

# Interstate Transport/Ozone: U.S. Environmental Protection Agency Final Rule Disapproving 19 State Implementation Plans (Including Arkansas)



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The United States Environmental Protection Agency (“EPA”) published in the February 13th Federal Register a final rule disapproving State Implementation Plan (“SIP”) submissions for 19 states regarding interstate transport for the 2015 8-hour National Ambient Air Quality Standards (“NAAQS”). See 88 Fed. Reg. 9336.

Arkansas’s SIP is one of the states included in the disapproval.

EPA had previously disapproved on February 22, 2022, Arkansas’s SIP addressing interstate transport for the 2015 8-hour ozone NAAQS. See 87 Fed. Reg. 9798. The states of Louisiana, Oklahoma, and Texas SIPs were also disapproved in that action.

Both the Arkansas Department of Energy & Environment Division of Environmental Quality and Arkansas Environmental Federation submitted comments opposing the disapproval of Arkansas’s SIP as noted [here](#) and [here](#).

EPA proposed a Federal Implementation Plan (“FIP”) for Arkansas and 25 other states on April 6, 2022. See 87 Fed. Reg. 20036.

By way of background, in 2015 EPA promulgated a revision to the 8-hour NAAQS. The federal agency had lowered the level of both primary and secondary standards to 0.070 parts per million.

Air transport refers to pollution from upwind emission sources that impact air quality in a particular location downwind. The total pollution in any area forms from the combination of local and upwind sources. The transport of pollutants across state borders is often denominated “interstate air pollution transport.” Transport of interstate air pollution may in some cases affect downwind states’ ability to meet the NAAQS for ozone.

The Clean Air Act contains a “good neighbor” provision which requires that EPA and the states address interstate transport of air pollution that affects down states’ ability to attain and maintain NAAQS. Clean Air Act Section 110(a)(2)(B) requires each state in its SIP to prohibit emissions that will:

- Significantly contribute to nonattainment of NAAQS
- Interfere with maintenance of NAAQS in a downwind state

A state's SIP must prohibit sources in that state from "emitting any air pollutant in amounts which will contribute significantly to nonattainment in, or interfere with maintenance of NAAQS in another state." If EPA determines that an SIP is inadequate it must require that the state revise the SIP (i.e., a SIP-call)..

A SIP call can be issued to multiple states at the same time. EPA may therefore issue a SIP call whenever it determines that the SIP is substantially inadequate to attain or maintain a particular NAAQS to ensure that the state's sources do not contribute significantly to a downwind state's nonattainment.

The February 13th final rule disapproving the 19 state SIPs triggers a two-year deadline for the EPA to promulgate a FIP to address the relevant requirements. However, EPA can approve a subsequent state SIP submission if it meets the required requirements.

An EPA summary of its basis for disapproving the Arkansas SIP is found in the preamble and states:

In the 2016v3 modeling, Arkansas is projected to be linked above 1 percent of the NAAQS to one nonattainment receptor and five maintenance-only receptors. It is also linked to seven violating-monitor maintenance-only receptor. Its highest-level contribution is 1.21 ppb to Brazoria County Texas (AQS Site ID 480391004). A full summary of Arkansas's October 10, 2019, SIP submission was provided in the proposed SIP submission disapproval. The EPA disagrees with Arkansas's arguments for application of a higher contribution threshold than 1 percent of the NAAQS at Step 2, and further addresses the relevance of PSD SILs in Section V.B.6. The EPA also found technical flaws in Arkansas's "consistent and persistent" claims and back trajectory analysis, and legal flaws in the state's arguments related to relative contribution. The State did not conduct an adequate Step 3 analysis. Arkansas argued in its SIP submission that it had already implemented all cost-effective controls. However, the State included an insufficient evaluation of additional emissions control opportunities to support such a conclusion. Further, the State's reliance on the cost effectiveness thresholds in the CSAPR and CSAPR Update is insufficient for the more protective 2015 ozone NAAQS. The State included no permanent and enforceable controls in its SIP submission. We provide further response to comments regarding Arkansas's SIP submission in the RTC document. The EPA is finalizing disapproval of Arkansas's interstate transport SIP submission for the 2015 ozone NAAQS.

A copy of the Federal Register notice can be downloaded [here](#).