozone and 2008 Pb NAAQS in a proposed action published May 10, 2016 (81 FR 28807), and intends to finalize that action in conjunction with the actions in this proposed rule in one joint, final rulemaking. The EPA is addressing prong 3 for the applicable NAAQS in a separate action proposed April 26, 2016 (81 FR 24525), which can be found in regulations.gov under the docket EPA-R08-OAR-2013-0561.

III. State Submissions

The Utah Department of Environmental Quality (Department or UDEQ) submitted the following: a certification of Utah's infrastructure SIP for the 2006 PM_{2.5} NAAQS on September 21, 2010; a certification of Utah's infrastructure SIP for the 2008 Pb SIP on January 19, 2012; a certification of Utah's infrastructure SIP for the 2008 ozone NAAQS and 2010 NO₂ NAAQS on January 31, 2013; a certification of Utah's infrastructure SIP for the 2010 SO₂ NAAQS on June 2, 2013; and a certification of Utah's infrastructure SIP for the 2012 PM_{2.5} on December 22, 2015.

Each of these infrastructure certifications addressed all of the required infrastructure elements under section 110(a)(2).¹ As noted above, the EPA is only addressing the 110(a)(2)(D)(i)(II), prong 4 (visibility) element of each of these submissions here; all other

¹ For discussion of other infrastructure elements, see EPA's "Guidance on Infrastructure State Implementation Plan (SIP) Elements under Clean Air Act Sections 110(a)(1) and (2)," September 13, 2013.

infrastructure elements from these certifications are being addressed in separate actions.

In Utah's 2006 PM_{2.5} infrastructure certification, UDEQ pointed to SIP language verifying that no Utah sources of emissions interfere with implementation of reasonably attributable visibility impairment (RAVI) SIPs in other states, in accordance with EPA guidance.²

In Utah's 2006 PM_{2.5}, 2008 ozone, 2010 SO₂, 2010 NO₂ and 2012 PM_{2.5} NAAQS infrastructure certifications, the Department pointed to its Regional Haze SIP (Utah SIP Section XX) to certify that the State meets the visibility requirements of section 110(a)(2)(D)(i)(II). Utah specifically noted in each of these submittals (aside from the 2006 PM_{2.5} submittal) that the State had consulted with other states in the Western Regional Air Partnership (WRAP), and that reductions in emissions from Utah were included in the WRAP regional visibility modeling. As explained below, this information is relevant in determining whether Utah's SIP will achieve the emission reductions that the WRAP states mutually agreed are necessary to avoid interstate visibility impacts in Class I areas.³

UDEQ addressed visibility for the 2008 Pb NAAQS by pointing to the short distance travelled by Pb emissions, and by noting that there was not a significant source of Pb in Utah within 100 miles of a Class I area.

IV. Utah's Regional Haze SIP

As stated in the EPA's September 13, 2013 Infrastructure SIP Guidance Memo ("2013

² See EPA's "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)," September 25, 2009, at 6.

³ See "Guidance on Infrastructure State Implementation Plan (SIP) Elements under Clean Air Act Sections 110(a)(1) and (2)," September 13, 2013, at 34.

Guidance”), “[o]ne way in which prong 4 may be satisfied for any relevant NAAQS is through an air agency’s confirmation in its infrastructure SIP submission that it has an approved regional haze SIP that fully meets the requirements of 40 CFR 51.308 or 51.309. 40 CFR 51.308 and 51.309 specifically require that a state participating in a regional planning process include all measures needed to achieve its apportionment of emission reduction obligations agreed upon through that process.”⁴

On May 26, 2011, Utah submitted to the EPA a SIP revision to address the requirements of the regional haze program. The EPA partially approved and partially disapproved Utah’s SIP revision on December 14, 2012 (77 FR 74355). In that action, the EPA disapproved Utah’s NO_x and PM₁₀ Best Available Retrofit Technology (BART) determinations (77 FR 74357), and approved Utah’s BART alternative for SO₂, which relied on the State’s participation in the backstop SO₂ trading program.⁵

In response to the EPA’s December 14, 2012 partial disapproval, UDEQ submitted further SIP revisions on June 4, 2015, and October 20, 2015, to meet the regional haze requirements for NO_x and PM₁₀ BART. Instead of establishing BART controls for NO_x, Utah’s SIP revisions contained an alternative to BART. The revisions also included BART controls for PM₁₀.

On July 5, 2016, the EPA finalized action on Utah’s June 4, 2015 Regional Haze SIP, approving the PM₁₀ BART determinations for both the affected sources, the Hunter and

⁴ See “Guidance on Infrastructure State Implementation Plan (SIP) Elements under Clean Air Act Sections 110(a)(1) and (2),” September 13, 2013, at 33.

⁵ EPA’s final approval of the “Western Backstop Sulfur Dioxide Trading Program” into the Utah SIP is codified at 40 CFR section 52.2320(c)(71)(C) and (D).

Huntington power plants, and disapproving the State's NO_x BART alternative for these two facilities. The EPA also promulgated a final federal implementation plan (FIP) to address the deficiencies in Utah's NO_x BART determinations and the associated monitoring, recordkeeping and reporting requirements for both the Hunter and Huntington power plants (81 FR 43894, July 5, 2016).

V. EPA's Assessment

The 2013 Guidance states that section 110(a)(2)(D)(i)(II)'s prong 4 requirements can be satisfied by approved SIP provisions that the EPA has found to adequately address a state's contribution to visibility impairment in other states. The EPA interprets prong 4 to be pollutant-specific, such that the infrastructure SIP submission need only address the potential for interference with protection of visibility caused by the pollutant (including precursors) to which the new or revised NAAQS applies.⁶

The 2013 Guidance lays out two ways in which a state's infrastructure SIP submittal may satisfy prong 4. As explained above, one way is through a state's confirmation in its infrastructure SIP submittal that it has an EPA approved regional haze SIP in place. In the absence of a fully approved regional haze SIP, a state can make a demonstration in its infrastructure SIP submittal that emissions within its jurisdiction do not interfere with other states' plans to protect visibility. Such a submittal should point to measures in the state's SIP that limit visibility-impairing pollutants and ensure that the resulting reductions conform with any mutually agreed emission reductions under the relevant regional haze regional planning

⁶ See "Guidance on Infrastructure State Implementation Plan (SIP) Elements under Clean Air Act Sections 110(a)(1) and (2)" at 33.

organization (RPO) process.⁷

UDEQ worked through its RPO, the WRAP, to develop strategies to address regional haze. To help states in establishing reasonable progress goals for improving visibility in Class I areas, the WRAP modeled future visibility conditions based on the mutually agreed emissions reductions from each state. The WRAP states then relied on this modeling in setting their respective reasonable progress goals. As a result, we consider emissions reductions from measures in Utah's SIP that conform with the level of emission reductions the State agreed to include in the WRAP modeling to meet the visibility requirement of CAA section 110(a)(2)(D)(i)(II).

With regard to the 2010 SO₂ NAAQS, the EPA proposes to find that the State's implementation of the Western Backstop Sulfur Dioxide Trading Program and the agreed upon SO₂ reductions achieved through that program sufficient to meet the requirements of prong 4.⁸ Under 40 CFR 51.309, certain states, including Utah, can satisfy their SO₂ BART requirements by adopting an alternative program consisting of SO₂ emission milestones and a backstop trading program.⁹ Utah Administrative Rules (UAR) R307-250 and R307-150 implement the backstop trading program provisions and the EPA has approved the State's rules, including the SO₂ reduction milestones, as satisfying its regional haze SO₂ obligations.¹⁰ Utah's SIP thus contains

7 See "Guidance on Infrastructure State Implementation Plan (SIP) Elements under Clean Air Act Sections 110(a)(1) and (2)" at 34, and also 76 *Fed. Reg.* 22036 (April 20, 2011) containing EPA's approval of the visibility requirement of 110(a)(2)(D)(i)(II) based on a demonstration by Colorado that did not rely on the Colorado Regional Haze SIP.

8 Specifically, the State is required to reach its "emissions milestone" for this program by keeping its SO₂ emissions below 141,849 tons/SO₂ in 2018 and each year thereafter.

9 40 CFR 51.309.

10 77 FR 74355 (Dec. 14, 2012).

measures requiring reductions of SO₂ consistent with what the State agreed to achieve under the WRAP process in order to protect visibility. As a result, EPA is proposing to approve 110(a)(2)(D)(i)(II) prong 4 for the 2010 SO₂ NAAQS.

The EPA is also proposing to approve Utah's prong 4 SIP submittal for the 2008 Pb NAAQS. The EPA agrees with UDEQ's submission, which states that significant impacts from Pb emissions from stationary sources are expected to be limited to short distances from the source. The State also noted that it does not have any major sources of Pb located within 100 miles of a neighboring state's Class I area. Further, when evaluating the extent to which Pb could impact visibility, the EPA has found Pb-related visibility impacts insignificant (*e.g.*, less than 0.10 percent).¹¹ The EPA proposes to approve prong 4 for the 2008 Pb NAAQS based on Utah's conclusion that it does not have any significant sources of lead emissions near another state's Class I area and that it, therefore, does not have emissions of Pb that would interfere with the requirements of section 110(a)(2)(D)(i)(II) with respect to visibility.

The EPA is proposing to disapprove Utah's prong 4 infrastructure SIP submittals for the 2006 PM_{2.5}, 2008 ozone, 2010 NO₂, and 2012 PM_{2.5} NAAQS. The EPA's disapproval of Utah's NO_x BART determination in our July 5, 2016 final rulemaking included the specific disapproval of the NO_x control measures the State submitted for the Hunter and Huntington facilities (81 FR 43894, 43902).

As noted, Utah relied on its Regional Haze SIP (Utah SIP Section XX), and specifically its participation in the WRAP, as justification for the approvability of prong 4 for 2006 PM_{2.5},

¹¹ EPA's September 13, 2013 Infrastructure SIP Guidance, at 33.

2008 ozone, 2010 NO₂ and 2012 PM_{2.5} NAAQS. Because the Department did not provide an alternative demonstration that its SIP contains measures to limit NO_x emissions in accordance with the emission reductions it agreed to under the WRAP,¹² the EPA's disapproval of Utah's NO_x BART alternative makes Utah's justification insufficient for the NAAQS pollutants impacted by the control of NO_x. Specifically, NO_x is a precursor of PM_{2.5} and ozone, and is also a term which refers to both NO (nitrogen oxide) and NO₂. The EPA is therefore proposing to disapprove prong 4 of Utah's infrastructure certifications with regard to the 2006 PM_{2.5}, 2008 ozone, 2010 NO₂ and 2012 PM_{2.5} NAAQS.

If the EPA disapproves an infrastructure SIP submission for prong 4, as we are proposing for the 2006 PM_{2.5}, 2008 Ozone, 2010 NO₂ and 2012 PM_{2.5} NAAQS, a FIP obligation will be created. However, since the EPA recently promulgated a FIP for Utah that corrects all regional haze SIP deficiencies (81 FR 43894), there will be no additional practical consequences from the disapproval for UDEQ, the sources within its jurisdiction, or the EPA.¹³ The EPA will not be required to take further action with respect to these prong 4 disapprovals, if finalized, because the FIP already in place would satisfy the requirements with respect to prong 4.¹⁴ Additionally, since the infrastructure SIP submission is not required in response to a SIP call under CAA section 110(k)(5), mandatory sanctions under CAA section 179 would not apply because the deficiencies are not with respect to a submission that is required under CAA title I part D.¹⁵

VI. Proposed Action

¹² With the exception of the 2006 PM_{2.5} NAAQS, which referenced the State's lack of interference with RAVI.

¹³ EPA's September 13, 2013 Infrastructure SIP Guidance, at 34.

¹⁴ Id. at 35.

¹⁵ Id.

The EPA is proposing to approve portions of Utah's infrastructure certifications which address the interstate transport requirements of CAA section 110(a)(2)(D)(i)(II), and to disapprove portions of other certifications addressing this CAA requirement. The EPA is proposing to approve 110(a)(2)(D)(i)(II) prong 4 for the 2008 Pb and 2010 SO₂ NAAQS. The EPA is also proposing to disapprove 110(a)(2)(D)(i)(II) prong 4 for the 2006 PM_{2.5}, 2008 ozone, 2010 NO₂ and 2012 PM_{2.5} NAAQS. The EPA is soliciting public comments on this proposed action and will consider public comments received during the comment period.

VII. Statutory and Executive Order Reviews

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

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);

- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Does not provide the EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

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

Order 13175 (65 FR 67249, November 9, 2000).

List of Subjects in 40 CFR Part 52

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

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

Dated: July 19, 2016.

Shaun L. McGrath,
Regional Administrator,
Region 8.

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