



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R08-OAR-2016-0588; FRL-9957-02-Region 8]

**Approval and Promulgation of State Implementation Plans;
Interstate Transport for Utah**

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing action on a portion of a January 31, 2013 submission and a December 22, 2015 supplemental submission 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) for the 2008 ozone National Ambient Air Quality Standards (NAAQS). Specifically, the EPA is proposing to approve interstate transport prong 1 for the 2008 ozone NAAQS.

DATES: Comments must be received on or before **[Insert date 21 days after date of publication in the Federal Register]**.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R08-OAR-2016-0588 at <http://www.regulations.gov>. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from regulations.gov. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a

written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (i.e., on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <http://www2.epa.gov/dockets/commenting-epa-dockets>.

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

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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 the EPA through <http://www.regulations.gov> or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information on a disk or CD ROM that you mail to the EPA, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.
2. Tips for preparing your comments. When submitting comments, remember to:

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

II. Background

On March 12, 2008, the EPA revised the levels of the primary and secondary 8-hour ozone standards to 0.075 parts per million (ppm). 73 FR 16436 (March 27, 2008). 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 requirements for 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. 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 only addressing prong 1 of CAA section 110(a)(2)(D)(i) with regard to the 2008 ozone NAAQS. The EPA proposed action on prongs 1, 2 and 4 for this NAAQS on May 10, 2016. 81 FR 28807. In that action, we proposed to disapprove prongs 1 and 2 of Utah’s SIP for the 2008 ozone NAAQS based a number of deficiencies in the SIP submission and in light of on the results of EPA modeling which initially indicated that emissions from Utah sources contribute to two nonattainment receptors in the Denver, Colorado area. *Id.* at 28810. As described below, the EPA has updated its air quality modeling, and now indicates that Utah sources do not contribute to any nonattainment receptors in the U.S. Details regarding this modeling information, and its impact on this proposed action, are discussed in the following section. The EPA finalized disapproval of Utah’s SIP submission with respect to

prongs 2 and 4 in a final action published October 19, 2016. 81 FR 71991.

III. State Submissions and EPA's Assessment

The Utah Department of Environmental Quality (Department or UDEQ) submitted a certification of Utah's infrastructure SIP for the 2008 ozone NAAQS on January 31, 2013, and a supplement regarding CAA section 110(a)(2)(D)(i)(I) with respect to the 2008 ozone NAAQS on December 22, 2015.¹

These infrastructure certifications addressed all of the infrastructure elements including section 110(a)(2)(D)(i), referred to as infrastructure element (D).² In this action, we are only addressing element (D) prong 1 from the 2008 ozone certification and the December 22, 2015 supplement which addressed prong 1 for the 2008 ozone NAAQS. All other infrastructure elements from these certifications have been addressed in separate actions.

In its January 31, 2013, 2008 ozone infrastructure submittal, UDEQ addressed 110(a)(2)(D)(i)(I) prongs 1 and 2 by citing EPA Administrator Gina McCarthy's November 19, 2012 memo³ which outlined the EPA's intention to abide by the decision of the United States Court of Appeals for the District of Columbia Circuit (D.C. Circuit) in *EME Homer City Generation, L.P. v. E.P.A.*, 696 F.3d 7 (D.C. Cir. 2012). The *EME Homer City* decision addressed the Cross-State Air Pollution Rule (CSAPR) promulgated by the EPA to address the interstate transport requirements under section 110(a)(2)(D)(i)(I) with respect to the 1997 ozone

¹ The 110(a)(2)(D)(i)(I) 2008 ozone supplement was submitted as part of Utah's infrastructure SIP certification for the 2012 PM_{2.5} NAAQS.

² 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.

³ Memo from Gina McCarthy to Air Division Directors, Regions 1-10 re: Next Steps for Pending Redesignation Requests and State Implementation Plan Actions Affected by the Recent Court Decision Vacating the 2011 Cross-State Air Pollution Rule (Nov. 19, 2012).

NAAQS, the 1997 fine particulate matter (PM_{2.5}) NAAQS, and the 2006 PM_{2.5} NAAQS. Among other things, the D.C. Circuit held that states did not have an obligation to submit SIPs addressing section 110(a)(2)(D)(i)(I) interstate transport requirements as to any NAAQS until the EPA first quantified each state's emissions reduction obligation. *Id.* at 30 through 31. In its submittal, the Department noted that the EPA had not quantified Utah's transport obligation as to the 2008 ozone NAAQS and that Utah's infrastructure SIP was therefore adequate with regard to prongs 1 and 2 of CAA section 110(a)(2)(D)(i)(I).

Subsequent to the UDEQ submission, on April 29, 2014, the U.S. Supreme Court reversed and remanded the D.C. Circuit's *EME Homer City* decision on CSAPR and held, among other things, that under the plain language of the CAA, states must submit SIPs addressing interstate transport requirements of CAA section 110(a)(2)(D)(i)(I) within three years of the promulgation of a new or revised NAAQS, regardless of whether the EPA first provides guidance, technical data or rulemaking to quantify the state's obligation. *EPA v. EME Homer City Generation, L.P.*, 134 S. Ct. 1584, 1601 (2014). UDEQ therefore additionally addressed 110(a)(2)(D)(i) prongs 1 and 2 for the 2008 ozone NAAQS as part of its December 22, 2015 infrastructure submittal that otherwise addressed the 2012 PM_{2.5} NAAQS. As stated, the EPA is proposing action on both the January 31, 2013 and December 22, 2015 certifications with regard to prong 1 for the 2008 ozone NAAQS.

In its December 22, 2015 infrastructure submittal, UDEQ acknowledged the changed legal landscape, and asserted that emissions from the State did not significantly contribute to nonattainment or interfere with maintenance of the 2008 ozone NAAQS in any other state. The Department cited air quality modeling assessing interstate transport of ozone that was released

by the EPA on August 4, 2015, (*see* Notice of Availability of the Environmental Protection Agency's Updated Ozone Transport Modeling Data for the 2008 Ozone NAAQS, 80 FR 46271), and explained that it did not consider the modeled contribution levels to nonattainment and maintenance receptors in the Denver, Colorado area and in southern California to be significant.

In the December 22, 2015 supplement, UDEQ cited various SIP-approved area source rules which it asserts will result in additional reductions in ozone precursor emissions as further evidence that emissions from the State do not contribute significantly to nonattainment of the 2008 ozone NAAQS in any other state. The Department listed several VOC emissions limitations on various industries submitted as part of the State's greater PM_{2.5} control strategy, which were recently approved by the EPA.⁴ UDEQ also pointed to a rule prohibiting the sale of water heaters that do not comply with low NO_x emission rates which will go into effect on November 1, 2017. UDEQ insisted that because NO_x and VOC are precursors to ozone, these emission limitations would further reduce ozone transport to downwind nonattainment and maintenance receptors below the levels which Utah claimed were already insignificant. UDEQ did not quantify or explain how these limitations would significantly reduce Utah ozone emissions, or how those reductions might impact downwind transport. UDEQ also cited the general west to east wind direction in the western U.S. as further evidence that Utah emissions are unlikely to significantly impact ozone pollution in southern California.

The EPA developed technical information and a related analysis to assist states with meeting section 110(a)(2)(D)(i)(I) requirements for the 2008 ozone NAAQS and used this

⁴ For more detail, see EPA's final action on these area source rules at 81 FR 9343, February 25, 2016, and the associated docket at EPA-R08-OAR-2014-0369.

technical analysis to support the recently finalized Cross-State Air Pollution Rule Update for the 2008 Ozone NAAQS (“CSAPR Update”).⁵ As explained below, this analysis supports the conclusions of UDEQ’s analysis for prong 1.

In the technical analysis supporting the CSAPR Update, the EPA used detailed air quality analyses to determine where projected nonattainment or maintenance areas would be and whether emissions from an eastern state contribute to downwind air quality problems at those projected nonattainment or maintenance receptors.⁶ Specifically, the EPA determined whether the state’s contributing emissions were at or above a specific threshold (i.e., one percent of the ozone NAAQS). If a state’s contribution did not exceed the one percent threshold, the state was not considered “linked” to identified downwind nonattainment and maintenance receptors and was therefore not considered to significantly contribute to nonattainment or interfere with maintenance of the standard in those downwind areas. If a state’s contribution was equal to or exceeded the one percent threshold, that state was considered “linked” to the downwind nonattainment or maintenance receptor(s) and the state’s emissions were further evaluated, taking into account both air quality and cost considerations, to determine what, if any, emissions reductions might be necessary to address the state’s obligation pursuant to CAA section 110(a)(2)(D)(i)(I).

As discussed in the final CSAPR Update, the air quality modeling contained in the EPA’s technical analysis (1) identified locations in the U.S. where the EPA anticipates nonattainment or

⁵ 81 FR 74504 (Oct. 26, 2016).

⁶ For purposes of the CSAPR Update, “eastern” states refer to all contiguous states east of the Rocky Mountains, specifically not including: Montana, Wyoming, Colorado and New Mexico.

maintenance issues in 2017 for the 2008 ozone NAAQS (these are identified as nonattainment and maintenance receptors), and (2) quantified the projected contributions from emissions from upwind states to downwind ozone concentrations at the receptors in 2017. 81 FR 74526. This modeling used the Comprehensive Air Quality Model with Extensions (CAMx version 6.11) to model the 2011 base year, and the 2017 future base case emissions scenarios to identify projected nonattainment and maintenance sites with respect to the 2008 8-hour ozone NAAQS in 2017. The EPA used nationwide state-level ozone source apportionment modeling (the CAMx Ozone Source Apportionment Technology/Anthropogenic Precursor Culpability Analysis technique) to quantify the contribution of 2017 base case NO_x and VOC emissions from all sources in each state to the 2017 projected receptors. The air quality model runs were performed for a modeling domain that covers the 48 contiguous U.S. and adjacent portions of Canada and Mexico. *Id.* at 81 FR 74526 through 74527. The updated modeling data released to support the final CSAPR Update are the most up-to-date information the EPA has developed to inform our analysis of upwind state linkages to downwind air quality problems for the 2008 ozone NAAQS.⁷ See “Air Quality Modeling Final Rule Technical Support Document for the Final CSAPR Update” in the docket for this action for more details regarding the EPA’s modeling analysis.

Consistent with the framework established in the original CSAPR rulemaking, the EPA’s technical analysis in support of the CSAPR Update applied a threshold of one percent of the 2008 ozone NAAQS of 75 ppb (0.75 ppb) to identify linkages between upwind states and the

⁷ The updated modeling results for the final CSAPR Update can be found in the docket for this action.

downwind nonattainment and maintenance receptors. *See* CSAPR Update at 81 FR 74518 through 74519. The EPA considered eastern states whose contributions to a specific receptor meet or exceed the threshold “linked” to that receptor and we analyzed these states further to determine if emissions reductions might be required from each state to address the downwind air quality problem. The EPA determined that one percent was an appropriate threshold to use in this analysis because there were important, even if relatively small, contributions to identified nonattainment and maintenance receptors from multiple upwind states. In response to commenters who advocated a higher or lower threshold than one percent, the EPA compiled the contribution modeling results for the CSAPR Update to analyze the impact of different possible thresholds for the eastern United States. The EPA’s analysis showed that the one percent threshold captures a high percentage of the total pollution transport affecting downwind states. The EPA’s analysis further showed that the application of a lower threshold would result in relatively modest increases in the overall percentage of ozone transport pollution captured, while the use of higher thresholds would result in a relatively large reduction in the overall percentage of ozone pollution transport captured relative to the levels captured at one percent at the majority of the receptors. *Id.*; *See also* Air Quality Modeling Final Rule Technical Support Document for the Final CSAPR Update, Appendix F, Analysis of Contribution Thresholds. This approach is consistent with the use of a one percent threshold to identify those states “linked” to air quality problems with respect to the 1997 ozone NAAQS in the original CSAPR rulemaking, wherein the EPA noted that there are adverse health impacts associated with ambient ozone even at low levels. 76 FR 48208, 48236 through 48237 (August 8, 2011).

As to western states, the EPA noted in the CSAPR Update that there may be

geographically specific factors to consider in evaluating interstate transport, and given the near-term 2017 implementation timeframe, the EPA focused the final CSAPR Update on eastern states. *See* CSAPR Update at 81 FR 74523. Consistent with our statements in the CSAPR Update, the EPA intends to address western states, like Utah, on a case-by-case basis.

In spite of deficiencies with Utah's technical analysis described above, the EPA's technical analysis in support of the CSAPR Update indicates that Utah does not contribute above the one percent threshold to any nonattainment receptors.⁸ Utah's largest modeled contribution to a nonattainment receptor is .32 ppb, below half of the one percent threshold, at a receptor in Fresno County, California. *Id.* The EPA is not necessarily determining that one percent of the NAAQS is always an appropriate threshold for identifying interstate transport linkages for all states in the west. In this instance, the State's low modeled level of contribution to any receptors identified in the EPA's technical analysis supports Utah's conclusion that the State does not contribute significantly to nonattainment of the 2008 ozone NAAQS in any other state. Thus, the EPA is proposing to approve Utah's SIP as meeting the 110(a)(2)(D)(i) prong 1 requirement for the 2008 ozone NAAQS. This proposed action supersedes the EPA's May 10, 2016 proposed disapproval of prong 1 of the Utah SIP for the 2008 ozone NAAQS. *See* 81 FR 28807.

IV. Proposed Action

The EPA is proposing to approve the section 110(a)(2)(D)(i)(I) prong 1 portion of Utah's January 31, 2013 submittal and the December 22, 2015 submittal with respect to the 2008 ozone NAAQS. The EPA is soliciting public comments on this proposed action and will consider

⁸ Please see the spreadsheet titled "Final CSAPR Update – Ozone Design Values & Contributions," in the docket for this action.

public comments received during the comment period.

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 actions, provided that they meet the criteria of the Clean Air Act. Accordingly, this proposed action merely proposes approval of state law as meeting 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, Oct. 4, 1993);
- 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).

The SIP is not approved to apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

List of Subjects in 40 CFR Part 52

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

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

Dated: December 12, 2016. Signed: Richard D. Buhl,
Acting Regional Administrator,
Region 8.

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