

Rule No.	Rule title	State effective date	EPA effective date	Final rule citation/ date	Comments
(27) XXVII .....	Interstate transport SIP for Section 110(a)(2)(D)(i) prong 1–2008 Ozone NAAQS; prongs 1, 2 and 4–2008 Pb NAAQS; prong 1 and 2–2010 NO <sub>2</sub> NAAQS; prong 4–2010 SO <sub>2</sub> NAAQS.	2/6/2014; 10/12/2011; 1/24/2014; 3/6/2015.	3/6/2017	[Insert <b>Federal Register</b> citation] 2/3/2017.	

[FR Doc. 2017–02197 Filed 2–2–17; 8:45 am]

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA–R08–OAR–2016–0588; FRL–9959–18–Region 8]

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

**AGENCY:** Environmental Protection Agency.

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is taking final 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 Utah 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). The interstate transport requirements under the CAA consist of four elements: Significant contribution to nonattainment (prong 1) and interference with maintenance (prong 2) of the NAAQS in other states; and interference with measures required to be included in the plan for other states to prevent significant deterioration of air quality (prong 3) or to protect visibility (prong 4). Specifically, the EPA is approving interstate transport prong 1 for the 2008 ozone NAAQS.

**DATES:** This final rule is effective on March 6, 2017.

**ADDRESSES:** The EPA has established a docket for this action under Docket Identification Number EPA–R08–OAR–2016–0588. All documents in the docket

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

**FOR FURTHER INFORMATION CONTACT:** Adam Clark, Air Program, U.S. Environmental Protection Agency, Region 8, Mail Code 8P–AR, 1595 Wynkoop Street, Denver, Colorado 80202–1129, (303) 312–7104, [clark.adam@epa.gov](mailto:clark.adam@epa.gov).

### I. Background

On December 20, 2016, the EPA proposed to approve portions of Utah's January 31, 2013 submission and December 22, 2015 supplemental submission as meeting the prong 1 requirements of CAA section 110(a)(2)(D)(i) for the 2008 ozone NAAQS. 81 FR 92755, December 20, 2016. An explanation of the CAA requirements, a detailed analysis of the State's submittals, and the EPA's rationale for this proposed action were provided in the notice of proposed rulemaking, and will not be restated here. The public comment period for this proposed rule ended on January 10,

2017. The EPA received four comments on the proposal, which will be addressed in the "Response to Comments" section, below.

### II. Response to Comments

**Comment:** Commenter Sierra Club stated that the EPA should disapprove Utah's prong 1 submission for the 2008 ozone NAAQS. The commenter asserted that all three of the Denver area maintenance receptors to which Utah's projected contribution exceeded one percent of the NAAQS<sup>1</sup> should instead be nonattainment receptors, but are not because the CSAPR Update modeling under-predicts the receptors' 2017 ozone design values. The commenter based this assertion on a weight of evidence approach using ambient air monitoring data collected at these receptors. The commenter stated that such a weight of evidence approach was appropriate to determine this receptor should be nonattainment, and noted that the EPA had used a weight of evidence approach in its action on Arizona's transport SIP. The CSAPR Update modeling projected that the Douglas County, Colorado receptor (monitor site ID 80350004) would have a 2017 average design value of 75.5 ppb, with a maximum design value of 77.6 ppb, and that one Jefferson County, Colorado receptor (monitor site ID 80590006) would have a 2017 average design value of 75.7 ppb, with a maximum design value of 78.2 ppb.<sup>2</sup> The commenter first asserted that both average design values should indicate nonattainment rather than maintenance, referring to the EPA's basis for the maintenance categorizations as "bad math." The commenter then stated that all three maintenance receptors will indeed be nonattainment for the 2015–2017 period. The commenter included the 4th highest daily maximum values, on which the 2008 ozone NAAQS is

<sup>1</sup> For details about these receptors, see EPA's final rulemaking disapproving prong 2 of Utah's 2008 ozone submittals, at 81 FR 71992, October 19, 2016.

<sup>2</sup> See document EPA–R08–OAR–2016–0588–0002, "Final CSAPR Update, Ozone Design Values & Contributions, All Sites," in the docket for this action.

based, for the years 2010 through 2016, which the EPA has replicated (with edits) in Table 1, below.

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TABLE 1—4TH HIGHEST DAILY MAX AT DENVER AREA RECEPTORS

Year	4th Max (ppb)		
	Monitor ID 80350004	Monitor ID 80590011	Monitor ID 80590006
2017 .....	* 66	* 61	* 69
2016 .....	78	83	79
2015 .....	81	81	77
2014 .....	74	76	77
2013 .....	83	82	81
2012 .....	79	77	79
2011 .....	81	83	81
2010 .....	78	74	76

\* Indicates a “critical value” required to attain NAAQS for 2015–2017.

The commenter stated that the 2015–2017 monitored design values at the Denver receptors could only attain the NAAQS if the receptors recorded the 4th daily maximum values (“critical values”) listed in the 2017 row of Table 1, and notes that each of these values is below the smallest value since 2010. The commenter asserted that the previous seven years of monitoring data provide a weight of evidence analysis demonstrating that these receptors will be nonattainment for the 2015–2017 design value period. The commenter also stated that Colorado’s drill rig count for oil and gas extract had increased to 28 by the end of 2016, the highest level since November 2015. The commenter also stated that 2017 was likely to see increased oil and gas extraction and transportation activity in Colorado due to reduced oil production in other countries, and that this would increase NO<sub>x</sub> and VOC emissions. Finally, the commenter asserted that it is unsurprising that the CSAPR Update modeling analysis under-predicts the 2017 design values because it included 2009 monitoring data which was impacted by the Great Recession, during which time ozone levels decreased. The commenter therefore recommended that the EPA disapprove Utah’s prong 1 submittals for the 2008 ozone NAAQS.

*Response:* First, the EPA does not agree that because the two Denver receptors (80350004 and 80590006) are projected to have average design values exceeding the NAAQS, that the EPA should label those receptors as nonattainment receptors. As explained in the EPA’s 2016 CSAPR Update Final Air Quality Modeling Technical Support Document (2016 AQM TSD), “In determining compliance with the NAAQS, ozone design values are truncated to integer values. For example, a design value of 75.9 ppb is

truncated to 75 ppb which is attainment. In this manner, design values at or above 76.0 ppb are considered to be violations of the NAAQS.”<sup>3</sup> This method is consistent with the method to demonstrate compliance with the 2008 ozone NAAQS. Therefore, design values of 75.5 or 75.7 are not considered a violation of the standard.

The EPA agrees that recent monitoring data at these three sites suggest that these sites face a risk of not attaining the NAAQS in 2017. However, that risk is uncertain as the future monitored 2017 design value is unknown at this time. In light of this uncertainty and the statute’s silence on how nonattainment and maintenance should be identified under the good neighbor provision, the EPA has developed a reasonable approach to identify downwind nonattainment and maintenance receptors. When evaluating air quality modeling for purposes of interstate transport, the EPA has routinely identified nonattainment receptors as those with monitors that are both projected to be unable to attain in an appropriate future year and that are measuring nonattainment based on current data—*i.e.*, if the projected average design value in the future year does not exceed the standard, the EPA does not identify that receptor as a nonattainment receptor. See 81 FR 74517 (CSAPR Update); 80 FR 75723 through 75724 (Proposed CSAPR Update); 76 FR 48227–28 (CSAPR); 70 FR 25243–33 (CAIR); *see also North Carolina*, 531 F.3d at 913 through 914 (affirming as reasonable the EPA’s approach to defining nonattainment in CAIR). Given the EPA’s modeling does

not project that the receptors will be in nonattainment in 2017, even though it may currently be measuring nonattainment, it would be inconsistent with the EPA’s past practice to identify that receptor as a nonattainment receptor.

Moreover, the EPA does not agree that it should identify nonattainment receptors based on the formula proposed by the commenter because the data cited by the commenter does not conclusively prove that these monitors will be in nonattainment based on 2017 data.<sup>4</sup> First, the commenter notes that it would be possible for the 2017 design values to be sufficiently low such that the 3-year averages are attaining the NAAQS. Second, the CAA provides that should 2017 data yield a fourth highest 8-hour concentration of 75.9 ppb or below, the state can petition EPA for additional time to demonstrate attainment of the NAAQS. *See* CAA section 181(a)(5).

That said, the EPA agrees that the receptors may have problems maintaining the standard in 2017 and has therefore identified these sites as maintenance receptors. On October 19, 2016, the EPA finalized disapproval of Utah’s SIP submission to address the maintenance prong for the 2008 ozone NAAQS. 81 FR 71991. As a result of this disapproval, the EPA and the State of Utah will need to evaluate what further emissions reductions may be required to ensure that the State’s impact on downwind air quality is mitigated such that the State will not interfere with maintenance of the standard at these receptors.

<sup>4</sup> Although the commenter is correct that the EPA evaluated the weight of the evidence in the Arizona SIP submission, the EPA did not use the approach proposed by the commenter to average projections and monitored data in identifying potential receptors.

<sup>3</sup> “Air Quality Modeling Technical Support Document for the Final Cross State Air Pollution Rule Update.” August 2016. This document was included in the docket for the proposed action.

The weight of evidence analysis in our action on the Arizona SIP determined the nature of the projected receptor's interstate transport problem as to the magnitude of ozone attributable to interstate transport from all upwind states collectively contributing to the air quality problem, not to the identification of that receptor. In the EPA action on the Arizona SIP, Arizona was the only state that contributed greater than the one percent threshold to the projected 2017 levels of the 2008 ozone NAAQS at the El Centro receptor. The EPA's assessment concluded that emissions reductions from Arizona are not necessary to address interstate transport because the total collective upwind state ozone contribution to these receptors is relatively low compared to the air quality problems typically addressed by the good neighbor provision. As discussed previously, the EPA similarly evaluated collective contribution to the Douglas County, Colorado monitor and finds the collective contribution of transported pollution to be substantial. Furthermore, in our action on the Arizona SIP we did not deviate from our past practice in identifying nonattainment and maintenance receptors in the way that commenter suggests we should do here.

The EPA does not agree that its projections are unreliable because the 2009 data are affected by the "Great Recession." In determining our 2009–2013 base period average design values, the data from 2009 are only weighted once, whereas, data in 2011 which has higher ozone is weighted 3 times in the calculations. In addition, our emissions data are projected from 2011 to 2017 and, thus, the effects of the recession on 2009 emissions have very little influence on our 2017 projected emissions. In this respect, the air quality and emissions in 2009 have only a very limited influence on the projected design values. As described in the EPA's air quality modeling guidance for ozone attainment demonstrations, the use of 5-year weighted average design values, as applied here, is intended to focus the base period air quality on the year of base case emissions, 2011 for this analysis, and to smooth out, to some extent, the effects of inter-annual variability in ozone concentrations.<sup>5</sup> Thus, the EPA continues to believe that including ambient data from 2009 is appropriate for projecting future year

ozone concentrations as part of the final rule.

Finally, the EPA does not find that the commenter's assumptions about an increase in oil and gas extraction and transportation activities in Colorado sufficient to project an increase in such emissions. For instance, the number of drill rigs noted by the commenter (28) at the end of 2016 is actually much lower than the level at the end of 2014 (69).<sup>6</sup> The EPA is not here making assertions about oil and gas production activities in Colorado, but rather explaining why we find the commenter's assumptions about a likely increase in such activity based on a drill rig count to be insufficient. Further, the commenter does not provide a source for the assumption regarding increased Colorado oil and gas production based on changes to the worldwide oil market. For these reasons, the EPA does not find that oil and gas activities will necessarily increase in Colorado in 2017 based on the comments received.

*Comment:* Commenter Sierra Club asserted that the EPA's analysis of Utah's 2008 ozone submittals ignores wintertime ozone levels. The commenter asserted that the EPA relies on the CSAPR Update analysis for its Utah ozone transport analysis, and that the CSAPR Update analysis throws out wintertime ozone data.<sup>7</sup> The commenter stated that it is inappropriate for EPA to exclude the wintertime ozone data because the EPA has elsewhere acknowledged that wintertime ozone is an important issue in Utah and neighboring states. To support this point, the commenter cited the EPA's revision to the 2008 ozone NAAQS, which states that "Elevated levels of winter-time O<sub>3</sub> have also been measured in some western states where precursor emissions can interact with sunlight off the snow cover under very shallow, stable boundary layer conditions." 80 FR 65416, October 26, 2015. The commenter also cited the ozone NAAQS revision to show that the ozone seasons for both Colorado and Utah are year-round, and that EPA must therefore include an evaluation of wintertime ozone before it can approve any ozone transport provisions for Utah. 80 FR 65419 through 65420, October 26, 2015.

<sup>6</sup> <http://insights.energengroup.com/weekly-rig-counts-in-colorado>.

<sup>7</sup> *Id.* The commenter specifically cited the following language from the document: "In addition, there are 7 sites in 3 counties in the West that were excluded from this file because the ambient design values at these sites were dominated by wintertime ozone episodes and not summer season conditions that are the focus of this transport assessment."

*Response:* As stated in the CSAPR Update Final, "Ozone levels are generally higher during the summer months." 81 FR 74513, October 26, 2016. The 2016 AQM TSD states that "High winter ozone concentrations that have been observed in certain parts of the Western U.S. are believed to result from the combination of strong wintertime inversions, large NO<sub>x</sub> and VOC emissions from nearby oil and gas operations, increased UV intensity due to reflection off of snow surfaces and potentially still uncharacterized sources of free radicals." 2016 AQM TSD at 14. Thus, high winter-time ozone episodes are due to a build-up of local emissions combined with local stagnation meteorological conditions rather than interstate transport. The EPA therefore disagrees that it must evaluate wintertime ozone before approving Utah's SIP as to the prong 1 requirements of section 110(a)(2)(D)(i)(I).

*Comment:* Several citizen commenters expressed frustration about the air quality in the Salt Lake City and greater Wasatch Front area of Utah. These commenters offered various solutions to improving air quality in the region.

*Response:* The EPA appreciates the recommendations provided by the commenters. The EPA will not address the recommendations specifically, as they are not directly connected to the impact of Utah emissions in other states, which this rulemaking (and CAA section 110(a)(2)(D)(i)) address.

### III. Final Action

The EPA is approving 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.

### IV. 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 CAA. Accordingly, this action merely approves some state law provisions as meeting federal requirements; this action 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,

<sup>5</sup> Modeling Guidance for Demonstrating Attainment of Air Quality Goals for Ozone, PM<sub>2.5</sub>, and Regional Haze available in the docket and at: [http://www.epa.gov/ttn/scram/guidance/guide/Draft\\_O3-PM-RH\\_Modeling\\_Guidance-2014.pdf](http://www.epa.gov/ttn/scram/guidance/guide/Draft_O3-PM-RH_Modeling_Guidance-2014.pdf).

October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);

- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because 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).

In addition, the SIP does not 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. 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 CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by April 4, 2017. 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 CAA section 307(b)(2).)

#### 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: January 17, 2017.

**Debra H. Thomas,**

*Acting Regional Administrator, Region 8.*

40 CFR part 52 is amended as follows:

#### PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

- 1. The authority citation for part 52 continues to read as follows:

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

#### Subpart TT—Utah

- 2. In § 52.2354, add paragraph (c) to read as follows:

##### § 52.2354 Interstate transport.

\* \* \* \* \*

(c) Addition to the Utah State Implementation Plan regarding the 2008 ozone Standard for CAA section 110(a)(2)(D)(i)(I) prong 1 submitted to EPA on January 31, 2013 and supplemented on December 22, 2015.

[FR Doc. 2017–02187 Filed 2–2–17; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR PART 52

[EPA–HQ–OAR–2016–0646; FRL–9958–70–OAR]

### Findings of Failure To Submit State Implementation Plan Submittals for the 2008 Ozone National Ambient Air Quality Standards (NAAQS)

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is finding that 15 states and the District of Columbia have failed to submit State Implementation Plan (SIP) revisions in a timely manner to satisfy certain requirements for the 2008 ozone National Ambient Air Quality Standards (NAAQS) that apply to nonattainment areas and/or states in the Ozone Transport Region (OTR). As explained in this action, consistent with the Clean Air Act (CAA) and EPA regulations, these findings of failure to submit establish certain deadlines for the imposition of sanctions, if a state does not submit a timely SIP revision addressing the requirements for which the finding is being made, and for the EPA to promulgate a Federal Implementation Plan (FIP) to address any outstanding SIP requirements.

**DATE:** The effective date of this action is March 6, 2017.

#### FOR FURTHER INFORMATION CONTACT:

General questions concerning this notice should be addressed to Mr. Stephen Senter, Office of Air Quality Planning and Standards, Air Quality Policy Division, Mail Code: C504–2, 109 TW Alexander Drive, Research Triangle Park, NC 27709; by telephone (919) 541–3042; or by email at [senter.stephen@epa.gov](mailto:senter.stephen@epa.gov).

#### SUPPLEMENTARY INFORMATION:

##### I. General Information

##### A. Notice and Comment Under the Administrative Procedure Act (APA)

Section 553 of the APA, 5 U.S.C. 553(b)(3)(B), provides that, when an agency for good cause finds that notice and public procedures are impracticable, unnecessary or contrary to the public interest, the agency may issue a rule without providing notice and an opportunity for public comment. The EPA has determined that there is good cause for making this final agency action without prior proposal and opportunity for comment because no significant EPA judgment is involved in making a finding of failure to submit