

**ENVIRONMENTAL PROTECTION AGENCY****40 CFR Part 52**

[EPA-R08-OAR-2007-0927; FRL-8760-5]

**Approval, Disapproval, and Promulgation of Air Quality Implementation Plans; Utah; Revisions to New Source Review Rules****AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to partially approve and partially disapprove State Implementation Plan revisions submitted by the State of Utah on September 15, 2006, October 1, 2007, and March 7, 2008 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"). Utah adopted these rules on June 15, 2006, July 11, 2007, and January 9, 2008 and these rules became State-effective on June 16, 2006, September 7, 2007, and January 11, 2008 respectively. Utah has a federally approved Prevention of Significant Deterioration (PSD) program for new and modified sources impacting attainment areas in the State. This action is being taken under section 110 of the Clean Air Act.

**DATES:** Comments must be received on or before February 6, 2009.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R08-OAR-2007-0927, by one of the following methods:

- *www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *E-mail:* [videtich.callie@epa.gov](mailto:videtich.callie@epa.gov) and [leone.kevin@epa.gov](mailto:leone.kevin@epa.gov).
- *Fax:* (303) 312-6064 (please alert the individual listed in the **FOR FURTHER INFORMATION CONTACT** section if you are faxing comments).
- *Mail:* Callie A. Videtich, Director, Air Program, Environmental Protection Agency (EPA), Region 8, Mailcode 8P-AR, 1595 Wynkoop Street, Denver, Colorado 80202-1129.
- *Hand Delivery:* Callie A. Videtich, Director, Air Program, Environmental Protection Agency (EPA), Region 8, Mailcode 8P-AR, 1595 Wynkoop Street, Denver, Colorado 80202-1129. Such deliveries are only accepted Monday through Friday, 8 a.m. to 4:30 p.m., excluding Federal holidays. Special arrangements should be made for deliveries of boxed information.

*Instructions:* Direct your comments to Docket ID No. EPA-R08-OAR-2007-0927. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at [www.regulations.gov](http://www.regulations.gov), including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through [www.regulations.gov](http://www.regulations.gov) or e-mail. The [www.regulations.gov](http://www.regulations.gov) Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA, without going through [www.regulations.gov](http://www.regulations.gov), your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. 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. For additional information about EPA's public docket visit the EPA Docket Center homepage at <http://www.epa.gov/epahome/dockets.htm>. For additional instructions on submitting comments, go to Section I. General Information of the **SUPPLEMENTARY INFORMATION** section of this document.

*Docket:* All documents in the docket are listed in the [www.regulations.gov](http://www.regulations.gov) index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in [www.regulations.gov](http://www.regulations.gov) or in hard copy at the Air Program, Environmental Protection Agency (EPA), Region 8, 1595 Wynkoop Street, Denver, Colorado 80202-1129. EPA requests that if at all possible, you contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section to view the hard copy of the docket. You may view the hard

copy of the docket Monday through Friday, 8 a.m. to 4 p.m., excluding Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Kevin Leone, Air Program, Mailcode 8P-AR, Environmental Protection Agency, Region 8, 1595 Wynkoop Street, Denver, Colorado 80202-1129, (303) 312-6227, or [leone.kevin@epa.gov](mailto:leone.kevin@epa.gov).

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**Definitions**

For the purpose of this document, we are giving meaning to certain words or initials as follows:

- (i) The word *Act* or initials *CAA* mean or refer to the Clean Air Act, unless the context indicates otherwise.
- (ii) The words *EPA*, *we*, *us* or *our* mean or refer to the United States Environmental Protection Agency.
- (iii) The initials *SIP* mean or refer to State Implementation Plan.
- (iv) The words *State* or *Utah* mean the State of Utah, unless the context indicates otherwise.

**I. General Information***A. What Should I Consider as I Prepare My Comments for EPA?*

1. *Submitting CBI.* Do not submit this information to EPA through [www.regulations.gov](http://www.regulations.gov) or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD-ROM that you mail to EPA, mark the outside of the disk or CD-ROM as CBI and then identify electronically within the disk or CD-ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for Preparing Your Comments.* When submitting comments, remember to:

- a. Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).

b. Follow directions—The agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

c. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

d. Describe any assumptions and provide any technical information and/or data that you used.

e. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

f. Provide specific examples to illustrate your concerns, and suggest alternatives.

g. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

h. Make sure to submit your comments by the comment period deadline identified.

## II. What Is Being Addressed in This Document?

On September 15, 2006, the State of Utah submitted revisions to revise the Utah State Implementation Plan (SIP) and rules. These revisions addressed the federal New Source Review Reform Rule published by EPA on December 31, 2002 (67 FR 80186). Specifically, Utah submitted a revision to Utah rule R307-110-9 (hereafter referred to as R307-110-9), which incorporates SIP section VIII into the Utah Administrative Code. The only change to R307-110-9, was to revise the date that the rule was most recently amended by the Utah Air Quality Board (UAQB) from December 18, 1992 to February 1, 2006. Utah also submitted SIP Section VIII, entitled Prevention of Significant Deterioration (PSD), which was completely revised, and Utah rule R307-405 (hereafter referred to R307-405). The revised R307-405 generally incorporates by reference the federal PSD requirements found at 40 CFR 52.21.

The revisions submitted by the State of Utah on October 1, 2007 updated the incorporation by reference section in R307-405 to reflect the July 1, 2006 version of the Code of Federal Regulations and to make a number of other changes to the rule text that are required due to the change in the incorporation by reference date.

The revisions submitted by the State of Utah on March 7, 2008 updated the incorporation by reference section in R307-405 to reflect the July 1, 2007 version of the Code of Federal Regulations.

As described below in sections III and IV of this action, EPA is proposing to approve and disapprove revisions to

R307-405 (“Permits: Major Sources in Attainment or Unclassified Areas (PSD)”) and approve R307-110-9 (“Section VIII, Prevention of Significant Deterioration of the Utah Air Quality Rules”), which includes an amended Section VIII into the Utah SIP. These revisions to R307-110-9 and R307-405 were submitted to EPA by the Utah Department of Environmental Quality (UDEQ) on September 15, 2006, October 1, 2007, and March 7, 2008 and relate to the PSD permit program of the State of Utah. These revisions to R307-405 that were submitted to us on March 7, 2008 were adopted by the Utah Air Quality Board on January 9, 2008 and became State-effective on January 11, 2008. The March 7, 2008 submittal supersedes the prior submittals and is the version of R307-405 that we are proposing partial approval and partial disapproval in this action.

We note that 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. These regulatory revisions included provisions for baseline emissions determinations, actual-to-future-actual methodology, “Plantwide Applicability Limits (PALs)”, “Clean Units”, and “Pollution Control Projects”. As stated in the December 31, 2002 rulemaking, State and local permitting agencies were required to adopt and submit revisions to their 40 CFR part 51 permitting programs implementing the minimum program elements of that rulemaking (67 FR 80240). With the September 15, 2006 submittal, Utah requested approval of its PSD program revisions into the SIP that satisfy this requirement.

On November 7, 2003, EPA published a reconsideration of the NSR Reform regulations that clarified two provisions in the regulations by including a definition of “replacement unit” and by clarifying that the plantwide applicability limitation (PAL) baseline calculation procedures for newly constructed units do not apply to modified units (68 FR 63021).

On June 24, 2005, the United States Court of Appeals for the District of Columbia Circuit issued its ruling on challenges to the December 2002 NSR Reform revisions (*State of New York et al. v. EPA*, 413 F.3d 3 (DC Cir. 2005)). Although the Court upheld most of EPA’s rules, it vacated both the “Clean Unit” and the “Pollution Control

Project” provisions and remanded back to EPA the recordkeeping provision in 40 CFR 52.21(r)(6) that required a stationary source to keep records of projects when there was a “reasonable possibility” that the project could result in a significant emissions increase. The phrase “reasonable possibility” used in the federal rule in 40 CFR 52.21(r)(6) limits the recordkeeping provisions to modifications at facilities that use the actual-to-future-actual methodology to calculate emissions changes and that may have a “reasonable possibility” of a significant emissions increase.

On December 21, 2007, EPA published a final rule in response to the DC Circuit Court’s remand of the recordkeeping provisions of EPA’s 2002 NSR Reform Rules (see 72 FR 70607) in which EPA clarified what constitutes “reasonable possibility”. The version of R307-405-19 that was submitted for approval into Utah’s SIP on March 7, 2008 does incorporate by reference the phrase “reasonable possibility” of the recordkeeping provisions at 40 CFR 52.21(r)(6). We note, however, that R307-405-19 only incorporates by reference the July 1, 2007 effective version of the Code of Federal Regulations and, therefore, does not incorporate by reference EPA’s December 21, 2007 final rule (see 72 FR 70607) that clarified what constitutes “reasonable possibility”. To address this issue, Utah submitted a commitment letter to EPA dated September 4, 2008 that acknowledges this federal rule change and that the State’s PSD regulations will continue to follow the “reasonable possibility” provisions in a manner that is consistent with EPA’s final rule.

On October 27, 2003 EPA published the Routine Equipment Replacement Provision (68 FR 61248), which specified at 40 CFR 52.21(cc) the criteria for routine equipment and replacement. On March 17, 2006, the Court of Appeals for the DC Circuit vacated EPA’s final Routine Equipment Replacement Provision.

In its March 8, 2008 submittal of the revisions to R307-405, Utah did not incorporate the vacated “Clean Unit”, “Pollution Control Projects”, or “Routine Equipment Replacement provisions”.

## III. What are the changes that EPA is proposing to approve?

EPA is proposing 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" continues to mean the Administrator of EPA: 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), and 52.21(p)(2).

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 be specific for Utah.

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 proposing approval of the September 15, 2006 submitted revision R307-110-9 ("Section VIII, Prevention of Significant Deterioration of the Utah Air Quality Rules"). This revision

updates the reference to Section VIII, "Prevention of Significant Deterioration of the Utah Air Quality Rules" to indicate that the most currently amended version is March 8, 2006. EPA is also proposing approval of the March 8, 2006 version of Section VIII, Prevention of Significant Deterioration of the Utah Air Quality Rules into the SIP. 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 also proposing approval of the March 8, 2006 version of Section VIII into the SIP as it would 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 Federal rules, 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, R307-110-9, and Utah SIP Section VIII 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.

#### **IV. What are the changes that EPA is proposing to disapprove?**

Utah has adopted a specific definition of "Major Source Baseline Date", found at R307-405-3(3)(a)(i), in its revised PSD rule. Part of this definition deviates from the federal definition found in 40 CFR 52.21(b)(14). Utah's definition specifies that the PM<sub>10</sub> major source baseline date is the "date that EPA approves the PM<sub>10</sub> maintenance plan that was adopted by the Board on July 6, 2005" for Davis, Salt Lake, Utah, and Weber Counties. The federal definition in 40 CFR 52.21(b)(14) specifies January 6, 1975 as the major source baseline date for PM<sub>10</sub>, 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 Clean Air Act for using a different date if an area was in a legally designated non-attainment status on January 6, 1975. EPA is proposing 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. However, if prior to our final SIP rulemaking action, Utah submits a SIP revision to their PSD rule to make the definition of "Major Source Baseline Date" consistent with the Federal definition used in 40 CFR 52.21(b)(14) EPA would then be able to approve an incorporation by reference of 40 CFR 52.21(b)(14).

#### **V. What action is EPA taking today?**

We propose 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") and Utah SIP Section VIII. EPA is proposing 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, and Utah SIP Section VIII.

#### **VI. 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.

#### List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds, Incorporation by reference.

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

Dated: November 24, 2008.

**Stephen S. Tuber,**

*Acting Regional Administrator, Region 8.*

[FR Doc. E9–48 Filed 1–6–09; 8:45 am]

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