EPA-APPROVED NEW YORK NONREGULATORY AND QUASI-REGULATORY PROVISIONS—Continued

| Action/SIP element | Applicable geographic or nonattainment area | New York submittal date | EPA approval date | Explanation |
|---|---|---|---|---|
| Revised commitment to perform a mid-course review for ozone. | New York portion of the New York-Northern New Jersey-Long Island 1-hour ozone nonattainment area. | 1/29/03 | 9/13/05, 70 FR 53944 | |
| New York reasonably available control technology (RACT) analysis for ozone. | Statewide and to the New York portion of the New York-Northern New Jersey-Long Island, NY–NJ–CT and the Poughkeepsie 8-hour ozone moderate nonattainment areas. | 9/1/06, supplemented on 2/8/08 and 9/16/08 | 7/23/10, 75 FR 43069 | |
| Reasonably available control measure (RACM) analysis for ozone. | New York portion of the New York-Northern New Jersey-Long Island, NY–NJ–CT 8-hour ozone moderate nonattainment area. | 2/8/08 | 7/23/10, 75 FR 43069 | |

**§ 52.1679 [Reserved]**

■ 5. Section 52.1679 is removed and reserved.

[FR Doc. 2011–17782 Filed 7–14–11; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 52

**[EPA–R08–OAR–2007–0927; FRL–9428–9]**

## Approval, Disapproval, and Promulgation of Air Quality Implementation Plans; Utah; Revisions to New Source Review Rules

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

**ACTION:** Final rule.

**SUMMARY:** EPA is partially approving and partially disapproving revisions to the State of Utah's Clean Air Act (CAA) State Implementation Plan (SIP). Utah has a federally-approved Prevention of Significant Deterioration (PSD) preconstruction permit program for new and modified sources impacting attainment areas in the State. Utah requested approval of its revised rules to implement the non-vacated provisions of EPA's New Source Review (NSR) Reform regulations. EPA proposed approval of these rules on January 7, 2009 and received adverse comments. In this action, EPA responds to these comments and announces EPA's final rulemaking action. This action affects major stationary sources in Utah that are subject to or potentially subject to the PSD preconstruction permit program. This action is being taken under section 110 of the CAA.

**DATES:** This action is effective on August 15, 2011.

**ADDRESSES:** EPA has established a docket for this action under Docket Identification No. EPA–R08–OAR–2007–0927. All documents in the docket are listed on the *http://www.regulations.gov* Web site. Although listed in the index, some information may not be publicly available, i.e., Confidential Business Information 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 either electronically through *http://www.regulations.gov* or in hard copy at EPA Region 8, Air Quality Planning Unit (8P–AR), 1595 Wynkoop Street, Denver, Colorado 80202. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Jody Ostendorf, Air Program, Mailcode 8P–AR, Environmental Protection Agency, Region 8, 1595 Wynkoop Street, Denver, Colorado 80202–1129, (303) 312–7814, or *ostendorf.jody@epa.gov.*

**SUPPLEMENTARY INFORMATION:** Throughout this document wherever ''we'', ''us'' or ''our'' are used, we mean EPA. Information is organized as follows:

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### I. Background for This Action

Title I of the CAA, as amended by Congress in 1990, specifies the general requirements for states to submit SIPs to attain and/or maintain the National Ambient Air Quality Standards (NAAQS) and EPA's actions regarding approval of those SIPs. SIPs must include, among other requirements, an NSR preconstruction permit program, which, for attainment areas, meets federal PSD requirements.

On February 12, 1982, EPA approved into the Utah SIP PSD permitting regulations. On December 31, 2002, EPA published revisions to the federal PSD and non-attainment NSR regulations in 40 CFR parts 51 and 52 (67 FR 80186). These revisions are commonly referred to as the ''NSR Reform'' regulations and became effective nationally in areas not covered by a SIP on March 3, 2003. For information on subsequent court decisions and regulatory revisions to these rules, see *http://www.epa.gov/nsr.*

On September 15, 2006, October 1, 2007, and March 7, 2008, the Utah Department of Environmental Quality (DEQ) submitted numerous rule changes and requested that the Utah SIP be revised to reflect those changes. These changes include revisions to Utah's Rule R307–405 (''Permits: Major Sources in Attainment or Unclassified Areas (PSD)'') and to Utah's Rule R307–110–9 (''Section VIII, Prevention of Significant Deterioration of the Utah Air Quality Rules'').

On January 7, 2009 EPA proposed to partially approve and partially disapprove the revisions submitted by the Utah DEQ. 74 FR 667 (January 7,

2009). This final action will update the federally approved SIP to reflect those changes made by Utah DEQ that EPA has reviewed and deemed approvable into the Utah SIP (Code of Federal Regulations, Title 40, part 52, subpart TT).

*A. What revisions to the Utah SIP does this action address?*

We are partially approving revisions to R307–405 (''Permits: Major Sources in Attainment or Unclassified Areas (PSD)'') and approving revisions to R307–110–9 (''Section VIII, Prevention of Significant Deterioration of the Utah Air Quality Rules''). EPA is disapproving R307–405–3.(3)(a)(i) because it defines ''Major Source Baseline Date'' in a manner inconsistent with the federal definition found at 40 CFR 52.21(b)(14). In all other respects we are approving the State's March 7, 2008 submitted revisions to R307–405, and the State's September 15, 2006 submitted revisions to R307–110–9. More information about each SIP submittal, including a summary of the submittal and relevant background information and analysis supporting our action, can be found in our proposed rule. 74 FR 667 (January 7, 2009).

*B. What comments did we receive on our proposal for these revisions?*

The Natural Resources Defense Council (NRDC) commented on EPA's proposal to approve changes to Utah's permitting programs for major stationary sources, specifically the PSD permit program and the nonattainment area (Part D) permit program that incorporate EPA's ''2002 NSR Reform Rules.'' NRDC primarily commented on the requirements of the Federal NSR rules, not Utah's application of the Federal requirements in its own rules. Notably, NRDC participated in litigation challenging EPA's promulgation of the 2002 NSR Reform Rules, where similar arguments were made by NRDC and rejected by the DC Circuit Court. *See New York* v. *EPA,* 413 F.3d 3 (D.C. Cir. 2005). Many of NRDC's comments in this action, including exhibits, do not raise any specific concerns with Utah's rules, but rather, reiterate arguments that NRDC made to the court regarding EPA's 2002 NSR Reform Rules and the requirements of Sections 110(l) and 193 of the CAA.

Although NRDC's comments cite nine sections of the Utah rules, the comments make no attempt to specifically explain or demonstrate how those identified provisions are inconsistent with either Section 110(l) or Section 193 of the CAA. Furthermore, NRDC provides no evidence supporting its allegations that approval of the specific provisions would result in a violation of the CAA. The NRDC comments include a list of 31 exhibits which the comment letter incorporates by reference into the comments. The 31 exhibits appear to stem from the *New York* v. *EPA* litigation, and were either submitted to that Court for review, or are relevant to that adjudication. In any event, none of the 31 exhibits provides EPA with any comments specific to the Utah rules at issue. NRDC does note that the *New York* v. *EPA* decision addressed EPA's regulations, rather than state regulations submitted under section 110 of the CAA, and that the Court of Appeals had no occasion to decide whether EPA could approve a particular state's implementation of the NSR Reform Rules consistent with Sections 110(l) and 193 of the CAA. EPA's responses to NRDC's comments regarding Sections 110(l) and 193 are below.

1. Section 110(l)

*a. Summary of Comments Regarding Section 110(l):*

NRDC asserts that ''[t]he 2002 NSR Reform Rule provisions that were not vacated by the DC Circuit in *New York* v. *EPA* allow previously-prohibited emissions increases to occur.'' As a result, NRDC states that ''it cannot be said of Utah's plan that it 'will cause no degradation of air quality'' and ''Utah has made no 'demonstration that the emissions that are allowed by its revised rule but are prohibited by the current SIP would not interfere with attainment or other applicable requirements.''' Further, NRDC states that ''EPA has never made, or even proposed to make, a finding that revising Utah's permit provisions so that they track the non-vacated provisions of the 2002 rule'' would be consistent with Section 110(l) of the CAA.

*b. EPA Response to Section 110(l)-Related Comments:*

Section 110(l) of the CAA states that ''[t]he Administrator shall not approve a revision of a plan if the revision would interfere with any applicable requirement concerning attainment and reasonable further progress or any other applicable requirement of this chapter.'' 42 U.S.C. 7410(l). EPA does not interpret section 110(l) to require a full attainment or maintenance demonstration before any changes to a SIP may be approved. Generally, a SIP revision may be approved under section 110(l) if EPA finds it will at least preserve status quo air quality. See *Kentucky Resources Council, Inc.* v. *EPA,* 467 F.3d 986 (6th Cir. 2006); *GHASP* v. *EPA,* No. 06–61030 (5th Cir. Aug. 13, 2008); see also, e.g., 70 FR 53 (Jan. 3, 2005), 70 FR 28429 (May 18, 2005) (proposed and final rules, upheld in *Kentucky Resources,* which discuss EPA's interpretation of section 110(l).

EPA has determined that Utah's SIP revision will not ''interfere with any applicable requirement concerning attainment and reasonable further progress * * * or any other applicable requirement of [the CAA]'' in violation of Section 110(l) of the CAA because it will result in neutral or beneficial effects on air quality. EPA's conclusion rests on two major analyses: (1) the national-scale analysis that EPA conducted in support of the 2002 NSR Reform Rules, and (2) the state-specific analysis that Utah DEQ conducted in support of its recent regulatory revisions.

First, EPA's national analysis in support of the 2002 NSR Reform Rules indicates that the non-vacated provisions of the NSR Reform Rules will have a neutral or beneficial impact. The three significant changes in the 2002 NSR Reform Rules that were upheld by the court were (1) Plantwide applicability limits (PALs), (2) the 2-in-10 baseline, and (3) the actual-to-projected actual emission test. EPA's Supplemental Environmental Analysis of the Impact of the 2002 Final NSR Improvement Rules (November 21, 2002) (Supplemental Analysis) discussed each of these three changes individually, and addresses some of the issues raised by NRDC.

With regard to PALs, the Supplemental Analysis explains, ''EPA expects that the adoption of PAL provisions will result in a net environmental benefit. Our experience to date is that the emissions caps found in PAL-type permits result in real emissions reductions, as well as other benefits.'' Supplemental Analysis at 6. EPA further explained that:

> Although it is impossible to predict how many and which sources will take PALs, and what actual reductions those sources will achieve for what pollutants, we believe that, on a nationwide basis, PALs are certain to lead to tens of thousands of tons of reductions of VOC from source categories where frequent operational changes are made, where these changes are time sensitive, and where there are opportunities for economical air pollution control measures. These reductions occur because of the incentives that the PAL creates to control existing and new units in order to provide room under the cap to make necessary operational changes over the life of the PAL.

Supplemental Analysis at 7. The Supplemental Analysis, and particularly Appendix B, provides additional details regarding EPA's analysis of PALs and

anticipated associated emissions decreases.

With regard to the 2-in-10 baseline, EPA concluded that ''the environmental impact from the change in baseline EPA is now finalizing will not result in any significant change in benefits derived from the NSR program.'' Supplemental Analysis at 13. This is mainly because ''the number of sources receiving different baselines likely represents a very small fraction of the overall NSR permit universe, excludes new sources and coal fired power plants, and because the baseline may shift in either direction, we conclude that any overall consequences would be negligible.'' Supplemental Analysis at 14. Additional information regarding the 2-in-10 baseline changes is available in the Supplemental Analysis, Appendix F.

With regard to the actual-to-projected actual test, EPA concluded, ''We believe that the environmental impacts of the switch to the actual-to-projected actual test are likely to be environmentally beneficial. However, as with the change to the baseline, we believe the vast majority of sources, including new sources, new units, electric utility steam generating units, and units that actually increase emissions as a result of a change, will be unaffected by this change. Thus, the overall impacts of the NSR changes are likely to be environmentally beneficial, but only to a small extent.'' Supplemental Analysis at 14 (see also Supplemental Analysis Appendix G). EPA has no reason to believe that the environmental impacts will be substantially different from those discussed in the Supplemental Analysis for the 2002 NSR Reform Rules.[1]

As NRDC acknowledges, the Utah PSD rules track the Federal 2002 NSR Reform Rules. Overall, as summarized above, EPA expects that changes in air quality as a result of implementing Utah's PSD rules will be consistent with EPA's position on the Federal 2002 NSR Reform Rules—that there will be somewhere between neutral and providing modest contribution to reasonable further progress when the 2002 NSR Reform Rules are compared to the pre-reform provisions. EPA's analysis for the environmental impacts of these three components of the 2002 NSR Reform Rules is informative of how Utah's adoption of NSR Reform (based on the Federal rules) is expected to affect emissions and air quality. EPA has no reason to believe that the environmental impacts in Utah will be substantially different from the anticipated nationwide effects discussed in the Supplemental Analysis for the 2002 NSR Reform Rules.

Second, Utah's own analysis of the air quality impacts of its rules supports EPA's conclusion that approval of Utah's SIP revision will not ''interfere with any applicable requirement concerning attainment and reasonable further progress * * * or any other applicable requirement of [the CAA]'' in violation of Section 110(l) of the CAA. As discussed above, NRDC cites seven general sections of Utah's rules as provisions the approval of which would violate Section 110(l). Without further specificity, however, it is not clear why or how NRDC believes approval of these provisions would violate Section 110(l). Moreover, NRDC has provided no information or data that indicates that EPA's analysis and conclusions regarding the impact of the 2002 NSR Reform Rules, in the Supplemental Analysis, are not applicable to Utah's rules, which mirror the Federal rules.

Utah has, however, provided such an analysis. Utah DEQ evaluated the air quality impact of the NSR Reform provisions when the State adopted the rule in 2006. In response to comments that the NSR Reform rule will allow many more modifications at existing major sources than the current NSR rules, the State noted that major source permitting requirements in attainment areas (the PSD permitting program) are only a portion of Utah's overall permitting requirements and the effect of the NSR Reform provisions must be viewed in the context of the entire program, including, in particular, Utah's overall statewide permitting program and the NSR requirements it imposes on *minor* sources. These requirements require all new sources and modifications, whether major or minor, to apply Best Available Control Technology (BACT), with limited exceptions (discussed below). Therefore, even when a source does not trigger PSD, the source must still apply BACT. The net effect is that emissions will not change if a project is reviewed under the minor source requirements rather than the PSD regulations. Similarly, Utah's statewide permitting program requires that sources that exceed certain emissions thresholds conduct modeling to ensure that their emissions will not result in an exceedance of the NAAQS. The thresholds that Utah applies for this requirement are the same significance thresholds as the PSD regulations require. Thus, Utah applies the same essential control technology and modeling requirements to minor sources as it does to major sources. Consequently, the fact that a source or modification might have been subject to the previously-approved PSD regulation, but is not subject to the revised PSD regulation, is not likely to result in increased emissions or interfere with NAAQS attainment.

In support of this conclusion, the State analyzed 14 different scenarios to determine how a modification would be affected by the change in applicability provisions. The scenarios focused on the types of changes that would no longer be subject to the PSD rule, and examined whether these modifications would still require Best Available Control Technology (BACT) and/or modeling to ensure that the NAAQS were not exceeded. In 12 of the 14 scenarios, under Utah's SIP-approved minor NSR program, BACT would be required for the modification even if the modification no longer met the applicability provisions of the PSD rule.[2] Therefore, the state concluded that emissions will not increase under the NSR Reform rule. The two exceptions, where BACT would not be required, occurred for modifications where emissions from the source are *decreasing.* Under these two scenarios, an emissions-decreasing modification that would have required review under the previously-approved PSD program could, under the revised rules, be constructed without the requirement to apply BACT. This is the type of scenario where the PSD rule created a disincentive for sources to reduce emissions. Adoption of the NSR Reform rule will remove this disincentive by allowing sources to install pollution controls or increase the efficiency of older emission units without requiring BACT, thereby resulting in reduced emissions overall.

Utah further evaluated a number of different scenarios to determine whether modifications that would no longer be subject to PSD would still be reviewed under Utah's minor source program or whether they might avoid that review as

[1] In reviewing EPA's approval of a Wisconsin SIP amendment that adopted of the 2002 NSR Reform rules, a Federal appeals court recently held that EPA could rely on the Supplemental Analysis in support of its approval. See *NRDC* v. *Jackson,* Nos. 09–1405 & 10–2123 (7th Cir., Jun. 16, 2011), 2011 US App LEXIS 12116.

[2] The federally approved Utah SIP incorporates by reference ''Utah Air Conservation Regulations, R307–1–3.1.8 * * * effective August 16, 1993.'' 40 CFR 52.2320(c)(28)(i)(B). That regulation provides that ''[t]he [Utah DEQ] shall issue an approval order if [it] determines * * * that * * * [t]he degree of pollution control for emissions, to include fugitive emissions and fugitive dust, is at least best available control technology except as otherwise provided in these regulations.'' Utah has since renumbered this regulation to Utah Administrative Code R307–401–8 but has not changed the substance of the quoted requirement.

well. Utah's minor source permitting program has a number of exemptions that are located in R307–401–9 through 16. Most of the exemptions would only apply to sources that would be minor under Utah's previously-approved PSD regulations as well as under the revised rules. The two that could possibly apply to sources that would qualify as PSD major sources under Utah's previously-approved PSD regulations are R307–401–11, Replacement-in-kind Equipment and R307–401–12, Reduction in Air Contaminants.

The replacement-in-kind rule is restrictive, and has been modified to contain some of the more specific language regarding eligibility that is found in the PSD rule. Because sources have an incentive to upgrade to newer, more efficient units and because older technologies are often no longer available, this rule is not used by sources to avoid updated technology.

Similarly, the reduction in air contaminants exemption under R307–401–12 applies by definition to sources that are *decreasing* emissions. As described above, the State believes that removing the disincentive through NSR Reform is likely to decrease emissions in Utah overall.

Accordingly, EPA has concluded that adoption of this SIP revision will maintain or improve air quality and meets the requirements of section 110(l).

2. Section 193

*a. Summary of Comments Regarding Section 193:*

Section 193 of the CAA states (in relevant part) that ''[n]o control requirement in effect, or required to be adopted by an order, settlement agreement, or plan in effect before November 15, 1990, in any area which is a nonattainment area for any air pollutant may be modified after November 15, 1990, in any manner unless the modification insures equivalent or greater emission reductions of such air pollutant.'' NRDC states that ''[t]he same Utah provisions'' discussed earlier in its comment violate Section 193. NRDC argues that NSR is a control requirement and thus the requirements of Section 193 apply to the NSR rules at issue in the Utah SIP revision. NRDC further alleges that neither Utah nor EPA has determined that Utah's revisions will ensure equivalent or greater emissions reductions; to the contrary, NRDC alleges that ''the modifications ensure that emissions will not be reduced as much as under the preexisting rules.''

*b. EPA Response to Section 193-Related Comments:*

Utah's NSR Reform rule is focused on the major source permitting requirements in attainment areas (PSD permitting program). It does not alter permitting or control requirements for pollutants for which the area is designated nonattainment, and therefore is not subject to Section 193. NSR reform in nonattainment areas will be dealt with in a future rulemaking. Furthermore, as discussed above, the overall effect of Utah's revisions is expected to be neutral or beneficial. Thus, even if Section 193 were applicable, Utah's revision would satisfy Section 193 for the same reason that it satisfies Section 110(l).

## II. Final Action

*A. Rules To Approve Into the Utah SIP*

EPA is taking final action to approve a revision to Utah's SIP that would, for the most part, incorporate by reference the Federal PSD requirements, found in 40 CFR 52.21, into the State's PSD program and replace EPA's prior approvals. The March 7, 2008 submitted revision to R307–405 incorporates by reference the provisions of 40 CFR 52.21 as they existed on July 1, 2007, with the exceptions noted below.

Utah did not incorporate by reference those sections of the Federal rules that do not apply to State activities or are reserved for the Administrator of the EPA. These sections are 40 CFR 52.21(a)(1) (Plan disapproval), 52.21(q) (Public participation), 52.21(s) (Environmental impact statements), 52.21(t) (Disputed permit or redesignations), and 52.21(u) (Delegation of authority). Utah did not incorporate by reference the vacated Federal requirements for ''Equipment Replacement,'' ''Clean Unit,'' and ''Pollution Control Project.''

Utah's March 7, 2008 submittal of the incorporation by reference revisions to R307–405 describes the circumstances in which the term ''Administrator'' continues to mean the EPA Administrator, and when it means instead the Executive Secretary of the Utah Air Quality Board. R307–405–3(3)(d)(ii)) identifies the following provisions in R307–405 where the term ''Administrator'' shall be changed to ''EPA Administrator:'' 40 CFR 52.21(b)(17), 52.21(b)(37)(i), 52.21(b)(43), 52.21(b)(48)(ii)(c), 52.21(b)(50)(i), 52.21(l)(2), 52.21(p)(2), and 51.166(q)(2)(iv).

As noted above, Utah did not incorporate by reference 40 CFR 52.21(q) (Public participation). Utah has instead incorporated by reference 40 CFR 51.166(q) (Public participation) at Utah rule R307–405–18. The provisions in 40 CFR 51.166 identify what a SIP must contain for EPA to approve a PSD permit program, and generally mirror the federal PSD regulations at 40 CFR 52.21. In addition, Utah added in Utah rule R307–405–18(2) an additional provision that modifies the PSD permit public participation requirements in 40 CFR 51.166(q) to replace ''within a specified time period'' in 40 CFR 51.166(q)(1) with ''within 30 days of receipt of the PSD permit application.''

The following provisions in R307–405 do not incorporate by reference 40 CFR 52.21, but instead either add language that is currently contained in the Utah SIP or add language specific to Utah's PSD program: R307–405–4 (''Area Designations''), R307–405–5 (''Area Redesignation''), and R307–405–8 (''Exclusions From Increment Consumption''). We have determined that these provisions are consistent with the requirements for SIP approved states contained in 40 CFR 51.166(e), (f), and (g).

EPA is also taking final action on approval of the September 15, 2006 submitted revision R307–110–9 (''Section VIII, Prevention of Significant Deterioration of the Utah Air Quality Rules'') to indicate that the most currently amended version is March 8, 2006. Section VIII summarizes, in a narrative fashion, the current federal PSD requirements, in addition to the Utah specific permitting requirements for new and modified sources and area designations. We are approving the March 8, 2006 version of Section VIII into the SIP to replace the federally-approved December 18, 1992 version currently in the Utah SIP.

As described above, the requirements included in Utah's PSD program, as specified in R307–405 are substantively the same as the Federal PSD provisions due to Utah's incorporation of the federal rules by reference. The revisions Utah made, in consideration of the requirements provided in 40 CFR 52.21, were reviewed by EPA and found to be as stringent as the requirements for PSD programs in 40 CFR 51.166, except as noted above regarding the provision in R307–405–3(3)(a)(i). Therefore, EPA has determined that, except for R307–405–3(3)(a)(i), the rule revisions to R307–405 and R307–110–9 are consistent with the program requirements for the preparation, adoption, and submittal of implementation plans for the Prevention of Significant Deterioration of Air Quality, as set forth in 40 CFR 51.166, and are approvable.

*B. Rules To Disapprove and Therefore Not Incorporate Into the Utah SIP*

Utah has adopted a specific definition of ''Major Source Baseline Date,'' found at R307–405–3(3)(a)(i), in its revised PSD rule. This definition deviates from the definition found in 40 CFR 52.21(b)(14) and the corresponding requirement for state PSD programs at 51.166(b)(14). Utah's definition specifies that the major source baseline date for particulate matter 10 microns in diameter or less ($PM_{10}$) is the ''date that EPA approves the $PM_{10}$ maintenance plan that was adopted by the Board on July 6, 2005'' for Davis, Salt Lake, Utah, and Weber Counties. The requirement for State programs at 40 CFR 51.166(b)(14) specifies January 6, 1975 as the major source baseline date for particulate matter, and the current EPA-approved SIP for Utah also specifies January 6, 1975 as the major source baseline date for PM–10 for the entire State (refer to Utah's SIP-approved rule R307–101–2 ''Definitions''). EPA is not aware of any authority for it to approve into a SIP a different major source baseline date other than January 6, 1975. Further, we note there is no provision in the CAA for using a different date if an area was in a legally designated non-attainment status on January 6, 1975. EPA is taking final action to disapprove Utah's definition of ''Major Source Baseline Date,'' and therefore, the current federally-approved definition found in R307–101–2 would continue to apply as a federally enforceable provision in lieu of the State-adopted version.

*C. Scope of Action*

We are taking final action to partially approve revisions to R307–405 (''Permits: Major Sources in Attainment or Unclassified Areas (PSD)'') and to approve revisions to R307–110–9 (''Section VIII, Prevention of Significant Deterioration of the Utah Air Quality Rules''). EPA is taking final action to disapprove R307–405–3.(3)(a)(i) because it defines ''Major Source Baseline Date'' in a manner inconsistent with the federal definition found at 40 CFR 52.21(b)(14). In all other respects we are approving the State's March 7, 2008 submitted revisions to R307–405, and the State's September 15, 2006 submitted revisions of R307–110–9.

Utah has not demonstrated authority to implement and enforce these rules within ''Indian country'' as defined in 18 U.S.C. 1151.5. Therefore, this SIP approval does not extend to ''Indian country'' in Utah.[3] See CAA sections 110(a)(2)(A) (SIP shall include enforceable emission limits), 110(a)(2)(E)(i) (State must have adequate authority under State law to carry out SIP), and 172(c)(6) (nonattainment SIPs shall include enforceable emission limits). This is consistent with EPA's previous approval of Utah's PSD program, in which EPA specifically disapproved the program for sources within Indian Reservations in Utah because the State had not shown it had authority to regulate such sources. See 40 CFR 52.683(b). It is also consistent with EPA's approval of Utah's title V air operating permits program. See 61 FR 64622, 64623 (December 6, 1996) (interim approval does not extend to Indian country); 66 FR 50574, 50575 (October 4, 2001) (full approval does not extend to Indian country).

## III. 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, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this proposed 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 Order 12866 (58 FR 51735, October 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 (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 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, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the State, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

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 September 13, 2011 . 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

[3] ''Indian country'' is defined under 18 U.S.C. 1151 as: (1) All land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and including rights-of-way running through the reservation, (2) all dependent Indian communities within the borders of the United States, whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a State, and (3) all Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same. Under this definition, EPA treats as reservations trust lands validly set aside for the use of a Tribe even if the trust lands have not been formally designated as a reservation. In Utah, Indian country includes, but is not limited to, the Northwestern Band of the Shoshoni Nation, the Paiute Indian Tribe of Utah, the Skull Valley Band of Goshute Indians, and the Ute Indian Tribe on the Uintah and Ouray Reservation.

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, 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: June 29, 2011.

**James B. Martin,**

*Regional Administrator, Region 8.*

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

## PART 52—[AMENDED]

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

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

### Subpart TT—Utah

■ 2. Section 52.2320 is amended by adding paragraph (c)(69) to read as follows:

**§ 52.2320 Identification of plan.**

* * * * *

(c) * * *

(69) On September 15, 2006 and March 7, 2008 the State of Utah submitted revisions to its State Implementation Plan (SIP) that contained revised rules pertaining to the State's Prevention of Significant Deterioration (PSD) preconstruction permit program.

(i) Incorporation by reference.

(A) The Utah Administrative Code (UAC), R307–110–9, *Section VIII, Prevention of Significant Deterioration,* is amended effective June 16, 2006.

(B) The Utah Administrative Code (UAC), R307–405, *Permits: Major Sources in Attainment or Unclassified Areas (PSD),* (except R307–405–3(2)(a)(i), ''Major Source Baseline Date'') is amended effective September 7, 2007.

[FR Doc. 2011–17783 Filed 7–14–11; 8:45 am]

BILLING CODE 6560–50–P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

**[EPA–R09–OAR–2011–0537; FRL–9431–9]**

### Revisions to the California State Implementation Plan, South Coast Air Quality Management District

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

**ACTION:** Direct final rule.

**SUMMARY:** EPA is taking direct final action to approve revisions to the South Coast Air Quality Management District (SCAQMD) portion of the California State Implementation Plan (SIP). These revisions concern volatile organic compound (VOC) emissions from consumer paint thinner & multi-purpose solvents and metalworking fluids & direct-contact lubricants. We are approving local rules that regulate these emission sources under the Clean Air Act as amended in 1990 (CAA or the Act).

**DATES:** This rule is effective on September 13, 2011 without further notice, unless EPA receives adverse comments by August 15, 2011.

If we receive such comments, we will publish a timely withdrawal in the **Federal Register** to notify the public that this direct final rule will not take effect.

**ADDRESSES:** Submit comments, identified by docket number EPA–R09–OAR–2011–0537, by one of the following methods:

1. *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions.

2. E-mail: *steckel.andrew@epa.gov.*

3. *Mail or deliver:* Andrew Steckel (Air-4), U.S. Environmental Protection Agency Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

*Instructions:* All comments will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Information that you consider CBI or otherwise protected should be clearly identified as such and should not be submitted through *http://www.regulations.gov* or e-mail. *http://www.regulations.gov* is an ''anonymous access'' system, and EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send e-mail directly to EPA, your e-mail address will be automatically captured and included as part of the public comment. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

*Docket:* Generally, documents in the docket for this action are available electronically at *http://www.regulations.gov* and in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California. While all documents in the docket are listed at *http://www.regulations.gov,* some information may be publicly available only at the hard copy location (*e.g.,* copyrighted material, large maps), and some may not be publicly available in either location (*e.g.,* CBI). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

**FOR FURTHER INFORMATION CONTACT:** Adrianne Borgia, EPA Region IX, (415) 972–3576, *borgia.adrianne@epa.gov.*

**SUPPLEMENTARY INFORMATION:** Throughout this document, ''we,'' ''us,'' and ''our'' refer to EPA.

**Table of Contents**



## I. The State's Submittal

### *A. What rules did the State submit?*

Table 1 lists the rules we are approving with the dates that they were adopted by the local air agencies and submitted by the California Air Resources Board (CARB).

TABLE 1—SUBMITTED RULES

| Local agency | Rule No. | Rule title | Amended | Submitted |
|---|---|---|---|---|
| SCAQMD | 1143 | Consumer Paint Thinner & Multi-Purpose Solvents | 12/3/10 | 4/5/11. |