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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R08-OAR-2018-0309 and EPA-R10-OAR-2018-0316: FRL—9985-28-Region 8 and Region 10]

Determination of Attainment by the Attainment Date and Clean Data Determination for the Logan, UT-ID 2006 24-Hour $PM_{2.5}$ Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is finalizing a determination of attainment by the attainment date and a clean data determination (CDD) for the 2006 24-hour fine particulate matter ($PM_{2.5}$) Logan, Utah (UT)-Idaho (ID) nonattainment area. These determinations are based upon quality-assured, quality-controlled and certified ambient air monitoring data for the period 2015-2017, available in the EPA's Air Quality System (AQS) database, showing that the area has attained the 2006 24-hour $PM_{2.5}$ National Ambient Air Quality Standards (NAAQS). Based on the final determination that the Logan, UT-ID nonattainment area is currently attaining the 24-hour $PM_{2.5}$ NAAQS, the EPA is also issuing the final determination that the obligation for Utah and Idaho to make submissions to meet certain Clean Air Act (CAA or the Act) requirements related to attainment of the NAAQS for this area is not applicable for as long as the area continues to attain the NAAQS. Additionally, the sanctions and Federal Implementation Plan (FIP) clocks triggered by the partial disapproval of the contingency measure element for the Idaho portion of the Logan, UT-ID $PM_{2.5}$ State Implementation Plan (SIP) will be suspended.

DATES: This final rule is effective on **[Insert date of publication in the Federal Register]**.

ADDRESSES: The EPA has established dockets for this action under Docket ID No. EPA-R08-OAR-2018-0309 and/or Docket ID No. EPA-R10-OAR-2018-0316. All documents in the docket are listed on the https://www.regulations.gov website. 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, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available through http://www.regulations.gov, or please contact the person identified in the "For Further Information Contact" section for additional availability information.

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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 17, 2006 (71 FR 61144), the EPA revised the level of the 24-hour $PM_{2.5}$ NAAQS, lowering the primary and secondary standards from the 1997 standard of 65 micrograms per cubic meter ($\mu g/m^3$) to 35 $\mu g/m^3$. On November 13, 2009 (74 FR 58688), the

EPA designated several areas as nonattainment for the 24-hour $PM_{2.5}$ NAAQS of 35 $\mu g/m^3$, including the Logan, Utah UT-ID nonattainment area.

On July 17, 2018 (83 FR 33886), the EPA proposed to determine, based on the most recent 3 years (2015-2017) of valid data,[1] that the Logan, UT-ID nonattainment area has attained the 2006 primary and secondary 24-hour $PM_{2.5}$ NAAQS by the December 31, 2017 attainment date. In addition, based on the CDD, the EPA also proposed to determine that the obligation to submit any remaining attainment-related SIP revisions arising from classification of the Logan, UT-ID area as a Moderate nonattainment area under subpart 4 of part D (of title I of the Act) for the 2006 24-hour $PM_{2.5}$ NAAQS is not applicable so long as the area continues to attain the 2006 24-hour $PM_{2.5}$ NAAQS. Additional detail can be found in the July 17, 2018 (83 FR 33886) proposed action.

II. Response to Comments

The EPA received eight public comments on the proposed action. Three of the comments related to forestry practices and wildfire management, primarily in California. One comment related to child labor practices in South America. One comment related to homelessness in California. Another comment discussed water quality issues in Venezuela. Finally, one comment raised issues concerning lead-based paint. None of these seven comments recommended that the EPA take a different action than the EPA proposed on July 17, 2018 (83 FR 33886). The eighth comment was received from the Idaho Conservation League (ICL) and raised issues relevant to this action, which are addressed below. After reviewing the comments received, the EPA has determined that the comments, with the exception of the ICL comment, fall outside the scope of our proposed action or fail to identify any material issue necessitating a response.

[1] Meeting the requirements of 40 CFR part 50, appendix N, and part 58.

The ICL comment raises concerns regarding monitoring data trends at the Franklin, ID and, to a lesser extent, the Smithfield, UT sites. The comment states that the 3-year average (2015-2017) at the Franklin, ID monitoring site was 30 $\mu g/m^3$; however, the 98^{th} percentile rose each year (18.8, 33.3, and 38.3 $\mu g/m^3$, respectively). The commenter briefly mentions the Smithfield, UT monitor and how the 98^{th} percentiles for the three years (2015-2017) rose too, but to a lesser extent. The comment also asserts that if the 2018 monitoring data at the Franklin, ID site yields a 98^{th} percentile measurement of greater than 33.4 $\mu g/m^3$ (the commenter observes that this measurement is not unreasonable for this site), then the 2016-2018 design value would exceed the standard of 35 $\mu g/m^3$. The commenter requests that the EPA addresses why the year-to-year increases in $PM_{2.5}$ is occurring, and what regulatory measures are in place to prevent this area from violating again.

In accordance with section 188(b)(2) of the CAA, the EPA is required to determine within 6 months of the applicable attainment date whether a nonattainment area attained the standard by that date. On September 8, 2017, the EPA extended the attainment date for the Logan, UT-ID $PM_{2.5}$ nonattainment area to December 31, 2017, upon which the EPA proposed a determination of attainment. A determination of attainment is not equivalent to a redesignation, and the states must still meet the statutory requirements for redesignation in order for the area to be redesiginated to attainment. The comment may be referring to a redesignation rather than a determination that the area attained by the attainment date and/or a CDD, so the EPA reiterates that the designation status of the area will remain nonattainment for the 2006 $PM_{2.5}$ NAAQS, until such time as the EPA determines that the area meets the CAA requirements for redesignation to attainment in CAA section 107(d)(3)(E).

The EPA has established regulations for determining if the 24-hour $PM_{2.5}$ NAAQS has been met at 40 CFR 50.13 and part 50, appendix N, section 4.2. Specifically, under 40 CFR 50.13 and part 50, appendix N, section 4.2, the 2006 24-hour $PM_{2.5}$ NAAQS is met when the 24-hour $PM_{2.5}$ NAAQS design value at each eligible monitoring site is less than or equal to 35 $\mu g/m^3$. Three years of valid annual $PM_{2.5}$ 98^{th} percentile mass concentrations generally are required to produce a valid design value. The regulations do not require that there be a downward trend over the course of the three years used to calculate the design value. Rather, according to part 50, appendix N, section 4.5, the design value is an average of the three years of valid annual $PM_{2.5}$ 98^{th} percentile mass concentrations. Thus, the process the EPA uses to calculate a design value accounts for the fluctuations in 98^{th} percentiles at the Logan, UT and Smithfield, UT monitoring sites. Following the requirements of 40 CFR 50.13 and part 50, appendix N, the EPA determined that the design values at both the Smithfield, UT and Franklin, ID monitors are below 35 $\mu g/m^3$, thus the proposed determination of attainment by the attainment date and the proposed CDD are appropriate.

Also, the 3-year design values are lower for the time period used for this attainment determination compared to the time period when the area was designated nonattainment. The Logan, UT design value used for designations[2] was 36 $\mu g/m^3$ (2006-2008). The first period when both the Logan, UT and Franklin, ID monitors had valid design values was in 2008-2010, when the Logan, UT monitor recorded a $PM_{2.5}$ 24-hour concentration of 43 $\mu g/m^3$ and the Franklin, ID monitor was 46 $\mu g/m^3$. In comparison, the most recent design value (2015-2017) is 33 $\mu g/m^3$ for the Logan, UT monitor and 30 $\mu g/m^3$ for the Franklin, ID monitor, which shows attainment. Moreover, since being designated as a Moderate nonattainment area in 2009, Utah and Idaho

[2] November 13, 2009 (74 FR 58688).

have adopted and implemented reasonably available control measures (RACM), including reasonably available control technologies (RACT), on sources of direct $PM_{2.5}$ and $PM_{2.5}$ precursors. Based on the overall trend towards attainment since the area was designated as nonattainment in 2009, as well as the implementation of RACM on sources in the nonattainment area, it is unlikely the area will re-violate the 24-hour $PM_{2.5}$ NAAQS. Furthermore, as described in detail in our proposal notice, should the area subsequently violate the 24-hour $PM_{2.5}$ NAAQS, in accordance with 40 CFR 51.1015(a)(2), the EPA would rescind the CDD, and Utah and Idaho would be obligated to submit a SIP revision to address any deficiencies. Therefore, the EPA is finalizing our action as proposed.

III. Final Action

Pursuant to CAA section 188(b)(2), the EPA is finalizing a determination, based on the most recent 3 years (2015-2017) of valid data, that the Logan, UT-ID nonattainment area has attained the 2006 primary and secondary 24-hour $PM_{2.5}$ NAAQS by the December 31, 2017 attainment date.

In addition, the EPA is finalizing a determination that the obligation to submit any remaining attainment-related SIP revisions arising from classification of the Logan, UT-ID area as a Moderate nonattainment area under subpart 4 of part D (of title I of the Act) for the 2006 24-hour $PM_{2.5}$ NAAQS are not applicable under the Clean Data Policy for so long as the area continues to attain the 2006 24-hour $PM_{2.5}$ NAAQS. *See* 40 CFR 51.1015(a). In particular, the obligation for Utah and Idaho to submit attainment demonstrations, projected emissions inventories, RACM (including RACT), reasonable further progress (RFP) plans, motor vehicle emissions budgets (MVEB), quantitative milestones, and contingency measures, for the Logan, UT-ID area are suspended until such time as: (1) the area is redesignated to attainment, after

which such requirements are permanently discharged; or (2) the EPA determines that the area has re-violated the $PM_{2.5}$ NAAQS, at which time the state shall submit such attainment plan elements for the Moderate nonattainment area by a future date to be determined by the EPA and announced through publication in the Federal Register at the time the EPA determines the area is violating the $PM_{2.5}$ NAAQS.

As discussed in the 2015 $PM_{2.5}$ SIP Requirements Rule,[3] the nonattainment base emissions inventory required by section 172(c)(3) is not suspended by this determination because the base inventory is a requirement independent of planning for an area's attainment. *See* 81 FR 58009 at 58028 and 58127-8; 80 FR 15340 at 15441-2. Additionally, Nonattainment New Source Review (NNSR) requirements are discussed in the $PM_{2.5}$ SIP Requirements Rule, and required by CAA sections 110(a)(2)(C); 172(c)(5); 173; 189(a); and 189(e), and are not being suspended by a CDD because this requirement is independent of the area's attainment planning. *See* 81 FR 58010 at 58107 and 58127.

This determination does not invalidate any prior actions that the EPA has made on any Moderate $PM_{2.5}$ area attainment plan elements that were submitted by either the State of Utah or the State of Idaho for the Logan, UT-ID Moderate $PM_{2.5}$ area attainment plans. This action does not preclude either state from submitting, nor the EPA from acting on, the suspended attainment plan elements. As a result of this final action, the sanctions and Federal Implementation Plan (FIP) clocks triggered by the partial disapproval of the contingency measure element of the Idaho portion of the Logan, UT-ID $PM_{2.5}$ SIP are suspended.

This final action does not constitute a redesignation of the Logan, UT-ID nonattainment area to attainment for the 2006 24-hour $PM_{2.5}$ NAAQS under CAA section 107(d)(3) because we

[3] On August 24, 2016, the EPA finalized the Fine Particulate Matter National Ambient Air Quality Standards: State Implementation Plan Requirements ("$PM_{2.5}$ SIP Requirements Rule"), 81 FR 58010.

have not yet approved a maintenance plan for Logan, UT-ID as meeting the requirements of section 175A of the CAA or determined that the area has met the other CAA requirements for redesignation. The classification and designation status in 40 CFR part 81 remains Moderate nonattainment for this area until such time as the EPA determines that Utah and Idaho have met the CAA requirements for redesignation to attainment for the Logan, UT-ID nonattainment area.

In accordance with 5 U.S.C. 553(d), the EPA finds there is good cause for these determinations to become effective immediately upon publication in the **Federal Register**. The expedited effective date for these actions is authorized under both 5 U.S.C. 553(d)(1), which provides that rule actions may become effective less than 30 days after publication if the rule "grants or recognizes an exemption or relieves a restriction," and 5 U.S.C. 553(d)(3), which allows an effective date less than 30 days after publication "as otherwise provided by the agency for good cause found and published with the rule." As noted above, this determination of attainment will result in a suspension of the requirements for Idaho and Utah to submit attainment demonstrations, projected emissions inventories, RACM (including RACT), RFP plans, MVEB, quantitative milestones, and contingency measures, so long as the Logan, UT-ID area continues to attain the $PM_{2.5}$ NAAQS. Furthermore, the sanctions and FIP clocks triggered by the partial disapproval of the contingency measure element of the Idaho portion of the Logan, UT-ID $PM_{2.5}$ SIP are suspended. The suspension of these requirements and the suspension of sanctions is sufficient reason to allow an expedited effective date of this rule under 5 U.S.C. 553(d)(1). In addition, the suspension of the obligations of Idaho and Utah to make submissions for these requirements provides good cause to make this rule effective on the date of publication of this action in the **Federal Register**, pursuant to 5 U.S.C. 553(d)(3). The purpose of the 30-day waiting period prescribed in 5 U.S.C. 553(d) is to give affected parties a reasonable time to

adjust their behavior and prepare before the final rule takes effect. Where, as here, the final rule suspends requirements rather than imposes obligations, affected parties, such as Idaho and Utah, do not need time to adjust and prepare before the rule takes effect.

IV. Statutory and Executive Order Reviews

This action finalizes a determination of attainment based on air quality and suspends certain federal requirements, and thus would not impose additional requirements beyond those imposed by state law. For this reason, this final 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 expected to be an Executive Order 13771 (82 FR 9339, February 2, 2017) 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 (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 CAA; and
- Does not provide the EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the 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).

The Congressional Review Act, 5 U.S.C. section 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the Federal Register. A major rule cannot take effect until 60 days after it is published in the Federal

Register. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[insert date 60 days after date of publication in the Federal Register]**. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

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

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

Dated: September 27, 2018.

Douglas H. Benevento,
Regional Administrator,
Region 8.

Dated: September 27, 2018.

Chris Hladick,
Regional Administrator,
Region 10.

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