



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R08-OAR-2019-0643; FRL-10009-77-Region 8]

Promulgation of State Implementation Plan Revisions; Infrastructure Requirements for the 2015 Ozone National Ambient Air Quality Standards; Utah

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: On October 1, 2015, the Environmental Protection Agency (EPA) promulgated the 2015 ozone National Ambient Air Quality Standard (NAAQS), revising the standard to 0.070 parts per million. Whenever a new or revised is promulgated, the Clean Air Act (CAA or Act) requires each state to submit a State Implementation Plan (SIP) revision for the implementation, maintenance, and enforcement of the new standard. This submission is commonly referred to as an infrastructure SIP. In this action we are proposing to approve the State of Utah's 2015 ozone NAAQS infrastructure SIP submitted to the EPA on January 29, 2020.

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-2019-0643, to the Federal Rulemaking Portal: <https://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>. To reduce the risk of COVID-19 transmission, for this action we will not be accepting comments submitted by mail or hand delivery

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 not be placed on the internet. Publicly available docket materials are available electronically at www.regulations.gov. To reduce the risk of COVID-19 transmission, for this action we do not plan to offer hard copy review of the docket. Please email or call the person listed in the **FOR FURTHER INFORMATION CONTACT** section if you need to make alternative arrangements for access to the docket.

FOR FURTHER INFORMATION CONTACT: Kate Gregory, (303) 312-6175, gregory.kate@epa.gov. Mail can be directed to the Air and Radiation Division, U.S. EPA, Region 8, Mail-code 8ARD-QP, 1595 Wynkoop Street, Denver, Colorado, 80202-1129.

SUPPLEMENTARY INFORMATION: Throughout this document, “reviewing authority,” “we,” “us,” and “our” refer to the EPA.

I. 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.¹ More recently, on October 1, 2015, the EPA promulgated and revised the NAAQS for ozone, further strengthening the primary and secondary 8-hour standards to 0.070 ppm.² The October 1, 2015 standards are known as the 2015 ozone NAAQS.

Under sections 110(a)(1) and (2) of the CAA, after the promulgation of a new or revised NAAQS states are required to submit infrastructure SIPs to ensure their SIPs provide for implementation, maintenance, and enforcement of the NAAQS.³ These submissions must contain any revisions needed for meeting the applicable SIP requirements of section 110(a)(2), or certifications that the existing SIPs already meet those requirements. The EPA highlighted and explained this statutory requirement in a series of guidance documents.⁴

A. 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.

¹ Final rule, National Ambient Air Quality Standards for Ozone, 73 FR 16436, 16483 (March 27, 2008).

² Final rule, National Ambient Air Quality Standards for Ozone, 80 FR 65292, 65362 (Oct. 26, 2015).

³ 42 U.S.C. 7410(a)(1), (2).

⁴ “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” (Oct. 2, 2007); “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)” (Sep. 25, 2009); “Guidance on Infrastructure SIP Elements Required Under Sections 110(a)(1) and (2) for the 2008 Lead (Pb) National Ambient Air Quality Standards (NAAQS)” (Oct. 14, 2011); “Guidance on Infrastructure State Implementation Plan (SIP) Elements under Clean Air Act Sections 110(a)(1) and (2)” (Sep. 13, 2013) (2013 Memo).

- 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 prevention of significant deterioration (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 for Utah is contained in section III of this document.

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

The Utah 2015 ozone NAAQS infrastructure SIP submissions demonstrates how the State, where applicable, has plans in place that meet the requirements of section 110 for the 2015 ozone NAAQS. The State submittals are available in the electronic docket for today's proposed

action at www.regulations.gov.⁵

The Utah Department of Environmental Quality (UDEQ) submitted a certification of Utah's infrastructure SIP for the 2015 ozone NAAQS on January 29, 2020. The State's submission references the current Utah Division of Air Quality (UDAQ) Rules (UAR).⁶

II. What is the scope of this proposed rule?

The EPA is acting upon SIP submissions from Utah that address the infrastructure requirements of CAA sections 110(a)(1) and 110(a)(2) for the 2015 ozone 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.

Whenever the EPA promulgates a new or revised NAAQS, CAA section 110(a)(1) requires states to make SIP submissions to provide for the implementation, maintenance, and enforcement of the NAAQS. This particular type of SIP submission is commonly referred to as an "infrastructure SIP." These submissions must meet the various requirements of CAA section

⁵ Utah made a submittal to address the 2015 ozone NAAQS infrastructure SIP requirements on October 24, 2019, but then made a second submittal on January 29, 2020, to address public participation requirements. The second submittal is comprehensive and includes all of the substantive material in the first, but for completeness the docket includes both submittals (see 'UT 2015 Ozone ISIP Submission – 10.24.19' and '01.29.20 UT 2015 ISIP Submission' in docket).

⁶ See <https://rules.utah.gov/publicat/code/r307/r307.htm> (as in effect December 1, 2019; site accessed April 13, 2020); Utah's approved SIP can be found at 40 CFR 52.2320.

110(a)(2), as applicable. The EPA has previously provided comprehensive guidance on the application of these provisions through a guidance document for infrastructure SIP submissions and through regional actions on infrastructure submissions.⁷ Unless otherwise noted below, we are following that approach in acting on this submission. In addition, in the context of acting on infrastructure submissions, the EPA generally evaluates the state's SIP for facial compliance with statutory and regulatory requirements, not for the state's implementation of its SIP.⁸ The EPA has other authority to address any issues concerning a state's implementation of the rules, regulations, consent orders, and other materials that comprise its SIP.

III. The EPA's Evaluation of the State Submittal

A. CAA Section 110(a)(2)(A): 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.

Multiple SIP-approved UDAQ Rules cited in Utah's certification provide enforceable emission limitations and other control measures, means or techniques, schedules for compliance, and other related matters necessary to meet the requirements of the CAA section 110(a)(2)(A) for the 2015 NAAQS. The State's submission cites SIP section I (*Legal Authority*), which allows the adoption of emission standards and other limits necessary for attainment and maintenance of

⁷ The EPA explains and elaborates on these ambiguities and its approach to address them in its 2013 Infrastructure SIP Guidance (available at https://www.epa.gov/sites/production/files/2015-12/documents/guidance_on_infrastructure_sip_elements_multipollutant_final_sept_2013.pdf), as well as in agency actions on infrastructure SIPs. *See, e.g.*, Proposed Rule, 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 (December 1, 2014).

⁸ *See Montana Envil. Info. Ctr. v. Thomas*, 902 F.3d 971, 978 (9th Cir. 2018).

the NAAQS. SIP section I, in combination with other specific control measures adopted by the Utah Air Quality Board (AQB), and multiple SIP-approved state air quality regulations cited in Utah's certification, including SIP sections II (*Review of New and Modified Air Pollution Sources*), VIII (*Prevention of Significant Deterioration*), IX (*Part D: 8 Hour Ozone Provisions*), X (*Part A, B, C: Vehicle Inspection and Maintenance Program General Provisions*), ozone Reasonable Available Control Technology (RACT) rules and R307-325 (*Ozone Nonattainment and Maintenance Areas: General Requirement*), R307-326 (*Ozone Nonattainment and Maintenance Areas: Control of Hydrocarbon Emissions*), R307-327 (*Ozone Nonattainment and Maintenance Areas: Petroleum Liquid Storage*), R307-328 (*Gasoline Transfer and Storage*), R307-335 (*Ozone Nonattainment and Maintenance Areas: Degreasing and Solvent Cleaning Operations*), R307-340 (*Ozone Nonattainment and Maintenance Areas: Surface Coating Processes*) 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 2015 ozone NAAQS, subject to the following clarifications.⁹

The EPA does not consider the SIP requirements triggered by the nonattainment area mandates in part D of Title 1 of the CAA to be governed by the submission deadline of section 110(a)(1). Nevertheless, Utah has included some SIP provisions originally submitted in response to part D requirements in its certification for the infrastructure requirements of section 110(a)(2). For the purposes of this action, the EPA is reviewing any rules originally submitted in response to part D requirements solely for the purposes of determining whether they support a finding that the State has met the basic infrastructure requirements of section 110(a)(2). For example, in

⁹ Utah 2015 Ozone Infrastructure SIP Submission, pp. 1, 2.

response to the requirement to have enforceable emission limitations under section 110(a)(2)(A), Utah's certification (contained within this docket) generally listed provisions within its SIP which regulate pollutants through various programs, including its stationary source permit program, which requires sources to demonstrate that emissions will not cause or contribute to a violation of any NAAQS. The EPA is approving those rules as meeting the requirement to have enforceable emission limitations on ozone precursors; any judgment about whether those emission limitations discharge the State's obligation to impose RACT under part D will be made separately, in an action reviewing those rules pursuant to the requirements of part D. This suffices, in the case of Utah, to meet the requirements of section 110(a)(2)(A) for the 2015 ozone NAAQS.

B. CAA Section 110(a)(2)(B): 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.”

As discussed in Utah's submission, the UDEQ periodically submits a Quality Management Plan and a Quality Assurance Project Plan to the EPA. These plans cover procedures to monitor and analyze data. As part of the monitoring SIP, Utah submits an Annual Monitoring Network Plan (AMNP) each year for the EPA's approval.

A comprehensive AMNP, intended to fully meet the federal requirements, was submitted to the EPA by Utah on July 3, 2019 and subsequently approved by the EPA.¹⁰ Utah's SIP-approved regulations provide for the design and operation of its monitoring network, reporting of

¹⁰ See *Utah AMNP Approval 2019.docx* in the docket for this action. Additionally, Utah's AMNPs can be found at <http://www.airmonitoring.utah.gov/network/review.htm>.

data obtained from the monitors, and annual network review including notification to the EPA of any changes, and public notification of exceedances of NAAQS. As described in its submission, Utah operates a comprehensive monitoring network, including ozone monitoring, compiles and analyzes collected data, and submits the data to the EPA's Air Quality System on a quarterly basis.

Based on this information, we are proposing to approve the Utah SIP as meeting the requirements of CAA section 110(a)(2)(B) for the 2015 ozone NAAQS.

C. CAA Section 110(a)(2)(C): Program for Enforcement of Control Measures and for Construction or Modification of Stationary Sources

To generally meet the requirements of section 110(a)(2)(C), the State is required to have SIP-approved PSD, nonattainment New Source Review (NSR), and minor NSR permitting programs that are adequate to implement the 2015 ozone 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).

The State's submissions for the 2015 ozone infrastructure requirements cite SIP section I (*Legal Authority*), which provides for enforcement of applicable laws, regulations, and standards, including 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 PSD requirements.

PSD Requirements

With respect to Element (C), 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 for Element (J) in relation to a comprehensive PSD permitting program are the same as the requirements with respect to Element (C).¹¹

Utah has shown that it 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 located in 40 CFR 52.21 as it existed on a specific date. On April 13, 2020, we proposed to approve portions of a Utah SIP revision revising the date of incorporation by reference of the Federal PSD program to July 1, 2018.¹² With this Utah SIP revision, the Utah SIP now generally reflects all changes to PSD requirements that the EPA has promulgated through the revised date of incorporation by reference.

For the above reasons, the EPA is proposing to approve Utah's SIP for the 2015 ozone 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 Requirements

¹¹ The "Prong 3" requirements of Element (D)(i)(II) may be satisfied in part by demonstrating that the air agency has a complete PSD permitting program that correctly addresses all regulated NSR pollutants. Our explanation of how the state has satisfied the Prong 3 requirements is below.

¹² See Proposed Rule, Revisions to the Utah Division of Administrative Rules, 85 FR 14606 (April 13, 2020). We did not receive any comments on our proposed approval and anticipate finalizing that approval before any final action on this proposal.

The State has a SIP-approved minor NSR program, adopted under section 110(a)(2)(C) of the Act.¹³ 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 2015 ozone 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.

D. CAA Section 110(a)(2)(D): Interstate Transport

CAA section 110(a)(2)(D)(i) consists of four separate elements, or "prongs." CAA section 110(a)(2)(D)(i)(I) requires SIPs to contain adequate provisions prohibiting emissions that will contribute significantly to nonattainment of the NAAQS in any other state (prong 1), and adequate provisions prohibiting emissions that will interfere with maintenance of the NAAQS by any other state (prong 2). CAA section 110(a)(2)(D)(i)(II) requires SIPs to contain adequate provisions prohibiting emissions that will interfere with any other state's required measures to prevent significant deterioration of its air quality (prong 3), and adequate provisions prohibiting emissions which will interfere with any other state's required measures to protect visibility (prong 4). This proposed action will not address the prongs 1, 2, and 4 portions of the Utah 2015 ozone infrastructure SIP. We will act on these portions of Utah's infrastructure SIP in a separate rulemaking action.

¹³ See Final Rule, Approval and Promulgation of Air Quality Implementation Plans; Utah; Revisions to Utah Administrative Code—Permit: New and Modified Sources, 79 FR 7072, 7076 (July 19, 2016).

Prong 3: Interference with PSD measures

As to in-state sources subject to PSD permitting, the prong 3 (PSD) requirement of CAA section 110(a)(2)(D)(II) may be met for all NAAQS 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 NSR pollutants and that satisfies the requirements of the EPA's PSD implementation rule(s).¹⁴ As discussed above in connection with Element (C), Utah has provided that confirmation by demonstrating that it has a federally approved PSD program, current as of the most recent revisions to 40 CFR 52.21.

In-state sources that are *not* subject to PSD permitting – that is, in-state sources not subject to PSD for any one or more of the pollutants subject to regulation under the CAA because they are in a nonattainment area for a NAAQS related to those particular pollutants – may also have the potential to interfere with PSD in an attainment or unclassifiable area of another state. One way a state may satisfy prong 3 with respect to these sources is by citing the air agency's EPA-approved nonattainment NSR provisions addressing all pollutants for which the state has designated nonattainment areas. Utah has a SIP-approved nonattainment NSR program¹⁵ which ensures regulation of major sources and major modifications in nonattainment areas, and therefore we find that this satisfies prong 3 with regard to this requirement.

Accordingly, the EPA is proposing to approve the infrastructure SIP submission as meeting the applicable prong 3 requirements of section 110(a)(2)(D)(i)(II) for the 2015 ozone NAAQS.

¹⁴ See 2013 Memo at 31 (“This is because in order to be approved by the EPA, a major source PSD permitting program would need to fully consider source impacts on air quality in other states.”).

¹⁵ See Final Rule, Approval and Promulgation of Air Quality Implementation Plans; State of Utah; Revisions to Nonattainment Permitting Regulations, 84 FR 35831 (July 25, 2019).

110(a)(2)(D)(ii): Interstate and international transport provisions

CAA section 110(a)(2)(D)(ii) requires SIPs to include provisions ensuring compliance with the applicable requirements of CAA sections 126 and 115 (relating to interstate and international pollution abatement). CAA section 126 requires notification to neighboring states of potential impacts from a new or modified major stationary source and specifies how a state may petition the EPA when a major source or group of stationary sources in a state is thought to contribute to certain pollution problems in another state. CAA section 115 governs the process for addressing air pollutants emitted in the United States that cause or contribute to air pollution that may reasonably be anticipated to endanger public health or welfare in a foreign country.

To address CAA section 110(a)(2)(D)(ii), Utah states that no sources within the State are the subject of an active finding under CAA section 126 with respect to the 2015 ozone NAAQS, and that there are no final findings under CAA section 115 against Utah with respect to the 2015 ozone NAAQS. In the assessing CAA section 110(a)(2)(D)(ii), we reviewed the information presented by Utah in its 2015 ozone infrastructure SIP submission, as well as relevant portions of the EPA-approved Utah SIP. As required by 40 CFR 51.166(q)(2)(iv), Utah's SIP-approved PSD program requires major new or modified sources to provide notice to states whose air quality may be impacted by the emissions of sources subject to PSD.¹⁶ This suffices to meet the notice requirement of section 126(a). Utah also has no pending obligations under sections 126(c) or 115(b) of the CAA. Therefore, the Utah infrastructure SIP currently meets the requirements of those sections. For these reasons, the EPA is proposing to approve the Utah SIP as fully meeting the requirements of CAA section 110(a)(2)(D)(ii) for the 2015 ozone NAAQS.

¹⁶ See Final Rule, Approval, Disapproval, and Promulgation of Air Quality Implementation Plans; Utah; Revisions to New Source Review Rules, 76 FR 41712 (July 15, 2011) (approving incorporation of most 40 CFR 52.21 requirements into state program).

E. CAA Section 110(a)(2)(E): Adequate Resources

Section 110(a)(2)(E)(i) requires each state to provide necessary assurances that it will have adequate personnel, funding, and authority under state 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) requires each state to comply with the requirements respecting state boards under CAA section 128. Section 110(a)(2)(E)(iii) requires each state 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.”

The provisions in Chapter 2 of Title 19 of the Utah Code and Utah SIP section I (*Legal Authority*) provide the UDAQ and the AQB adequate authority to carry out SIP obligations with respect to the 2015 ozone NAAQS. The State receives section 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 with the EPA documents that the State has the resources needed to carry out agreed 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. 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 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 UDEQ 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 submittals (Utah SIP section VI, *Intergovernmental Cooperation*) 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 2015 ozone NAAQS.

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."

On February 14, 2006, EPA approved SIP section 1 (*Legal Authority*) into the Utah SIP as codified in UAR R307-110-2.¹⁷ Utah SIP section 1 (*Legal Authority*) specifies certain requirements regarding the composition of the State board and disclosure by its members of potential conflicts of interest. Details on how this portion of the Procedural Rules meet the requirements of section 128 are provided in our April 26, 2016 proposal.¹⁸ In our August 2, 2016 final action, we correspondingly approved Utah's infrastructure SIP for the 2008 ozone NAAQS

¹⁷ See Final Rule, Approval and Promulgation of Air Quality Implementation Plans; Utah; Rule Recodification, 71 FR 7679, 7682 (February 14, 2006); 40 CFR 52.2320.

¹⁸ See Proposed Rule, 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, 81 FR 24525, 24531-24532 (April 26, 2016).

for element (E)(ii).¹⁹ 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. Therefore, Utah's SIP continues to meet the requirements of section 110(a)(2)(E)(ii). We are proposing to approve the State's January 29, 2020 SIP submission as meeting the requirements of section 128 because it continues to comply with the statutory requirements and is consistent with the EPA's guidance recommendations concerning section 128.

F. CAA Section 110(a)(2)(F): Stationary Source Monitoring System

Under section 110(a)(2)(F), the SIP must require, as may be prescribed by the EPA: (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.

In its submission, Utah includes reference to EPA-approved section III (*Source Surveillance*) which describes the State's program of periodic emissions testing, emissions inventories, plant inspections and source monitoring.²⁰ Additionally, the State cites EPA-approved SIP section II (*Review of New and Modified Air Pollution Sources*) and SIP section VIII (*Prevention of Significant Deterioration*) as the State's program for new or modified sources to submit plans to UDEQ (and receive approval) prior to construction or modification of stationary sources. Utah also cites UAR rules in its submission (including R307-150, R307-165 and R307-

¹⁹ See Final Rule, 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, 81 FR 50626 (Aug. 2, 2016).

²⁰ Utah 2015 Ozone Infrastructure SIP Submission, p. 15; see 40 CFR 52.2320.

170) that require certain large sources to install and maintain continuous emission monitors to assure compliance with emission limitations established in approval orders and the SIP.²¹ In addition, Utah provides for monitoring, recordkeeping, and reporting requirements for sources subject to minor and major source permitting.

Additionally, 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 November 2019. The EPA compiles the emissions data, supplementing it where necessary, and releases it to the general public through the Web site <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 2015 ozone NAAQS.

G. CAA Section 110(a)(2)(G): Emergency Powers

²¹ Utah 2015 Ozone Infrastructure SIP Submission, p. 15.

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 Administrator has authority to file suit to immediately restrain an air pollution source that presents an imminent and substantial endangerment to public health or welfare, or the environment. If it is not practicable to assure prompt protection by filing suit, then the Administrator has authority to issue temporary administrative orders to protect the public health or welfare, or the environment. Those orders can be extended if the EPA subsequently files a civil suit.

In our April 2016 proposed Utah infrastructure SIP action, we explained how Utah meets the requirement that the plan provide for State authority comparable to that in CAA section 303.²² For the reasons stated in the April 2016 document, we are proposing to approve the State’s submittal for this requirement of section 110(a)(2)(G) with respect to the 2015 ozone NAAQS.

As discussed above, each state must also have adequate contingency plans adopted into the SIP to implement the air agency’s emergency episode authority. 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. Evaluating Utah’s plan in our 2016 infrastructure SIP action, we found that Utah’s air pollution emergency rules, consistent with the subpart H requirements, address ozone (as well as several other pollutants); 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.²³ The 2016 action concerned the 2008 ozone standard, but as to ozone, Utah’s SIP-approved criteria for

²² See 81 FR at 24534 (proposing to approve Utah SIP as meeting CAA section 110(a)(2)(G) requirement to provide authority comparable to that in CAA section 303); 81 FR 50626 (taking final action on proposal).

²³ See 81 FR 24525, 24533 (proposal); 81 FR 50626 (final rule).

emergency episodes remain consistent with the Significant Harm Levels established in EPA's regulations.²⁴ Accordingly, Utah's contingency plans remain approvable with respect to the 2015 ozone standard.

For these reasons, we propose approval of Utah's SIP as meeting the requirements of CAA section 110(a)(2)(G) for the 2015 ozone NAAQS.

H. CAA Section 110(a)(2)(H): Future SIP Revisions

Section 110(a)(2)(H) requires that SIPs provide for revision "(i) from 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 the Act.

Utah SIP section I cites 19-2-104 (describing the powers of the Air Quality Board) and 19-2-109 (the State's Air Conservation Act) and of the Utah Code. We have previously found that these provisions give the AQB sufficient authority to meet the requirements of CAA section 110(a)(2)(H), and find that the basis for that finding is still valid.²⁵ We therefore propose to approve Utah's SIP as meeting the requirements of CAA section 110(a)(2)(H).

I. CAA Section 110(a)(2)(I): Nonattainment Area Plan Revision Under Part D

There are two elements identified in CAA section 110(a)(2) that are not governed by the three-year submission deadline of CAA section 110(a)(1) because SIPs incorporating necessary local nonattainment area controls are due on nonattainment area plan schedules pursuant to

²⁴ Compare UAC R307-105-1 with 40 CFR 51.151.

²⁵ See 81 FR 24525, 24533-24534 (proposal); 81 FR 50626 (final rule).

section 172 and the various pollutant-specific subparts 2 through 5 of part D. These are submissions required by: (i) CAA section 110(a)(2)(C) to the extent that subsection refers to a permit program as required in part D, Title I of the CAA; and (ii) section 110(a)(2)(I) which pertain to the nonattainment planning requirements of part D, Title I of the CAA. As a result, this action does not address CAA section 110(a)(2)(C) with respect to nonattainment NSR or CAA section 110(a)(2)(I).

J. CAA Section 110(a)(2)(J): Consultation with Government Officials, Public Notification, PSD and Visibility Protection

CAA section 110(a)(2)(J) requires states to provide a process for consultation with local governments and FLMs pursuant to CAA section 121. In addition, states must satisfy the requirements of CAA section 127 concerning measures to notify the public if NAAQS are exceeded in an area, and to enhance public awareness of measures that can be taken to prevent exceedances and of the ways for the public to participate in air quality improvement efforts. Finally, as noted above, CAA section 110(a)(2)(J) requires states to meet applicable requirements of part C, Title I of the CAA related to PSD and visibility protection.

In its submittals, 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 121.²⁶ The State has thereby 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.

²⁶ Utah 2015 Ozone Infrastructure SIP Submission, p. 17.

In its submission, Utah cites SIP section XVI (*Public Notification*), which is the State's plan to report monitored levels of emissions both daily and annually, which meets the general requirements of CAA section 127 to notify the public when the NAAQS have been exceeded.

As to the section 110(a)(2)(J) requirement to address Part C's PSD requirements, we have discussed the State's program above in connection with section 110(a)(2)(C). As we have noted, the requirements for Element (J) in relation to a comprehensive PSD permitting program are the same as the requirements with respect to Element (C). Our proposed approval of the State's submissions with respect to Element (C) therefore applies to the PSD component of Element (J).

Finally, with regard to the applicable requirements for visibility protection, the EPA recognizes that 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 newly applicable visibility requirements under section 110(a)(2)(J) when a new NAAQS becomes effective, and thus no requirement for Utah to address the visibility component of Element (J) in its infrastructure SIP.

For these reasons, we propose to approve the Utah SIP as meeting the requirements of CAA section 110(a)(2)(J) for the 2015 ozone NAAQS.

K. CAA Section 110(a)(2)(K): Air Quality and Modeling/Data

CAA section 110(a)(2)(K) requires that SIPs provide for (i) the performance of air quality modeling as the Administrator may prescribe for the purpose of predicting the effect on ambient air quality of any emissions of any NAAQS pollutant, and (ii) the submission, upon request, of data related to such air quality modeling to the Administrator. Applicable EPA

requirements for air quality modeling for criteria pollutants are found in 40 CFR part 51, appendix W, Guideline on Air Quality Models.²⁷

In its submissions, Utah cites UAR rule R307-405-13, which 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.²⁸ Additionally, the State cites EPA-approved SIP section II (*Review of New and Modified Air Pollution Sources*) and SIP section VIII (*Prevention of Significant Deterioration*) as the State's program for new or modified sources to submit plans to UDEQ (and receive approval) prior to construction or modification of stationary sources. Utah's PSD program incorporates by reference the federal program at 40 CFR 52.21, including the provision at 52.21(l)(1) requiring that estimates of ambient air concentrations be based on applicable air quality models specified in appendix W of 40 CFR part 51, and the provision at 52.21(l)(2) requiring that modification or substitution of a model specified in appendix W must be approved by the Administrator.

Therefore, we propose to approve the Utah SIP as meeting the CAA section 110(a)(2)(K) for the 2015 ozone NAAQS.

L. CAA Section 110(a)(2)(L): Permitting fees

CAA section 110(a)(2)(L) provides that SIPs must require each major stationary source to pay permitting fees to cover the cost of reviewing, approving, implementing and enforcing a

²⁷ In its most recent revision to appendix W, the EPA stated that revised requirements must be "integrated into the regulatory processes of respective reviewing authorities and followed by applicants by no later than January 17, 2018." Final Rule, Revisions to the Guideline on Air Quality Models: Enhancements to the AERMOD Dispersion Modeling System and Incorporation of Approaches to Address Ozone and Fine Particulate Matter, 82 FR 5182 (Jan. 17, 2017). On April 13, 2020, we proposed to approve portions of a Utah SIP revision that revised the date of incorporation by reference for appendix W to comply with EPA's January 17, 2017 revisions to appendix W. *See* 85 FR 14606. As noted previously, we did not receive any comments on our proposed approval and anticipate that that approval will be final before any final action on this proposal.

²⁸ Utah 2015 Ozone Infrastructure SIP Submission, p.19.

permit. Utah's SIP-approved rules require 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.²⁹ Likewise, SIP section I (*Legal Authority*) "identifies the statutory authority to charge a fee to major sources to cover permit and enforcement expenses."³⁰ Finally, the State's submissions cite R307-415, which is the state regulation that provides for collection of permitting fees under Utah's approved title V permit program.³¹ As discussed in that approval, the State demonstrated that the fees collected were sufficient to administer the program.³² Therefore, we propose to approve the submissions as supplemented by the State for the 2015 ozone NAAQS.

M. CAA Section 110(a)(2)(M): Consultation/Participation by Affected Local Entities

CAA section 110(a)(2)(M) requires states to provide for consultation and participation in SIP development by local political subdivisions affected by the SIP. To satisfy this requirement, Utah refers to SIP section VI (*Intergovernmental Cooperation*), codified at R307-110-7. The provisions of this section require and provide authority for public hearings, notice of hearings, public comment periods, and the consultation and coordination between state and local governments. The EPA most recently approved this rule on February 14, 2006.³³ The rules and regulations cited by Utah provide for the consultation and participation by local political subdivisions affected by the SIP; therefore, we are proposing to approve the Utah SIP as meeting the requirements of CAA section 110(a)(2)(M) for the 2015 ozone NAAQS.

²⁹ See UAC rule R307-414, *Permits: Fees for Approval Orders*; 40 CFR 52.2320.

³⁰ See SIP Section I (*Legal Authority*), codified at UAC R307-10-2; 40 CFR 52.2320.

³¹ See Clean Air Act Final Full Approval of Operating Permits Program; Approval of Construction Permit Program Under Section 112(l); State of Utah, 60 FR 30192 (June 8, 1995); 40 CFR 52.2320.

³² Utah 2015 Ozone Infrastructure SIP Submission, p.19.

³³ 71 FR 7679.

IV. Proposed Action

In this rulemaking, we are proposing approval for multiple elements of the infrastructure SIP requirements for the 2015 ozone NAAQS for Utah along with a proposed no action for three infrastructure elements for Utah. Our proposed actions are contained in Table 1 below.

The EPA is proposing to approve Utah’s January 29, 2020 SIP submission for the following CAA section 110(a)(2) infrastructure elements for the 2015 ozone NAAQS: (A), (B), (C), (D)(i)(II) Prong 3, (D)(ii), (E), (F), (G), (H), (J), (K), (L), and (M). The EPA is proposing no action on (D)(i)(I) Prongs 1 and 2, and (D)(i)(II) Prong 4.

TABLE 1: INFRASTRUCTURE ELEMENTS THAT THE EPA IS PROPOSING TO ACT ON

In the table below, the key is as follows:

A - *Approve.*

D - *Disapprove.*

NA - *No Action.*

2015 Ozone NAAQS Infrastructure SIP Elements: Utah	
(A): Emission Limits and Other Control Measures	A
(B): Ambient Air Quality Monitoring/Data System	A
(C): Program for Enforcement of Control Measures	A
(D)(i)(I): Prong 1 Interstate Transport - significant contribution	NA
(D)(i)(I): Prong 2 Interstate Transport - interference with maintenance	NA
(D)(i)(II): Prong 3 Interstate Transport - prevention of significant deterioration	A
(D)(i)(II): Prong 4 Interstate Transport – visibility	NA
(D)(ii): Interstate and International Pollution Abatement	A

(E): Adequate Resources	A
(F): Stationary Source Monitoring System	A
(G): Emergency Episodes	A
(H): Future SIP revisions	A
(J): Consultation with Government Officials, Public Notification, PSD and Visibility Protection	A
(K): Air Quality and Modeling/Data	A
(L): Permitting Fees	A
(M): Consultation/Participation by Affected Local Entities	A

V. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the 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 choices, provided that they meet the criteria of the CAA. Accordingly, this action merely proposes to approve state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- 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 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted 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 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, Greenhouse gases, 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: May 18, 2020

Gregory Sopkin,
Regional Administrator,
EPA Region 8

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