



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R08-OAR-2016-0620; FRL-9968-74-Region 8]

Approval and Promulgation of Air Quality Implementation Plans; State of Utah; Revisions to Ozone Offset Requirements in Davis and Salt Lake Counties

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking final action to approve State Implementation Plan (SIP) revisions submitted by the State of Utah on August 20, 2013, and on June 29, 2017. The submittals revise the portions of the Utah Administrative Code (UAC) that pertain to ozone offset requirements in Davis and Salt Lake Counties for major sources. This action is being taken under section 110 of the Clean Air Act (CAA) (Act).

DATES: This final rule is effective on [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: The EPA has established a docket for this action under Docket Identification Number EPA-R08-OAR-2016-0620. All documents in the docket are listed on the <http://www.regulations.gov> index. Although listed in the index, some information may not be publicly available, e.g., Confidential Business Information 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 through <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. The EPA requests that 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, 8:00 a.m. to 4:00 p.m., excluding federal holidays.

FOR FURTHER INFORMATION CONTACT: Kevin Leone, Air Program, U.S.

Environmental Protection Agency, Region 8, Mailcode 8P-AR, 1595 Wynkoop, Denver, Colorado 80202-1129, (303) 312-6227, leone.kevin@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

On August 20, 2013, with supporting administrative documentation submitted on September 12, 2013, Utah sent the EPA revisions to their nonattainment permitting regulations, specifically to address EPA identified deficiencies in those regulations that may also affect the EPA's ability to approve Utah's fine particulate matter (PM_{2.5}) SIP. These revisions addressed R307-403-1 (Purpose and Definitions), R307-403-2 (Applicability), R307-403-11 (Actual Plant-wide Applicability Limits (PALs)), and R307-420 (Ozone Offset Requirements in Davis and Salt Lake Counties). On June 2, 2016, the EPA entered into a consent decree with the Center for Biological Diversity, Center for Environmental Health, and Neighbors for Clean Air regarding a failure to act, pursuant to CAA sections 110(k)(2)-(4), on certain complete SIP submissions from states intended to address specific requirements related to the 2006 PM_{2.5} NAAQS for certain nonattainment areas, including the submittal from the Governor of Utah dated August 20, 2013.

On February 3, 2017, the EPA published a final rulemaking (82 FR 9138) to conditionally approve the revisions in Utah's August 20, 2013 submittal, except for the revisions

to R307-420. The submittal did not contain the appropriate supporting documentation required for the EPA to take action on R307-420. As a result, the EPA requested an extension for taking action on R307-420, and on December 20, 2016, the EPA was granted an extension which moved the deadline for taking final action on R307-420 from January 3, 2017, to September 29, 2017 (See docket). Utah submitted on June 29, 2017, an additional SIP revision that addresses the lack of appropriate supporting documentation for R307-420.

II. Response to Comments

No comments were received on our July 14, 2017 notice of proposed rulemaking (82 FR 32517).

III. Final Action

The EPA is taking final action to approve Utah's revisions to R307-420 and R307-403-6, as submitted on August 20, 2013, and June 29, 2017. R307-420 maintains the offset provisions of the nonattainment area new source review (NNSR) permitting program in Salt Lake and Davis Counties after the area is re-designated to attainment for ozone. R307-420 also establishes more stringent offset requirements for nitrogen oxides that may be triggered as a contingency measure under Utah's ozone maintenance plan. R307-420 was also modified to include the definitions and applicability provisions of R307-403 (Permits: New and Modified Sources in Nonattainment Areas and Maintenance Areas) to ensure that the definitions and applicability provisions in R307-420 are consistent with related permitting rules in R307-403. The EPA is taking final action to approve these revisions.

On August 20, 2013, Utah submitted revisions to the definitions in the NNSR program that addressed certain deficiencies in the program. Utah also submitted revisions to the

corresponding definitions in R307-420. As explained in our proposed rulemaking published on July 14, 2017 (82 FR 32517), since the EPA had not received the 1999 rulemaking that created R307-420 as a SIP submittal, we were unable to take action on the revisions to R307-420 in our February 3, 2017 (82 FR 9138) final rulemaking for Utah's revisions to Nonattainment Permitting Regulations.

Utah's June 29, 2017 submittal addressed this issue by submitting the 1999 rule revisions that created R307-420 and modified R307-403-6. As these rule revisions preserve the ozone maintenance plan requirements for offsets and contingency measures in Salt Lake and Davis Counties while improving the clarity of those requirements, we proposed to approve the 1999 rule revisions on July 14, 2017 (82 FR 32517). We also proposed to approve the remaining portion of the August 20, 2013 submittal.

The EPA is taking final action to approve the subsequent revisions to R307-420, submitted on August 20, 2013, that Utah promulgated to ensure that the definitions and applicability provisions in R307-420 are consistent with related permitting rules in R307-403. For the reasons explained in our July 14, 2017 notice of proposed rulemaking, the definitions and applicability provisions in R307-403 are consistent with requirements for NNSR programs found in 40 CFR 51.165. While R307-420 is part of the ozone maintenance plan for Salt Lake and Davis Counties and not part of the NNSR program, and therefore, not directly subject to the requirements in 40 CFR 51.165, we view the corresponding revisions to the definitions and applicability provisions as strengthening the maintenance plan. Specifically, the EPA is approving the following revisions to Utah's nonattainment permitting regulations:

Table 1: Revised Sections as public noticed in the Utah State Bulletin on March 1,

1999 (Submitted on June 29, 2017)

Adds Section R307-420-1 (Purpose)
Adds Section R307-420-2 (Definitions)
Adds Section R307-420-3 (Applicability)
Adds Section R307-420-4 (General Requirements)
Adds Section R307-420-5 (Contingency Measure: Offsets for Oxides of Nitrogen)
<p>Revises Section R307-403-6 (Offsets: Ozone Nonattainment Areas and Davis and Salt Lake Counties)</p> <ol style="list-style-type: none"> 1. Removes the phrase: “and Davis and Salt Lake Counties” from title 2. Adds the phrase: “In any ozone nonattainment area” 3. Adds the phrase “42 U.S.C. 7511a” 4. Removes the language: “As outlined in Section 182 of the federal Clean Air Act, for moderate areas, the emission offset ratio must be at least 1.15.1.” <ol style="list-style-type: none"> (1) Ozone Maintenance Plan, Salt Lake and Davis Counties. In the event that the contingency measures described in Section IX, Part D.2.h.(3) of the State Implementation Plan are triggered, the offset requirement in (2) below shall apply to emissions of both volatile organic compounds and oxides of nitrogen. (2) The emission offset ratio must be at least 1.2.1, and offset must be obtained for the same pollutant for which the source or modification has been deemed “major”.

Table 2: Revised Sections submitted on August 20, 2013

R307-420-1 (Purpose) the phrase: “Except as provided in R307-420-2, the definitions in R307-403-1 apply to R307-420.”
R307-420-3 (Applicability) the new paragraph: (3) The applicability provision in R307-403-2(1)(a) through (f) and R307-403-2(2)(2) through (7) apply in R307-420.”

Please refer to the August 20, 2013 and June 29, 2017 submittal for further details on these revisions.

IV. 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 UDAQ rules as described in the amendments to 40 CFR part 52 set forth in this document. The EPA has made, and will continue to make, these materials generally available through 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).

Therefore, these materials have been approved by the EPA for inclusion in the SIP, 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.¹

V. 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, the EPA’s role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely approves state law as meeting federal requirements and does not impose additional requirements

¹ 62 FR 27968 (May 22, 1997).

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. 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 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 [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION 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. This action may not be challenged later in proceedings to enforce its requirements. (See CAA section 307(b)(2).)

List of Subjects in 40 CFR Part 52

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

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

Dated: September 20, 2017.

Suzanne J. Bohan,
Acting Regional Administrator,
Region 8.

40 CFR part 52 is amended 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 as follows:

a. Under the centered heading **“R307-403. Permits: New and Modified Sources in Nonattainment Areas and Maintenance Areas”**:

- i. By revising the table entry for “R307-403.”
- ii. By adding a table entry for “R307-403-6” in numerical order.

b. By adding a centered heading **“R307-420. Permits: Ozone Offset Requirements in Davis and Salt Lake Counties”** and table entries for “R307-420-1”, “R307-420-2”, “R307-420-3”, “R307-420-4”, and “R307-420-5” in numerical order.

The revision and additions read as follows:

§52.2320 Identification of plan.

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(c) * * *

Rule No.	Rule title	State effective date	Final rule citation, date	Comments
* * * * *				
R307-403. Permits: New and Modified Sources in Nonattainment Areas and Maintenance Areas				
R307-403	Permits: New and Modified Sources in Nonattainment Areas	9/15/1998	71 FR 7679, 2/14/2006	Except for R307-403-1, R307-403-2, R307-403-6,

	and Maintenance Areas			R307-403-10, R307-403-11.
* * * * *				
R307-403-6	Offsets: Ozone Nonattainment Areas	9/15/1998	[insert Federal Register citation], [insert date of publication in the Federal Register]	
* * * * *				
R307-420. Permits: Ozone Offset Requirements in Davis and Salt Lake Counties				
R307-420-1	Purpose	3/1/1999, 7/1/2013	[insert Federal Register citation], [insert date of publication in the Federal Register]	
R307-420-2	Definitions	3/1/1999, 7/1/2013	[insert Federal Register citation], [insert date of publication in the Federal Register]	
R307-420-3	Applicability	3/1/1999, 7/1/2013	[insert Federal Register citation],	

			[insert date of publication in the Federal Register]	
R307-420-4	General Requirements	3/1/1999, 7/1/2013	[insert Federal Register citation], [insert date of publication in the Federal Register]	
R307-420-5	Contingency Measure: Offsets for Oxides of Nitrogen	3/1/1999, 7/1/2013	[insert Federal Register citation], [insert date of publication in the Federal Register]	

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[FR Doc. 2017-21111 Filed: 10/4/2017 8:45 am; Publication Date: 10/5/2017]