



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R08-OAR-2012-0300; FRL-9903-27-Region 8]

Approval and Promulgation of State Implementation Plans; Utah: Prevention of Significant Deterioration; Greenhouse Gas Permitting Authority and Tailoring Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is partially approving and partially disapproving revisions to the Utah State Implementation Plan (SIP) relating to regulation of Greenhouse Gases (GHGs) under Utah's Prevention of Significant Deterioration (PSD) program and other SIP provisions. These revisions were submitted to EPA on April 14, 2011 by the Governor. The GHG-related SIP revisions are designed to align Utah's regulations with the GHG emission thresholds established in EPA's "PSD and Title V Greenhouse Gas Tailoring Final Rule," which EPA issued by notice dated June 3, 2010. In today's action, EPA is approving the GHG (as it relates to the PSD program) revisions because the Agency has determined that this SIP revision, which is already adopted by Utah as a final effective rule, is in accordance with the Clean Air Act (CAA or Act) and EPA regulations regarding PSD permitting for GHGs.

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

ADDRESSES: EPA has established a docket for this action under Docket Identification No. EPA-R08-OAR-2012-0300. All documents in the docket are listed in the 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 or in hard copy at the Air Program, Environmental Protection Agency (EPA), Region 8, 1595 Wynkoop St., 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, 8:00 a.m. to 4:00 p.m., excluding Federal holidays.

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

SUPPLEMENTARY INFORMATION: Throughout this document “we,” “us,” or “our” refer to EPA.

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I. Background for Our Final Action

The background for today’s final rule and EPA’s national actions pertaining to GHGs is discussed in detail in our September 5, 2013 proposal (see 78 FR 54602). The comment period was open for 21 days and we received no written comments. However, we did receive a phone call of clarification from the State of Utah, which is explained below and documented in a Memo to the Docket dated September 30, 2013.

II. What Final Action is EPA Taking?

Utah has adopted and submitted regulations that are substantively similar to the federal requirements for the permitting of GHG-emitting sources subject to PSD. As presented in our proposed notice, we conclude that the revisions are consistent with the requirements of 40 CFR 51.166, in particular the requirements set out in EPA's final GHG Tailoring Rule, and that the revisions should be approved into Utah's SIP.

R307-401-9 (Small Source Exemption), was revised by the State to exclude sources from the requirement to obtain an approval order if their GHG emissions are below the thresholds established by EPA, and adopted into the State rules (R307-401-9(5)). Therefore, preconstruction permits for GHGs are only required under the PSD permitting program, thus exempting minor sources from GHG permitting. We are approving the rule amendment as submitted by the State and this revision.

R307-405-3 (Definitions), was also revised by the State to amend the definition of "subject to regulation" to include "greenhouse gases (GHGs)" as defined in 40 CFR 86.1818-12(a). R307-405-3 was modified to establish thresholds for permitting of GHGs under the PSD program. Definitions for the terms "GHGs", "emissions increase" and "tpy CO₂ equivalent emissions (CO₂e)", were added to this rule. Applicability thresholds for several different types of permitting scenarios were also added. Therefore, we are approving the state's additions to R307-405-3(9) as they are consistent with the federal rule provisions in 40 CFR 51.166(b)(48).

Our final review determines that there are eight provisions in the R307-405-3 in the State submittal that are identical in rule number and language to the definitions we approved in our July 15, 2011 approval (76 FR 41712) and we are approving these definitions as resubmitted. These provisions include: R307-405-3(1)(adopting by reference the definitions in 40 CFR 52.21(b) with exceptions as noted in the rules); R307-405-3(2)(c)(definition of "Reviewing

Authority”); R307-405-3(2)(d)(definition of “Administrator”); R307-405-3(2)(e)(definitions or portions of definitions vacated by the DC Circuit Court of Appeals on March 17, 2006); R307-405-3(3)(definition of “Air Quality Related Values”); R307-405-3(4)(definition of “Heat Input”); R307-405-3(7)(definition of “Good Engineering Practice”); and R307-405-3(8)(definition of “Dispersion Technique”).

We proposed to approve R307-405-3(2)(e) and indicated in our proposal that this is a new rule that is not currently in the SIP. The rule explains that “certain definitions or portions of definitions that apply to the equipment repair and replacement provisions are not incorporated into the SIP because these provisions were vacated by the DC Circuit Court of Appeals.” Upon further research we found that we previously approved this rule in our final action on July 15, 2011 (76 FR 41712). Therefore, we are reapproving the resubmittal of this provision.

Additionally, in our proposed action we indicated there is a definition that had a new rule number, and upon further research we found that we had previously approved the definition with that rule number in our July 15, 2011 approval, R307-405-3(3)(definition of “Air Quality Related Values”). Therefore, we are reapproving the resubmittal of this provision.

We are not acting on four provisions in R307-405-3 because we took final action on these provisions on October 25, 2013 (78 FR 63883). Specifically, these provisions include: R307-405-3(2)(a)(definitions of “major source baseline area” and “minor source baseline area”); R307-405-3(b)(definition of “baseline area”)’ R307-403-3(f)(definition of “regulated NSR pollutant”).

We are not acting on rule provisions related to the Title V program. There are two specific definitions we are not acting on: R307-405-3(5)(definition of “Title V Permit”) and R307-405-3(6)(definition of “Title V Operating Permit Program”). The State also submitted R307-415-3 (all the definitions for the Operating Permit Program). We are not acting on these

definitions and rule in this notice because approval of the Title V program revisions is handled separately and Title V is not part of the SIP.

Additionally, consistent with our June 12, 2013 proposal (78 FR 35181), we are disapproving the State's submittal of R307-401-7 (Permit: New and Modified Sources, Public Notice), which was effective in the Utah Administrative Code on December 1, 2010.¹

Also consistent with our June 2013 proposal we are partially approving and partially disapproving R307-401-9 (Permit: New and Modified Sources, Small Source Exemption). We are approving R307-401-9(5), which excludes sources whose GHG emission are below established EPA thresholds for GHG from the requirement to obtain an Approval Order. However, we are disapproving paragraph (b) and the portions of paragraph (c) that reference paragraph (b). We are disapproving R307-401-9(b) and the phrase "or (b)" in paragraph (c) because EPA lacks authority in an action on a SIP revision under CAA section 110 to approve provisions addressing hazardous air pollutants. Thus, we are disapproving these specific provisions.

Finally, we proposed to disapprove R307-405-3(2)(a)(i), consistent with our final action on July 15, 2011 (76 FR 41712), because it defines "Major Source Baseline Date" in a manner inconsistent with the federal definition. However, as the State explained to us in a phone call², Utah removed the Major Source Baseline Date in a subsequent March 19, 2012 SIP submittal. In our October 25, 2013 final action (78 FR 63883) on that submittal, we incorporated into the SIP the required definition for State programs at 40 CFR 51.166(b)(14). Therefore, we are not taking

¹ As we explained in our June 12, 2013 notice of proposed rulemaking, R307-401-7 revised Utah's public notice procedures to allow for a 10-day public comment period for an approval or disapproval order issued under R307-401-8. The rule allows for the public comment period to be increased to 30 days under certain conditions. We note that the public comment period for an approval or disapproval order currently in Utah's federally approved SIP is 30 days. (See R307-1-3.1.3) Federal regulations for Public Availability of Information found at 40 CFR 51.161(b)(2) require at a minimum a 30-day public comment period for the permitting of a source, including minor source permits. In addition, the 30-day comment period is important to allow adequate opportunity for comment by other affected states, federal agencies, and the public.

² Information regarding the phone conversation with the State appears in the Docket in the Memo dated September 30, 2013.

action on the State's definition of Major Source Baseline Date in this final action.

III. Statutory and Executive Order Reviews

Under the CAA, 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 CAA. Accordingly, this final action merely approves some state law as meeting federal requirements and disapproves other state law because it does not meet federal requirements; this final action does not impose additional requirements beyond those imposed by state law. For that reason, this final 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 (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 CAA; and,
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have Tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the State, and EPA notes that it will not impose substantial direct costs on Tribal governments or preempt Tribal law.

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by [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 section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements.

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

Dated: November 7, 2013.

Shaun L. McGrath,
Regional Administrator,
Region 8.

For the reasons set forth above, 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 – [AMENDED]

2. Amend § 52.2320 by adding paragraph (c)(76) to read as follows:

§ 52.2320 Identification of plan.

* * * * *

(c) * * *

(76) On April 14, 2011 the State of Utah submitted revisions to its State Implementation Plan (SIP) that contained revised rules, submitted in their entirety, pertaining to regulation of Greenhouse Gases (GHGs) under the State’s Prevention of Significant Deterioration (PSD) program.

(i) Incorporation by reference.

(A) Title R307 of the Utah Administrative Code (UAC), Environmental Quality, Air Quality, R307-401, Permit: New and Modified Sources, R307-401-9, Small Source Exemption, (5); and R307-405, Permits: Major Sources in Attainment or Unclassified Areas (PSD), R307-405-3, Definitions, except (2)(a), (b), (f), (5), and (6); effective January 1, 2011, as published in the Utah State Bulletin on September 15, 2010 and December 15, 2010.

[FR Doc. 2014-02083 Filed 02/05/2014 at 8:45 am; Publication Date: 02/06/2014]