



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R08-OAR-2018-0388, FRL-9980-67-Region 8]

**Approval and Promulgation of State Implementation Plan Revisions; Infrastructure
Monitoring Requirements for the 2008 Pb, 2010 SO₂, 2010 NO₂ 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 monitoring requirements of the Clean Air Act (Act or CAA) for the National Ambient Air Quality Standards (NAAQS) promulgated for lead (Pb) on October 15, 2008, nitrogen dioxide (NO₂) on January 22, 2010, sulfur dioxide (SO₂) on June 2, 2010, and fine particulate matter (PM_{2.5}) on December 14, 2012. 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 DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]**.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R08-OAR-2018-0388 at <http://www.regulations.gov>. Follow the online instructions for submitting comments. Once

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

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

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

I. Background

On October 15, 2008, the EPA revised the level of the primary and secondary Pb NAAQS from 1.5 micrograms per cubic meter ($\mu\text{g}/\text{m}^3$) 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 NO_2 at a level of 100 parts per billion (ppb), based on a 3-year average of 98th percentile 1-hour daily maximum concentrations, while retaining the annual primary standard of 53 ppb. The secondary annual 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 3-year average of the annual 99th percentile of 1-hour daily maximum concentrations (75 FR 35520, June 22, 2010). Finally, on December 14, 2012, the EPA promulgated a revised annual $\text{PM}_{2.5}$ standard by lowering the level to $12.0 \mu\text{g}/\text{m}^3$ and retaining the 24-hour $\text{PM}_{2.5}$ standard at a level of $35 \mu\text{g}/\text{m}^3$ (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 $\text{PM}_{2.5}$, 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 $\text{PM}_{2.5}$ 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).

II. What is the Scope of this Rulemaking?

The EPA is acting upon the SIP submissions from Utah that address the infrastructure monitoring requirements of CAA sections 110(a)(1) and 110(a)(2) for the 2008 Pb, 2010 SO₂, 2010 NO₂ 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 3 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

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.

proposed rulemaking: Promulgation of State Implementation Plan Revisions; Infrastructure Requirements for the 1997 and 2006 PM_{2.5}, 2008 Lead, 2008 Ozone, and 2010 NO₂ 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 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”).

III. 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 (listed below) include requirements such as modeling, monitoring and emissions inventories, which are designed to assure attainment and maintenance of the NAAQS.

- 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.

Of these infrastructure elements, element B is the subject of this action, as all other elements were acted on in the EPA rulemaking titled Promulgation of State Implementation Plan Revisions; Infrastructure Requirements for the 2008 Lead, 2008 Ozone, 2010 NO₂, 2010 SO₂, and 2012 PM_{2.5} National Ambient Air Quality Standards; Utah.² A detailed discussion of element 110(a)(2)(B) is contained in the next section.

² 81 FR 50626 (August 2, 2016).

IV. 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; 2010 NO₂ NAAQS on January 31, 2013; 2010 SO₂ 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, 2010 NO₂, 2010 SO₂ and 2012 PM_{2.5} NAAQS. These plans reference the Utah Code Annotated (UCA) and the Utah SIP. These submittals are available within the electronic docket for today's proposed action at www.regulations.gov. The UCA and the Utah SIP referenced in the submittals are publicly available at <http://le.utah.gov/xcode/code.html> and <https://deq.utah.gov/legacy/laws-and-rules/air-quality/sip/>. 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.

V. Analysis of the State Submittals

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). Pursuant to its Quality Assurance Project Plan (QAPP), the Department makes arrangements to operate and maintain federal reference monitors and establishes

federally-approved protocols for sample collection, handling and analysis. The State's QAPP was most recently approved on November 28, 2016, with an annual update in November of 2017.

Utah's annual monitoring network plan (AMNP), is made available by the Department for public review and comment prior to submission to the EPA. Additionally, the State of Utah submits data to the EPA's Air Quality System database in accordance with 40 CFR 58.16. Finally, Utah's 2017 AMNP was approved by the EPA through a letter dated October 27, 2017 (available within the docket). The State provides the EPA with prior notification when changes to its monitoring network or plan are being considered. This action proposes to approve the State's submittal in reference to element B: ambient air quality monitoring/data system. Previous action was not taken in the final EPA ruling titled Promulgation of State Implementation Plan Revisions; Infrastructure Requirements for the 2008 Lead, 2008 Ozone, 2010 NO₂, 2010 SO₂, and 2012 PM_{2.5} National Ambient Air Quality Standards; Utah.³

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 Pb, 2010 SO₂, 2010 NO₂ and 2012 PM_{2.5} NAAQS for this element. Approval of element B will satisfy any outstanding requirements under Section 110(a)(2).

VI. What Proposed Action is the EPA Taking?

In this action, the EPA is proposing to approve infrastructure element B for the 2008 Pb, 2010 SO₂, 2010 NO₂ and 2012 PM_{2.5} NAAQS from the State's certifications as shown in Table 1.

³ 81 FR 50626 (August 2, 2016).

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

Proposed for Approval	Element
<u>January 19, 2012 submittal</u> - 2008 Pb NAAQS:	(B)
<u>January 31, 2013 submittal</u> - 2010 NO₂ NAAQS:	(B)
<u>June 2, 2013 submittal</u> - 2010 SO₂ NAAQS:	(B)
December 4, 2015 <u>submittal</u> - 2012 PM_{2.5} NAAQS:	(B)

VII. 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. *See* 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this proposed action merely proposes to approve state law as meeting federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this 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);
- Is not an Executive Order 13771 regulatory action because this action is not significant under Executive Order 12866;
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);

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

The SIP is not approved to apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, 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: July 13, 2018.

Debra Thomas,

Acting Regional Administrator,

Region 8.