



Billing Code: 6560-50-P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R08-OAR-2016-0221; FRL-9948-89-Region 8]

### Approval and Promulgation of State Implementation Plan Revisions to Permits, Rules and Approval Orders; Utah

**AGENCY:** Environmental Protection Agency.

**ACTION:** Direct final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is taking direct final action to approve State Implementation Plan (SIP) revisions submitted by the State of Utah on February 10, 2012 and August 29, 2014. These submittals request SIP revisions to remove changes to the major source baseline date that were disapproved by the EPA on July 15, 2011. The submittals also address the EPA's February 6, 2014 disapproval of several permit rules related to the public availability of good engineering practice stack height demonstrations in the public comment process for an approval order, and the process for making emission reductions enforceable in an approval order. The EPA is taking this action in accordance with section 110 of the Clean Air Act (CAA).

**DATES:** This rule is effective on [**Insert date 60 days after date of publication in the Federal Register**] without further notice, unless EPA receives adverse comments by [**Insert date 30 days after date of publication in the Federal Register**]. If adverse comments are received, the EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R08-OAR-2016-0221, at <http://www.regulations.gov>. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from Regulations.gov. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (i.e., on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <http://www2.epa.gov/dockets/commenting-epa-dockets>.

**FOR FURTHER INFORMATION CONTACT:** Jody Ostendorf, Air Program, U.S. Environmental Protection Agency (EPA), Region 8, Mail Code 8P-AR, 1595 Wynkoop Street, Denver, Colorado 80202-1129, (303) 312-7814, [ostendorf.jody@epa.gov](mailto:ostendorf.jody@epa.gov).

**SUPPLEMENTARY INFORMATION:**

**I. Why is EPA Using a Direct Final Rule?**

The EPA is publishing this rule without a prior proposed rule because we view this as a noncontroversial action and anticipate no adverse comment. However, in the “Proposed Rules” section of today’s Federal Register, we are publishing a separate document that will serve as the proposed rule to approve the SIP revisions if adverse comments are received on this direct final rule. We will not institute a second comment period on this action. Any parties interested in

commenting must do so at this time. For further information about commenting on this rule, see the **ADDRESSES** section of this document.

If the EPA receives adverse comment, we will publish a timely withdrawal in the Federal Register informing the public that this direct final rule will not take effect. We would address all public comments in any subsequent final rule based on the proposed rule.

## **II. What Should I Consider as I Prepare My Comments for the EPA?**

A. *Submitting CBI.* Do not submit this information to the EPA through [www.regulations.gov](http://www.regulations.gov) or email. 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.

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

- Identify the rulemaking by docket number and other identifying information (subject heading, Federal Register date and page number).
- 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.
- Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

- Describe any assumptions and provide any technical information and/or data that you used.
- If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
- Provide specific examples to illustrate your concerns, and suggest alternatives.
- Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
- Make sure to submit your comments by the comment period deadline identified.

### **III. Analysis of the State Submittals**

Utah's February 10, 2012 submittal removes changes to the major source baseline date that were disapproved by the EPA on July 15, 2011. The EPA disapproved R307-405-3(3)(a)(i) because it defined "Major Source Baseline Date" in a manner inconsistent with the federal definition found at 40 CFR 52.21(b)(14). The EPA approves these revisions.

The August 29, 2014 SIP revisions address the EPA's February 6, 2014 disapproval of R307-410-2, Permits: Emissions Impact Analysis, Definitions; R307-410-6, Permits: Emissions Impact Analysis, Stack Heights and Dispersion Techniques; and R307-401-12, Permit: New and Modified Sources, Reduction in Air Contaminants. The submittal also amends R307-410-2 to incorporate by reference the date of the Code of Federal Regulations referenced in R307-101-3. The EPA approves these revisions. The submittal amends R307-410-6 to require the director to notify the public of the availability of a demonstration that the source stack height meets good engineering practice, and to provide an opportunity for public hearing on it as required by 40 CFR 51.164. This conforms to what is required by R307-401-7, Public Notice, and the EPA

approves this revision.

Finally, the submittal amends R307-401-12 to exempt an owner or operator of a stationary source of air contaminants that reduces or eliminates air contaminants from the requirement to submit a notice of intent and obtain an approval order prior to construction if certain conditions are met. Those conditions are: a) the project does not increase the potential to emit of any air contaminant or cause emissions of any new air contaminant; and b) the director is notified of the change and the reduction of air contaminants is made enforceable through an approval order in accordance with the notification requirements of R307-401-12. The EPA approves these revisions.

#### **IV. What Action is the EPA Taking Today?**

The EPA is taking direct final action to approve the SIP revisions submitted by the State of Utah on February 10, 2012 and August 29, 2014. The EPA is approving the proposed SIP revisions as a direct final action without prior proposal because the agency views the revisions as noncontroversial and anticipates no adverse comments. However, in the Proposed Rules section of today's Federal Register publication, the EPA is publishing a separate document that will serve as the proposal to approve the SIP revisions if adverse comments are filed. This rule will be effective **[Insert date 60 days after date of publication in the Federal Register]** without further notice unless the Agency receives adverse comments by **[Insert date 30 days after date of publication in the Federal Register.]** If the EPA receives adverse comments, the EPA will publish a timely withdrawal in the Federal Register informing the public that the rule will not take effect. The EPA will address all public comments in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period on this action. Any parties

interested in commenting must do so at this time. Please note that if the EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, the EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

## **V. Incorporation by Reference**

In this rule, the EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is finalizing the incorporation by reference of the Utah rules described in the amendments to 40 CFR part 52 set forth below. Therefore, these materials have been approved by the EPA for inclusion in the State Implementation Plan, have been incorporated by reference by the EPA into that plan, are fully federally enforceable under sections 110 and 113 of the CAA as of the effective date of the final rulemaking of the EPA's approval, and will be incorporated by reference by the Director of the Federal Register in the next update to the SIP compilation.<sup>1</sup> The EPA has made, and will continue to make, these materials generally available through [www.regulations.gov](http://www.regulations.gov) and/or at the EPA Region 8 Office (please contact the person identified in the "For Further Information Contact" section of this preamble for more information).

## **VI. Statutory and Executive Orders Review**

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, the EPA's role is to approve state actions, provided that they meet the criteria of the Clean Air Act. Accordingly, this direct final action

---

<sup>1</sup> 62 Fed. Reg. 27968 (May 22, 1997).

merely approves a 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 in 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 (Public Law 104-4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045(62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and

- Does not provide the EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

The SIP is not approved to apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

The Congressional Review Act, 5 U.S.C. section 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. The EPA will submit a report containing this rule 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. section 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 **[Insert date 60 days after date of publication of this document in the Federal Register]**. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial

review may be filed, and shall not postpone the effectiveness of such rule or action. Parties with objections to this direct final rule are encouraged to file a comment in response to the parallel notice of proposed rulemaking for this action published in the proposed rules section of today's Federal Register, rather than file an immediate petition for judicial review of this direct final rule, so that the EPA can withdraw this direct final rule and address the comment in the proposed rulemaking. 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 22, 2016.

\_\_\_\_\_  
Shaun L. McGrath,  
Regional Administrator,  
Region 8.

40 CFR part 52 is amended to read as follows:

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

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

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

**Subpart TT - Utah**

2. Section 52.2320 paragraph (c) is amended by:

a. In the table, under the heading “R307-401, Permit: New and Modified Sources”, adding in numerical order, a table entry for “R307-401-12”;

b. In the table, under the heading “R307-405. Permits: Major Sources in Attainment or Unclassified Areas (PSD)” revising the table entry for “R307-405-03”; and

c. In the table, under the heading “R307-410. Permits: Emissions Impact Analysis”, revising the table entries for “R307-410-02” and “R307-410-06”.

The revisions and addition read as follows:

§ 52.2320 Identification of plan.

\* \* \* \* \*

(c) \* \* \*

| Rule Number  | Rule title                     | State effective date | Final rule citation, date   | Comments |
|--|--------------------------------|----------------------|---|----------|
| * * * * *  |                                |                      |   |          |
| <b>R307-401. Permit: New and Modified Sources.</b>                                 |                                |                      |   |          |
| * * * * *  |                                |                      |   |          |
| R307-401-12.   | Reduction in Air Contaminants. | 08/07/2014           | [Insert <b>Federal Register</b> citation].<br>[Insert date of publication in the <b>Federal Register</b> ]. |          |
| * * * * *  |                                |                      |   |          |
| <b>R307-405. Permits: Major Sources in Attainment or Unclassified Areas (PSD).</b> |                                |                      |   |          |
| * * * * *  |                                |                      |   |          |
| R307-405-03.   | Definitions.                   | 02/02/2012           | [Insert <b>Federal Register</b> citation].<br>[Insert date of publication in the <b>Federal Register</b> ]. |          |
| * * * * *  |                                |                      |   |          |
| <b>R307-410. Permits: Emissions Impact Analysis.</b>                               |                                |                      |   |          |
| * * * * *  |                                |                      |   |          |
| R307-410-02.   | Definitions.                   | 08/07/2014           | [Insert <b>Federal Register</b> citation].  |          |

|              |   |            |   |  |
|--------------|---|------------|---|--|
|              |   |            | citation].<br>[Insert date<br>of<br>publication<br>in the<br><b>Federal<br/>Register</b> ].   |  |
| * * * * *    |   |            |   |  |
| R307-410-06. | Stack Heights and<br>Dispersion Techniques. | 08/07/2014 | [Insert<br><b>Federal<br/>Register</b><br>citation].<br>[Insert date<br>of<br>publication<br>in the<br><b>Federal<br/>Register</b> ]. |  |
| * * * * *    |   |            |   |  |

\* \* \* \* \*

[FR Doc. 2016-16963 Filed: 7/18/2016 8:45 am; Publication Date: 7/19/2016]