approve the SIP revision should adverse or critical comments be filed.

If the EPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on this action serving as a proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to the SIP shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 et seq., EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities (5 U.S.C. 603 and 604). Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, part D of the CAA do not create any new requirements, but simply approve requirements that the state is already imposing. Therefore, because the federal SIP approval does not impose any new requirements, EPA certifies that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the federal-state relationship under the CAA, preparation of a regulatory flexibility analysis would constitute federal inquiry into the economic reasonableness of state action. The CAA forbids EPA to base its actions concerning SIPs on such grounds (*Union Electric Co.* v. *U.S. E.P.A.*, 427 U.S. 246, 256–66 (S.Ct. 1976); 42 U.S.C. 7410(a)(2)).

The Office of Management and Budget has exempted these actions from review under Executive Order 12866.

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 July 5, 1995. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule 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, Incorporation by reference, Intergovernmental relations, Lead, Reporting and recordkeeping requirements.

Dated: April 12, 1995.

**Dennis Grams,**

*Regional Administrator.*

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. 7401–7671q.

## Subpart AA—Missouri

2. Section 52.1320 is amended by adding paragraph (c)(87) to read as follows:

**§ 52.1320 Identification of plan.**

* * * * *

(c) * * *

(87) In submittals dated July 2, 1993; June 30, 1994; and November 23, 1994, MDNR submitted an SIP to satisfy Federal requirements for an approvable nonattainment area lead SIP for the Doe Run primary smelter in Herculaneum, Missouri. Although Missouri rule 10 CSR 10–6.120 contains requirements which apply statewide to primary lead smelting operations, EPA takes action on this rule only insofar as it pertains to the Doe Run Herculaneum facility. Plan revisions to address the other lead smelters in the state are under development.

(i) Incorporation by reference.

(A) Revised regulation 10 CSR 10–6.120 (section (1), section (2)(B), section (3)) entitled Restriction of Emissions of Lead From Primary Lead Smelter-Refinery Installations, effective August 28, 1994.

(B) Consent Order, entered into between the Doe Run Company and MDNR, dated July 2, 1993.

(C) Consent Order amendment, signed by the Doe Run Company on March 31, 1994, and by MDNR on April 28, 1994.

(D) Consent Order amendment, signed by the Doe Run Company on September 6, 1994, and by MDNR on November 23, 1994.

(ii) Additional material.

(A) Revisions to the Doe Run Herculaneum Work Practice Manual submitted on July 2, 1993.

(B) Revisions to the Doe Run Herculaneum Work Practice Manual submitted on June 30, 1994.

**§ 52.1323 [Amended]**

3. Section 52.1323 is amended by removing paragraph (g) and redesignating paragraph (h) as paragraph (g).

[FR Doc. 95–10976 Filed 5–4–95; 8:45 am]

BILLING CODE 6560–50–P

## 40 CFR Part 52

**[UT11–1–6726a, UT12–1–6727a, and UT13–1–6746a; FRL–5184–5]**

## Approval and Promulgation of Air Quality Implementation Plans; Utah; New Source Review

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

**ACTION:** Direct final rule.

**SUMMARY:** In this document, EPA is approving revisions to the State Implementation Plan (SIP) submitted by the Governor of Utah on November 12, 1993 and on May 20, 1994. The November 12, 1993 submittal included revisions to the State's new source review (NSR) permitting regulations to meet the new NSR requirements of the amended Clean Air Act (Act) for all of its nonattainment areas. The May 20, 1994 submittal included a revision to the State's definition of volatile organic compounds. The Governor submitted the nonattainment NSR rules with numerous other ozone SIP revisions and an ozone redesignation request for the Salt Lake and Davis County nonattainment areas. EPA will be acting on the other portions of the Governor's November 12, 1993 submittal in separate notices. EPA finds that the State's NSR rules meet the Federal nonattainment NSR permitting requirements of the Act for all of its nonattainment areas, and that the State's revised definition of volatile organic compounds is consistent with the federal definition.

**DATES:** This final rule is effective on July 5, 1995 unless adverse or critical comments are received by June 5, 1995. If the effective date is delayed, timely notice will be published in the **Federal Register**.

**ADDRESSES:** Comments should be addressed to Vicki Stamper, 8ART–AP, at the EPA Regional Office listed. Copies of the State's submittal and other relevant information are available for

inspection during normal business hours at the following locations: Air Programs Branch, U.S. Environmental Protection Agency, Region VIII, 999 18th Street, suite 500, Denver, Colorado 80202–2466; and Division of Air Quality, Utah Department of Environmental Quality, P.O. Box 44820, 150 North 1950 West, Salt Lake City, Utah 84114–4820.

**FOR FURTHER INFORMATION CONTACT:** Vicki Stamper, 8ART–AP, U.S. Environmental Protection Agency, Region VIII, 999 18th Street, suite 500, Denver, Colorado 80202–2466, (303) 293–1765.

**SUPPLEMENTARY INFORMATION:**

## I. Background

### *A. Nonattainment NSR Requirements of the Amended Act*

The air quality planning requirements for nonattainment NSR are set out in part D of title I of the Act. The EPA has issued a ''General Preamble'' describing EPA's preliminary views on how EPA intends to review SIPs and SIP revisions submitted under part D, including those State submittals containing nonattainment area NSR SIP requirements (see 57 FR 13498 (April 16, 1992) and 57 FR 18070 (April 28, 1992)). Because EPA is describing its interpretations here only in broad terms, the reader should refer to the General Preamble for a more detailed discussion of the interpretations of part D advanced in this notice and the supporting rationale. A brief discussion of the specific elements required in a State's nonattainment NSR program is also included in Section II.B. of this notice.

EPA is currently developing rule revisions to implement the changes under the 1990 Clean Air Act Amendments in the NSR provisions of parts C and D of title I of the Act. The EPA anticipates that the proposed rule will be published for public comment in early 1995. If EPA has not taken final action on States' NSR submittals by that time, EPA may generally refer to the proposed rule as the most authoritative guidance available regarding the approvability of the submittals. EPA expects to take final action to promulgate the rule revisions to implement the part C and D changes in early 1996. Upon promulgation of those revised regulations, EPA will review NSR SIPs to determine whether additional SIP revisions are necessary to satisfy the requirements of the rulemaking.

Prior to EPA approval of a State's NSR SIP submission, the State may continue permitting only in accordance with the new statutory requirements for permit applications completed after the relevant SIP submittal date. This policy was explained in transition guidance memoranda from John Seitz dated March 11, 1991 and September 3, 1992.

As explained in the March 11 memorandum, EPA does not believe Congress intended to mandate the more stringent title I NSR requirements during the time provided for SIP development. States were thus allowed to continue to issue permits consistent with requirements in their current NSR SIPs during that period, or to apply 40 CFR 51, Appendix S for newly designated areas that did not previously have NSR SIP requirements.

The September 3, 1992 memorandum also addressed the situation where States did not submit the part D NSR SIP revisions by the applicable statutory deadline. For permit applications complete by the SIP submittal deadline, States may issue final permits under the prior NSR rules, assuming certain conditions in the September 3 memorandum are met. However, for applications completed after the SIP submittal deadline, EPA will consider the source to be in compliance with the Act where the source obtains from the State a permit that is consistent with the substantive new NSR part D provisions in the amended Act. EPA believes this guidance continues to apply to permitting pending final action on Utah's NSR SIP submittal.

### *B. Volatile Organic Compound Definition*

On February 3, 1992, EPA promulgated a definition of volatile organic compounds (VOCs) in 40 CFR 51.100(s). See 57 FR 3941–3946. Therefore, Utah updated its definition of VOCs in its regulations to reflect the federal definition. That revised definition was submitted by the State on June 10, 1994.

## II. Analysis of State Submission

Section 110(k) of the Act sets out provisions governing EPA's review of SIP submittals (see 57 FR 13565–13566).

### *A. Procedural Background*

1. New Source Review Rules

The Act requires States to observe certain procedural requirements in developing implementation plans and plan revisions for submission to EPA. Section 110(a)(2) of the Act provides that each implementation plan submitted by a State must be adopted after reasonable notice and public hearing.[1] Section 110(l) of the Act similarly provides that each revision to an implementation plan submitted by a State under the Act must be adopted by such State after reasonable notice and public hearing.

The EPA also must determine whether a submittal is complete and therefore warrants further EPA review and action (see section 110(k)(1) and 57 FR 13565, April 16, 1992). The EPA's completeness criteria for SIP submittals are set out at 40 CFR part 51, appendix V. The EPA attempts to make completeness determinations within 60 days of receiving a submission. However, a submittal is deemed complete by operation of law under section 110(k)(a)(B) if a completeness determination is not made by EPA within 6 months after receipt of the submission.

The State of Utah held public hearings on June 2, 1993 for the VOC/nitrogen oxides ($NO_X$) offset provisions and on August 4, 1993 for the other NSR revisions to entertain public comment on these SIP revisions. Following the public hearings, the VOC/$NO_X$ offset rule was adopted by the State on June 17, 1993 and the other NSR revisions were adopted on September 30, 1993. These rule revisions were submitted to EPA on November 12, 1993 as a proposed revision to the SIP, along with other ozone SIP revisions and the ozone redesignation request for the Salt Lake and Davis County nonattainment areas.

Specifically, the State submitted revisions to its NSR permitting regulations in Utah Air Conservation Regulation (UACR) R307–1–1 and R307–1–3. The revisions to the State's NSR regulations were made to bring the State's NSR rules for all of its nonattainment areas up-to-date with the amended Act.

The SIP revisions were reviewed by EPA to determine completeness shortly after its submittal, in accordance with the completeness criteria referenced above. The initial submittal was found to be incomplete, and a letter dated January 19, 1994 was forwarded to the Governor indicating the administrative and technical deficiencies in the submittal. The State of Utah sued EPA on March 18, 1994 regarding EPA's incompleteness finding (State of Utah v. EPA, Case No. 94–9520). As part of the lawsuit settlement, EPA agreed to allow the State to repackage its submittal and request parallel processing of the ozone redesignation request for Salt Lake and Davis Counties. Therefore, on June 27,

[1] Section 172(c)(7) of the Act provides that plan provisions for nonattainment areas shall meet the applicable provisions of Section 110(a)(2).

1994, the State submitted a request for parallel processing of the ozone maintenance plan and resubmitted a reorganized ozone redesignation request which included, among other things, NSR rule revisions for all of the State's nonattainment areas. On the basis of the State's reorganized redesignation request and request for parallel processing, EPA withdrew the January 19, 1994 finding of incompleteness in a July 7, 1994 letter to the Governor and deemed the State to have submitted a complete ozone redesignation request, including a complete nonattainment area NSR submittal, on November 12, 1993.

Since the increased emission offset ratio requirements for new and modified sources of VOCs and $NO_X$ in the State's moderate ozone nonattainment areas were not submitted by November 15, 1992, EPA made a finding, pursuant to section 179 of the Act, that the State failed to submit that SIP element and notified the Governor in a letter dated January 15, 1993. After the VOC/$NO_X$ emission offset rules for the State's ozone nonattainment areas were resubmitted on June 27, 1994 along with the reorganized ozone redesignation request, EPA determined that the State's submittal was administratively and technically complete on July 7, 1994 as stated above. This completeness determination corrected the State's deficiency and, therefore, terminated the 18-month sanctions clock under section 179 of the Act.

Promulgation of full approval of Utah's ozone NSR rules will fulfill EPA's obligation under section 110(c)(1) of the Act, which requires that EPA either approve the State's submittal or promulgate a NSR Federal implementation plan (FIP) within 24 months of EPA's finding that the State failed to submit the NSR rules (i.e, by January 15, 1995).

2. Volatile Organic Compound Definition

The State of Utah held a public hearing on March 9, 1993 for the revisions to the definition of VOCs in UACR R307–1–1 to entertain public comment on this SIP revision. Following the public hearing, the revised VOC definition was adopted by the State on March 26, 1993. This revision was submitted to EPA on May 20, 1994 as a proposed revision to the SIP.

The SIP revision was reviewed by EPA to determine completeness shortly after its submittal, in accordance with the completeness criteria referenced above. The submittal was found to be complete, and a letter dated October 20, 1994 was forwarded to the Governor indicating the completeness of the submittal and the next steps to be taken in the processing of the submittal.

*B. Review of Submittal for Meeting the Nonattainment NSR Requirements of the Act*

1. General Nonattainment NSR Requirements

The general statutory requirements for nonattainment NSR SIPs and permitting as amended by the 1990 Amendments are found in sections 172 and 173 of the Act. These requirements apply in all nonattainment areas. The following represents EPA's review of the State's regulation in meeting the NSR requirements of the amended Act:

(1) The amended Act repealed the construction ban provisions previously found in section 110(a)(2)(I) with certain exceptions.

No construction bans are currently imposed in Utah, so this requirement is inapplicable.

(2) Section 173(a)(1)(A) of the Act requires a demonstration for permit issuance that the new source growth does not interfere with reasonable further progress (RFP) for the area. In addition, calculations of emissions offsets must be based on the same emissions baseline used in the demonstration of RFP.

In UACR R307–1–3.3.2.C.(3), R307–1–3.3.3.A.(2), and R307–1–3.3.5, the State has established provisions which adequately address section 173(a)(1).

(3) Section 173(c)(1) of the Act requires that offsets must generally be obtained by the same source or other sources in the same nonattainment area. However, offsets may be obtained from other nonattainment areas if: The area in which the offsets are obtained has an equal or higher nonattainment classification; and emissions from the nonattainment area in which the offsets are obtained contribute to a National Ambient Air Quality Standard (NAAQS) violation in the area in which the source would construct.

In UACR R307–1–3.3.3.A.(1), the State has established provisions that adequately meet this requirement of section 173(c)(1).

(4) Section 173(c)(1) of the Act requires that any emissions offsets obtained in conjunction with the issuance of a permit to a new or modified source must be in effect and enforceable by the time the new or modified source commences operation.

In UACR R307.1.3.3.3.A.(2), the State has established provisions that adequately meet this requirement of section 173(c)(1).

(5) Section 173(c)(1) of the Act requires that emissions increases from new or modified major stationary sources are offset by real reductions in actual emissions.

In UACR R307–1–3.3.3.A.(2), the State has established provisions that adequately meet this requirement of section 173(c)(1).

(6) Section 173(c)(2) of the Act prohibits emissions reductions otherwise required by the Act from being credited for purposes of satisfying the part D offset requirements.

In UACR R307–1–3.3.3.A.(3), the State has established provisions that adequately meet the requirements of section 173(c)(2).

(7) Section 173(a)(3) provides that, as a condition of permit issuance, states must require the owner or operator of a proposed new or modified source to demonstrate that all major stationary sources under the same ownership or control are in compliance or are on a schedule for compliance with all applicable emission limitations and standards.

In UACR R307–1–3.3.2.C.(2), the State has established provisions that adequately meet the requirements of section 173(a)(3).

(8) Section 173(a)(2) requires a new or modified major stationary source to comply with the lowest achievable emission rate (LAER).

In UACR R307–1–3.3.2.C.(1), the State has established provisions that adequately meet the requirements of section 173(a)(2).

(9) Revised sections 172(c)(4), 173(a)(1)(B), and 173(b) of the Act limit and invalidate use of certain growth allowances in nonattainment areas.

This requirement is inapplicable because the State of Utah has not established any growth allowances in its nonattainment area SIPs.

(10) Revised section 173(a)(5) of the Act requires that, as a prerequisite to issuing any part D permit, an analysis of alternative sites, sizes, production processes, and environmental control techniques for a proposed source must be completed which demonstrates that the benefits of the proposed source significantly outweigh the environmental and social costs imposed as a result of its location, construction, or modification.

In UACR R307–1–3.1.10, the State has established provisions which adequately address the requirements of section 173(a)(5).

(11) Section 173(d) of the Act requires States to submit control technology information from permits to EPA for the purposes of making such information

available through the RACT/BACT/LAER clearinghouse.

Utah and EPA have established provisions in the annual State-EPA agreement requiring the State to submit information from nonattainment NSR permits to EPA's RACT/BACT/LAER clearinghouse. Thus, a process has been established to meet this requirement.

(12) Section 173(e) of the Act provides that States may allow any existing or modified source that tests rocket engines or motors to use alternative or innovative means to offset emissions increases from firing and related cleaning, under certain conditions.

In lieu of imposing any alternative offset measures the permitting authority may impose an emission limit amounting to no more than 1.5 times the average cost of stationary control measures adopted in that area during the previous three years.

In UACR R307–1–3.3.3.A.(4), the State has adopted provisions for innovative offsetting for rocket engine and motor firing consistent with sections 173(e)(1) through (e)(4) of the Act.

(13) Section 328 requires that sources located on the outer continental shelf (OCS) must be subject to the same requirements as would be applicable if the source were located in the corresponding onshore area.

Since the State of Utah is landlocked and not adjacent to any oceans, this requirement is inapplicable.

(14) Revised section 302(z) of the Act sets forth a new definition of ''stationary source'' reflecting Congressional intent that certain stationary internal combustion engines are subject to State regulation under stationary source permitting programs, while certain ''nonroad engines,'' defined in section 216(10), are generally excluded. On June 17, 1994, the EPA published regulations in 40 CFR Part 89 regarding new nonroad engines and vehicles, including a definition of nonroad engine (59 FR 31306).

EPA's action to approve this SIP revision is limited in that the action does not approve any regulation of nonroad engines in a manner inconsistent with section 209 of the Act and EPA regulations implementing section 209.

2. Applicability of Utah's Nonattainment NSR Provisions

EPA's initial review of the State's nonattainment NSR rules found that the applicability of the rules was unclear. Specifically, UACR R307–1–3.3.2.C. states that the nonattainment NSR provisions apply to a new or modified source if the Executive Secretary of the Utah Air Quality Board finds that the emissions from the proposed source would contribute to an existing violation of the NAAQS. EPA identified concerns with this language in an August 25, 1994 letter to the State, since applicability of the Federal nonattainment NSR requirements is based on the fact that a new or modified major source proposes to *locate* in a nonattainment area. In an October 18, 1994 letter, the State Air Director provided clarification that, under the State's rules, any new major source or major modification proposing to construct in a nonattainment area would be considered to contribute to an existing violation of the NAAQS and would therefore be subject to all of the State's nonattainment NSR requirements. In addition, the State's letter further explained that there is a more general requirement in UACR R307–1–3.1.8.B. which specifically provides that the Executive Secretary may only issue a permit if it is determined to be in accord with the ''new source review requirements for nonattainment areas under the Federal Clean Air Act.'' Thus, the State's regulations require the State to comply with the Federal nonattainment NSR requirements in approving any construction permit.

3. Nonattainment Area-Specific NSR Requirements

In addition to all of the general nonattainment NSR provisions mentioned above, there are also nonattainment area-specific NSR provisions in subparts 2, 3, and 4 of part D of the Act, some of which supersede these general NSR provisions because they are more stringent. The following provisions are the additional NSR provisions that apply in Utah's nonattainment areas and represent EPA's review of the State's regulation in meeting these requirements:

1. Ozone Nonattainment Areas

The general nonattainment NSR requirements discussed above are found in sections 172 and 173 of part D of title I of the Act and must be met in all nonattainment areas. Requirements for ozone that supplement or supersede these requirements are found in subpart 2 of part D. In addition, section 182(f) of subpart 2 states that the requirements for major stationary sources of VOCs shall apply to major stationary sources of $NO_X$ unless the Administrator makes certain determinations related to the benefits or contribution of $NO_X$ control to air quality.

Utah currently has two ozone nonattainment areas: Davis County and Salt Lake County, both of which are currently classified as moderate. (See 40 CFR 81.345 for Utah's ozone nonattainment area designations.) For moderate ozone nonattainment areas, States must submit the following NSR provisions, in addition to provisions meeting the general NSR requirements in sections 172 and 173 of the Act discussed above:

a. Definition of the term ''major stationary source'' that reflects the section 302(j) 100 tons per year (tpy) VOC and, presumptively, the 100 tpy $NO_X$ thresholds for determination of whether a source is subject to the part D NSR requirements as a major source. In addition, a 40 tpy significance level for defining major modifications of both VOCs and $NO_X$ must be established consistent with the significance level in 40 CFR 51.165(a)(1)(x).

b. Provisions to ensure that new or modified major stationary sources obtain offsets under section 182(a)(4) of the Act at a ratio of at least 1.15:1 in order to obtain an NSR permit.

In the applicable definition of ''major source'' in UACR R307–1–1, the State has established a 100 tpy threshold for any source of VOCs or $NO_X$ located in an ozone nonattainment area or a lesser amount if required in part D of the Act. In addition, the definition of ''major modification'' in R307–1–1 provides that a modification that is significant for VOCs or $NO_X$ shall be considered significant for ozone. The State has established a 40 tpy significance threshold for both VOCs and $NO_X$ in the definition of ''significant'' in R307–1–1. Lastly, UACR R307–1–3.3.3.C. requires an offset ratio of at least 1.15:1 be met by new and modified sources proposing to locate in ozone nonattainment areas. Therefore, EPA finds that the State's NSR program meets the requirements for all of its ozone nonattainment areas.

In addition to meeting the NSR requirements for ozone nonattainment areas, the State has written the alternative siting analysis requirement in R307–1–3.1.10 and the 1.15:1 offset requirement in R307–1–3.3.3.C. to apply to new or modified major sources of VOCs or $NO_X$ proposing to locate in the Salt Lake or Davis County area. In addition, the State has retained the nonattainment NSR thresholds for VOCs and $NO_X$ for defining a major source proposing to locate in Salt Lake or Davis Counties (i.e., 100 tpy). Thus, the State intends these two nonattainment NSR provisions to apply in the Salt Lake and Davis County areas even after such areas are no longer designated nonattainment areas.

2. Carbon Monoxide Nonattainment Areas

The State of Utah has three CO nonattainment areas: Salt Lake City, currently not classified, Ogden, currently classified as moderate with a design value less than 12.7 parts per million (ppm), and Provo, currently classified as moderate with a design value greater than 12.7 ppm. (See 40 CFR 81.345 for Utah's CO nonattainment area designations.)

For both not classified and moderate CO nonattainment areas, States must submit the following NSR provisions, in addition to provisions meeting the general NSR requirements in sections 172 and 173 of the Act discussed above:

A definition of the term ''major stationary source'' that reflects the section 302(j) 100 tpy CO threshold, and a 100 tpy significance level for defining major modifications of CO consistent with the significance level in 40 CFR 51.165(a)(1)(x).

In the applicable definition of ''major source'' in UACR R307–1–1, the State has established a 100 tpy threshold for sources of CO locating in a CO nonattainment area. In addition, the State has established a 100 tpy significance threshold for CO in the definition of ''significant'' in R307–1–1. Therefore, EPA finds that the State's NSR rules meets the requirements for all of its CO nonattainment areas.

3. PM–10 Nonattainment Areas

The State of Utah has two PM–10 nonattainment areas, both of which are currently classified as moderate: Salt Lake County and Utah County. (See 40 CFR 81.345 for Utah's PM–10 nonattainment area designations.) For moderate PM–10 nonattainment areas, States must submit the following NSR provisions, in addition to provisions meeting the general NSR requirements in sections 172 and 173 of the Act discussed above:

a. A definition of the term ''major stationary source'' that reflects the section 302(j) 100 tpy PM–10 threshold, and a 15 tpy significance level for defining major modifications of PM–10, consistent with the significance level in 40 CFR part 51.

b. Section 189(e) of the amended Act requires that the control requirements applicable to major stationary sources of PM–10 must also apply to major stationary sources of PM–10 precursors, except where the Administrator of EPA has determined that such sources do not contribute significantly to PM–10 levels which exceed the standard in the area. PM–10 precursors may include VOCs, which form secondary organic compounds, sulfur dioxide ($SO_2$), which forms sulfate compounds, and $NO_X$, which form nitrate compounds. Thus, unless the EPA Administrator finds otherwise, States must submit rules applying all of the NSR provisions mentioned above to sources of PM–10 precursors, including the 100 tpy threshold for defining major stationary sources and the current significance level thresholds in 40 CFR 51.165(a)(1)(x) for each PM–10 precursor pollutant for defining major modifications.

EPA has not made a finding under section 189(e) that sources of PM–10 precursors do not contribute significantly in Utah's PM–10 nonattainment areas. In EPA's notice of proposed approval of the Salt Lake and Utah County PM–10 SIPs, EPA stated that PM–10 violations in both counties were attributable to sources of both $SO_2$ and $NO_X$ (see 57 FR 60152, December 18, 1992). Approval of these PM–10 SIPs was promulgated on July 8, 1994 (59 FR 35036). Thus, in accordance with section 189(e), Utah is required to regulate new and modified major sources of $SO_2$ and $NO_X$ as precursors to PM–10 in its NSR permitting rules.

In the applicable definition of ''major source'' in UACR R307–1–1, the State has established a 100 tpy threshold for any source of PM–10 or a PM–10 precursor located in a PM–10 nonattainment area or a lesser amount if required in part D of the Act. ''PM–10 precursor'' is defined in UACR R307–1–1 as including $SO_2$ and $NO_X$. In addition, the definition of ''major modification'' in UACR R307–1–1 provides that a modification that is significant for a PM–10 precursor shall be considered significant for PM–10. The State has established a 15 tpy significance level for PM–10 and 40 tpy significance levels for both $SO_2$ and $NO_X$ in the definition of ''significant'' in R307–1–1.

In UACR R307–1–3.3.3.B., the State has adopted an additional provision requiring emission offsets for new and modified sources of PM–10 and PM–10 precursors that may not normally be subject to the nonattainment NSR permitting requirements. Specifically, this provision requires new sources or modifications to existing sources with total combined net emissions increases of PM–10, $SO_2$, and $NO_X$ of greater than or equal to 25 tpy to obtain emission offsets. For sources or modifications between 25 and 50 tpy, the emission offset ratio required is 1:1, and for sources or modifications equal to or greater than 50 tpy, the emission offset ratio required is 1.2:1. For these offset determinations, the State rule provides that PM–10, $SO_2$, and $NO_X$ will be treated on an equal basis.

This provision was originally submitted as a Group I PM–10 control measure for these areas before nonattainment NSR rules for PM–10 were required. This measure was continued as a control measure in the PM–10 SIP submittal for the Salt Lake and Utah County nonattainment areas, which EPA approved on July 8, 1994 (59 FR 35036). The basis for this measure, according to Section 9.A.7. of the Utah SIP, was to ensure new growth did not increase the cap on industrial emissions. Since the State now has adopted nonattainment NSR rules for new and modified major sources of PM–10 or PM–10 precursors (i.e., new sources greater than 100 tpy of PM–10 or a PM–10 precursor) in accordance with the requirements of the amended Act, EPA interprets UACR R307–1–3.3.3.B. to apply only to those new and modified sources which would not otherwise be subject to the major source/major modification nonattainment NSR provisions in R307–1–3.

It is necessary to make this distinction because, in determining applicability to the major source nonattainment NSR requirements, EPA only allows a source to consider reductions in the same pollutant when calculating the potential to emit of a new source or the net emissions increase from a modification. Also, in meeting the emission offset requirement of the nonattainment NSR provisions once it is determined that a source is subject to the nonattainment NSR provisions, EPA currently only allows restricted interpollutant trading between PM–10 and PM–10 precursors. Specifically, new major sources or major modifications of a PM–10 precursor are allowed to obtain offsets from reductions in PM–10. Otherwise, new major sources and major modifications must obtain offsets from reductions in the same pollutant.

As discussed above under ''Applicability of Utah's Nonattainment NSR Provisions,'' UACR R307–1–3.1.8.B. specifically provides that the Executive Secretary may only issue a permit if it is determined to be in accord with the ''new source review requirements for nonattainment areas under the Federal Clean Air Act.'' Thus, in order for the State to comply with this provision, the State must interpret its regulations as stated in the above paragraph. Consequently, the State's provision in UACR R307–1–3.3.3.B. applies to new sources or modifications which would have combined emissions of PM–10 and PM–10 precursors greater than or equal to 25 tpy, but this

provision does not apply to any new source or modification considered to be major based on the emissions of a single pollutant. In the case of a new major source or major modification, the nonattainment NSR provisions for major sources of UACR R307–1–3, including the general offset requirements in R307–1–3.3.3.A., and the nonattainment NSR requirements under the Clean Air Act would apply to such source or modification in accordance with UACR R307–1–3.1.8.B.

Because the State has adequately addressed all of the other general NSR requirements, EPA finds that the State's NSR program meets all of the requirements for all of its PM–10 nonattainment areas.

4. Sulfur Dioxide Nonattainment Areas

The State of Utah has two $SO_2$ nonattainment areas, which are defined as Salt Lake County and portions of Tooele County. (See 40 CFR 81.345 for Utah's $SO_2$ nonattainment area designations.) For $SO_2$ nonattainment areas, States must submit the following NSR provisions, in addition to provisions meeting the general NSR requirements in sections 172 and 173 of the Act discussed above:

A definition of the term ''major stationary source'' that reflects the section 302(j) 100 tpy $SO_2$ threshold, and a 40 tpy significance level for defining major modifications of $SO_2$, consistent with the significance level in 40 CFR 51.165(a)(1)(x).

In the definition of ''major source'' in UACR R307–1–1, the State has established a 100 tpy threshold for $SO_2$. In addition, the State has established a 40 tpy significance threshold for $SO_2$ in the definition of ''significant'' in R307–1–1. Therefore, EPA finds that the State's NSR rules meets the requirements for all of its $SO_2$ nonattainment areas.

For further information on these requirements and the State's provisions which meet these requirements, please see the Technical Support Document (TSD) accompanying this notice.

*C. Review of VOC Definition Submittal*

EPA has reviewed the State's definition of VOC in UACR R307–1–1 and finds that it is consistent with the federal definition in 40 CFR 51.100(s). For further information, see the TSD.

**Final Action**

EPA is approving the revisions to Utah's nonattainment NSR rules in UACR R307–1–1 and R307–1–3, which were submitted by the Governor on November 12, 1993 and May 20, 1994 for approval in the SIP. The State of Utah has submitted an approvable plan to implement the NSR provisions of part D of the Act. Each of the NSR program elements discussed above have been adequately addressed in the State's regulations for all of the State's nonattainment areas.

EPA's approval includes the following sections of the Utah Air Conservation Regulations: (1) The forward of R307–1–1 and the following definitions in R307–1–1 that have been revised since EPA's last approval of R307–1–1 (July 8, 1994, 59 FR 35036) and which apply to the State's NSR permitting program in R307–1–3: ''air contaminant,'' ''air contaminant source,'' ''air pollution,'' ''allowable emissions,'' ''ambient air,'' ''best available control technology (BACT),'' ''board,'' ''department,'' ''dispersion technique,'' ''emission limitation,'' ''executive director,'' ''executive secretary,'' ''major modification,'' ''major source,'' ''PM–10 precursor,'' ''person,'' ''temporary,'' and ''volatile organic compound (VOC);'' (2) R307–1–3.1.8; 3) R307–1–3.1.10; and 4) R307–1–3.3.

The EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial action and anticipates no adverse comments. However, in a separate document in this **Federal Register** publication, the EPA is proposing to approve the SIP revision should adverse or critical comments be filed. Under the procedures established in the May 10, 1994 **Federal Register** (59 FR 24054), this action will be effective on July 5, 1995 unless, by June 5, 1995, adverse or critical comments are received.

If the EPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on this action serving as a proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective on July 5, 1995.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to any SIP shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866 review.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 et. seq., EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, part D of the Act do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP-approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-state relationship under the Act, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co. v. U.S. E.P.A.*, 427 U.S. 246, 256–66 (S.Ct. 1976); 42 U.S.C. 7410(a)(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 July 5, 1995. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule 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, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: March 24, 1995.

**Robert L. Duprey,**

*Acting Regional Administrator.*

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. 7401–7671q.

## Subpart TT—Utah

2. Section 52.2320 is amended by adding paragraph (c)(28) to read as follows:

**§ 52.2320 Identification of plan.**

* * * * *

(c) * * *

(28) On November 12, 1993, the Governor of Utah submitted revisions to its permitting requirements to satisfy the nonattainment new source review provisions in the amended Clean Air Act for all of its nonattainment areas. On May 20, 1994, the Governor of Utah submitted a revision to Utah's definition of volatile organic compounds.

(i) Incorporation by reference.

(A) Utah Air Conservation Regulations, R307–1–1, the forward and the following definitions: ''air contaminant,'' ''air contaminant source,'' ''air pollution,'' ''allowable emissions,'' ''ambient air,'' ''best available control technology (BACT),'' ''board,'' ''department,'' ''dispersion technique,'' ''emission limitation,'' ''executive director,'' ''executive secretary,'' ''major modification,'' ''major source,'' ''PM–10 precursor,'' ''person,'' ''temporary,'' and ''volatile organic compound (VOC);'' effective November 15, 1993, printed June 24, 1994.

(B) Utah Air Conservation Regulations, R307–1–3.1.8, R307–1–3.1.10, and R307–1–3.3; effective August 16, 1993, printed May 26, 1994.

(ii) Additional material.

(A) Letter dated October 18, 1994 from Russell A. Roberts to Douglas M. Skie clarifying applicability of Utah's nonattainment new source review permitting requirements.

[FR Doc. 95–10821 Filed 5–4–95; 8:45 am]

BILLING CODE 6560–50–P

## 40 CFR Part 52

**[NC70–2–6861a: NC63–1–6394a; FRL–5189–3]**

## Clean Air Act Approval and Promulgation of Emission Statement Implementation Plan for North Carolina

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

**ACTION:** Direct final rule.

**SUMMARY:** The EPA is approving a revision to the State Implementation Plan (SIP) submitted by the State of North Carolina through the North Carolina Department of Environment, Health and Natural Resources (NCDEHNR) for the purpose of implementing an emission statement program for stationary sources within the North Carolina ozone nonattainment/maintenance areas: Davidson County, Durham County, Forsyth County, Gaston County, Guilford County, Mecklenburg County, Wake County, the Dutchville Township portion of Granville County, and that part of Davie County bounded by the Yadkin River, Dutchman's Creek, North Carolina Highway 801, Fulton Creek, and back to the Yadkin River. The SIP was submitted on August 15, 1994, by the State to satisfy the Federal requirements for an emission statement program as part of the SIP for North Carolina.

**DATES:** This final rule is effective July 5, 1995, unless someone submits adverse or critical comments by June 5, 1995. If the effective date is delayed, timely notice will be published in the **Federal Register**.

**ADDRESSES:** Written comments should be addressed to: Joey LeVasseur, Regulatory Planning and Development Section, Air Programs Branch, Air, Pesticides & Toxics Management Division, Region 4 Environmental Protection Agency, 345 Courtland Street, NE., Atlanta, Georgia 30365.

Copies of the material submitted by the State of North Carolina may be examined during normal business hours at the following locations:

Air and Radiation Docket and Information Center (Air Docket 6102), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

Environmental Protection Agency, Region 4 Air Programs Branch, 345 Courtland Street, NE, Atlanta, Georgia 30365.

North Carolina Department of Environment, Health and Natural Resources, 512 North Salisbury Street, Raleigh, North Carolina 27604.

**FOR FURTHER INFORMATION CONTACT:** Joey LeVasseur, Regulatory Planning and Development Section, Air Programs Branch, Air, Pesticides & Toxics Management Division, Region 4 Environmental Protection Agency, 345 Courtland Street, NE., Atlanta, Georgia 30365. The telephone number is 404/347–3555 ext. 4215. Reference file NC70–2–6861.

**SUPPLEMENTARY INFORMATION:** A SIP revision was submitted by the State of North Carolina on December 17, 1993, to satisfy the requirements of section 182(a)(B) of the Clean Air Act Amendments of 1990 (CAA) (November 15, 1990). This revision was submitted as a temporary rule and EPA held off action until the State submitted a permanent rule on August 15, 1994. The SIP revision was reviewed by EPA to determine completeness shortly after its submittal, in accordance with the completeness criteria set out at 40 CFR part 51, appendix V (1991), as amended by 57 FR 42216 (August 26, 1991). The submittal was found to be complete and a letter dated December 5, 1994, addressed to Mr. A. Preston Howard, Director, NCDEHNR, was sent to NCDEHNR indicating the submittal was administratively complete.

There are several key general and specific components of an acceptable emission statement program. Specifically, the state must submit a revision to its SIP and the emission statement program must meet the minimum requirements for reporting. In general, the program must include, at a minimum, provisions for applicability, compliance, and specific source requirements detailed below.

### A. SIP Revision Submission

The NCDEHNR submitted the North Carolina emission statement regulation on August 15, 1994, which meets the emission statement requirement.

### B. Program Elements

The State emission statement program must, at a minimum, include provisions covering applicability of the regulations, a compliance schedule for sources covered by the regulations, and the specific reporting requirements for sources. The emission statement submitted by the source should contain, at a minimum, a certification that the information is accurate to the best knowledge of the individual certifying the statement. The North Carolina submittal meets these requirements.

### C. Applicability

Section 182(a)(3)(B) requires that states with areas designated as nonattainment for ozone require emission statement data from sources of volatile organic compounds (VOC) and oxides of nitrogen ($NO_X$) in the nonattainment areas. This requirement applies to all ozone nonattainment areas, regardless of the classification (Marginal, Moderate, etc.).

The states may waive, with EPA approval, the requirement for emission statements for classes or categories of sources with less than 25 tons per year of actual plant-wide $NO_X$ or VOC emissions in nonattainment areas if the class or category is included in the base