



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R08-OAR-2019-0643; FRL-10018-17-Region 8]

Air Quality State Implementation Plans; Approval and Promulgation of Implementation Plans; Utah; Infrastructure Requirements for the 2015 Ozone National Ambient Air Quality Standards; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; correction.

SUMMARY: On June 1, 2020, the Environmental Protection Agency (EPA) published a rulemaking proposing to approve multiple elements of the infrastructure SIP requirements for the 2015 ozone NAAQS for the State of Utah, while taking no action on three infrastructure elements (85 FR 33052). On September 16, 2020, we published a rulemaking taking final action on the proposal. The final rulemaking incorrectly stated that there were no comments received during the public comment period for the proposed rulemaking (85 FR 57731). One comment, submitted electronically on July 1, 2020, had been received but was inadvertently overlooked in the preparation of the September 16 final rule. In this correction document we will respond to the comment received.

DATES: This rule is effective on [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA-R08-OAR-2019-0643. All documents in the docket are listed at <http://www.regulations.gov>. 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 you

may contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional availability information.

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 “we,” “us,” and “our” means the EPA.

I. Response to Comments

Comment

We received one anonymous comment on the proposed rulemaking. The commenter asserts that in stating that hard copy comments would not be accepted,¹ the EPA was attempting to preclude submission of comments by “post mail,” without prior public notification or rulemaking, in violation of the Administrative Procedure Act (APA). The commenter cited in particular 5 USC 553(c): “After notice required by this section, the agency shall give interested persons an opportunity to participate in the rule making through submission of written data, views, or arguments with or without opportunity for oral presentation.” The commenter stated that the EPA must re-propose the rule without excluding comments submitted by mail.

The commenter also stated that they submitted a separate comment by postal mail.

Response

The EPA does not agree that the comment method offered was in violation of the APA, or that the comment period was otherwise legally insufficient in any way. The agency did not eliminate the opportunity for public comment, but rather temporarily eliminated one method of transmission of public comment, in light of public health concerns related to the COVID-19

¹ In the “addresses” section, the proposed rulemaking stated: “To reduce the risk of COVID–19 transmission, for this action we will not be accepting comments submitted by mail or hand delivery” (85 FR 33052).

pandemic. We provided notice of that temporary change in the proposed rule published at 85 FR 57731, in full compliance with the APA's "prior public notification" requirement. Additionally, the proposed rule describes CAA comment submission requirements:

"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>." (This site directs commenters to [regulations.gov](http://www.regulations.gov) as our preferred method for submitting comments.)

The APA requires agencies to provide an opportunity for public comment, but it does not dictate the form in which comments may be submitted, nor does it preclude agencies from imposing reasonable limitations or structures on comment submissions. Accordingly, the commenter's assertion that the APA required the Agency here to accept comments on this proposal by postal mail is incorrect. In addition, the e-Government Act of 2002 requires agencies to create electronic dockets for rulemakings and make those e-dockets available to the public; the EPA satisfied that requirement in this case by employing the Federal Rulemaking Portal at [regulations.gov](http://www.regulations.gov) as an option for submitting comments on the proposed rulemaking. Further, the fact that the commenter was successfully able to submit a written comment by electronic means demonstrates that the notice and comment method used did not interfere with the commenter's ability to comment on this action.

As noted, the EPA was not required to accept comments by postal mail in this matter and did not do so. Even if we had chosen to accept a comment submitted by postal mail, the comment that the commenter claimed was submitted by postal mail was not found at the address listed in the proposed rule, or at any of the other agency addresses that we checked after receiving the electronically submitted comment. Because the commenter anonymously submitted

the electronically submitted comment, contacting the commenter to inquire about location of the comment submitted by mail was not possible.

II. Statutory and Executive Order Reviews

Under the Clean Air Act, 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 Clean Air Act. Accordingly, this action merely approves 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, 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 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 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. 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. 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 Clean Air Act, 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, Carbon monoxide, Greenhouse gases, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: February 11, 2021.

Debra Thomas,
Acting Regional Administrator,
Region 8.

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