



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R08-OAR-2016-0311; FRL-9954-14-Region 8]

Approval and Promulgation of Air Quality Implementation Plans; State of Utah; Revisions to the Utah Division of Administrative Rules, R307-300 Series; Area Source Rules for Attainment of Fine Particulate Matter Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is finalizing approval and finalizing the conditional approval of portions of the fine particulate matter (PM_{2.5}) State Implementation Plan (SIP) and other general rule revisions submitted by the State of Utah. The revisions affect the Utah Division of Administrative Rules (DAR), R307-300 Series; Requirements for Specific Locations. The revisions had submission dates of May 9, 2013, May 20, 2014, September 8, 2015, and March 8, 2016. The March 8, 2016 submittal contains rule revisions to address our February 25, 2016 conditional approval of several Utah DAR R307-300 Series rules submitted on February 2, 2012, May 9, 2013, and May 20, 2014. These area source rules control emissions of direct PM_{2.5} and PM_{2.5} precursors, which are sulfur dioxides (SO₂), nitrogen oxides (NO_x) and volatile organic compounds (VOC). Additionally, the EPA is finalizing to approve the State's reasonably available control measure (RACM) determinations for the rule revisions that pertain to the PM_{2.5} SIP. This action is being taken under section 110 of the Clean Air Act (CAA or Act).

DATES: This final rule is effective on **[Insert date 30 days after publication in the Federal Register]**.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA-R08-OAR-2016-0311. All documents in the docket are listed on the <http://www.regulations.gov> website. 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, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available through <http://www.regulations.gov>, or please contact the person identified in the “For Further Information Contact” section for additional availability information.

FOR FURTHER INFORMATION CONTACT: Crystal Ostigaard, Air Program, EPA, Region 8, Mailcode 8P-AR, 1595 Wynkoop Street, Denver, Colorado 80202-1129, (303) 312-6602, ostigaard.crystal@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

On October 17, 2006 (71 FR 61144), the EPA strengthened the level of the 24-hour PM_{2.5} National Ambient Air Quality Standards (NAAQS), lowering the primary and secondary standards from 65 micrograms per cubic meter ($\mu\text{g}/\text{m}^3$), the 1997 standard, to 35 $\mu\text{g}/\text{m}^3$. On November 13, 2009 (74 FR 58688), the EPA designated three nonattainment areas in Utah for the 24-hour PM_{2.5} NAAQS of 35 $\mu\text{g}/\text{m}^3$. These are the Salt Lake City, Utah; Provo, Utah; and Logan, Utah-Idaho nonattainment areas. The State of Utah has made a number of SIP submittals intended to address the requirements under part D of title I of the CAA for these PM_{2.5}

nonattainment areas. Among those requirements are those in sections 172(c)(1) and 189(a)(1)(C) regarding RACM and reasonably available control technology (RACT).

On August 18, 2016 (81 FR 55156), the EPA proposed to approve and conditionally approve a number of RACM components in the PM_{2.5} Moderate area SIP submitted by the State. Our proposed notice provides details on the EPA's interpretation of the RACM requirements under part D and our evaluation of the State's submittals. The submittals dated May 9, 2013, May 20, 2014, September 8, 2015, and March 8, 2016, contained various revisions to the Utah DAR, Title R307 – Environmental Quality, set of rules, most of which are applicable to the Utah SIP for PM_{2.5} nonattainment areas. The rules we are addressing in this final rule were provided by Utah in the four different submissions listed above, and these rules are R307-101-2, General Requirements: Definitions; R307-302, Solid Fuel Burning Devices in Box Elder, Cache, Davis, Salt Lake, Tooele, Utah, and Weber Counties; R307-312, Aggregate Processing Operations for PM_{2.5} Nonattainment Areas; and R307-328, Gasoline Transfer and Storage.

II. Response to Comments

The EPA did not receive any comments on the proposed action.

III. Final Action

For the reasons stated in our proposed notice, the EPA is finalizing approval of revisions to Administrative Rule R307-101-2, along with revisions in R307-300 Series; Requirements for Specific Locations (Within Nonattainment and Maintenance Areas), R307-312 and R307-328 for incorporation into the Utah SIP as submitted by the State of Utah on March 8, 2016. This final rule completes the February 25, 2016 (81 FR 9343) conditional approval for R307-101-2, R307-312, and R307-328 that had submission dates of February 2, 2012, May 9, 2013, and May 20,

2014. Additionally, we are finalizing approval of Utah's determination that R307-312 constitutes RACM for the Utah PM_{2.5} SIP that was conditionally approved on February 25, 2016 (81 FR 9343); however, we are not acting at this time to determine that Utah's PM_{2.5} attainment plan has met all requirements regarding RACM under subparts 1 and 4 of part D, title I of the Act. We intend to act separately on the remainder of Utah's PM_{2.5} attainment plan.

The EPA is finalizing the conditional approval of revisions for R307-302 found in the May 9, 2013, May 20, 2014, and September 8, 2015 submittals. Additionally, the EPA is finalizing the conditional approval of Utah's determination that R307-302 constitutes RACM for the Utah PM_{2.5} SIP for solid fuel burning devices. As stated earlier, we are not determining that Utah's PM_{2.5} attainment plan has met all requirements regarding RACM under subparts 1 and 4 of part D, title I of the Act. Under section 110(k)(4) of the Act, the EPA may approve a SIP revision based on a commitment by the state to adopt specific enforceable measures by a date certain, but not later than one year after the date of approval of the plan revision. On May 19, 2016, Utah submitted a commitment letter to adopt and submit specific revisions within one year of our final action on these submittals; specifically to add continuous controls that extend to startup, shutdown, and malfunction, by establishing a prohibition on fuel types that can't be burned in a solid fuel burning device at any time. Since we are finalizing our conditional approval, Utah must adopt and submit the specific revisions it has committed to within one year of our finalization. If Utah does not submit these revisions within one year, or if we find Utah's revisions to be incomplete, or we disapprove Utah's revisions, this conditional approval will convert to a disapproval. If any of these convert to a disapproval, that will constitute a disapproval of a required plan element under part D of title I of the Act, which starts an 18-

month clock for sanctions, see CAA section 179(a)(2), and the two-year clock for a federal implementation plan (FIP) to address the disapproved plan element, see CAA section 110(c)(1)(B).

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 Utah Division of Administrative Rules described in the amendments set forth to 40 CFR part 52 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.¹ 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).

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 of state law as meeting federal requirements and does not impose additional

¹ 62 FR 27968 (May 22, 1997).

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 Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- 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 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).

In addition, 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 from 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. 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, Intergovernmental relations, Incorporation by reference, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organization compounds.

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

Dated: September, 26 2016.

Debra H. Thomas,
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, the table in paragraph (c) is amended as follows:

- a. Under “R307-101. General Requirements” by revising the entry for “R307-101-2”;
- b. Under “R307-302. Davis, Salt Lake, and Utah Counties: Residential Fireplaces and Stoves” by revising the entries “R307-302-1”, “R307-302-2”, “R307-302-3”, “R307-302-4”;
- c. Under “R307-302. Davis, Salt Lake, and Utah Counties: Residential Fireplaces and Stoves” by adding the entries “R307-302-05”, “R307-302-06”;
- d. Under “R307-312. Aggregate Processing Operations for PM_{2.5}; Nonattainment Areas” by revising the entry for “R307-312”;
- e. Under “R307-312. Aggregate Processing Operations for PM_{2.5}; Nonattainment Areas” by removing the entry for “R307-312-5(2)(a)”;
- f. Under “R307-328. Ozone Nonattainment and Maintenance Areas and Utah and Weber Counties: Gasoline Transfer and Storage” by revising the entry for “R307-328”; and
- g. Under “R307-328. Ozone Nonattainment and Maintenance Areas and Utah and Weber Counties: Gasoline Transfer and Storage” by removing the entry for “307-328-4(6)”.

The revisions 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
* * * * *				
R307-101. General Requirements				
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R307-101-2	Definitions	3/3/2016	[Insert Federal Register citation], [Insert date of publication in the Federal Register]	
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R307-302. Davis, Salt Lake, and Utah Counties: Residential Fireplaces and Stoves				
R307-302-01	Definitions	2/4/2015	[Insert Federal Register citation], [Insert date of publication in the Federal Register]	Conditionally approved through [insert date one year from the date of publication in the Federal Register]
R307-302-02	No-Burn Periods for PM ₁₀	2/4/2015	[Insert Federal Register citation], [Insert date of publication in the Federal Register]	Conditionally approved through [insert date one year from the date of publication in the Federal Register]
R307-302-03	No-Burn Periods for Carbon Monoxide	3/6/2014	[Insert Federal Register citation], [Insert date of publication in the Federal Register]	Conditionally approved through [insert date one year from the date of publication in the Federal Register]
R307-302-04	Violations	3/6/2014	[Insert Federal Register citation], [Insert date of	Conditionally approved through [insert date one year from the date

			publication in the Federal Register]	of publication in the Federal Register]
R307-302-05	Opacity and other Controls for Heating Appliances	3/6/2014	[Insert Federal Register citation], [Insert date of publication in the Federal Register]	Conditionally approved through [insert date one year from the date of publication in the Federal Register]
R307-302-06	Prohibition	1/1/2013	[Insert Federal Register citation], [Insert date of publication in the Federal Register]	Conditionally approved through [insert date one year from the date of publication in the Federal Register]

R307-312. Aggregate Processing Operations for PM_{2.5}; Nonattainment Areas				
R307-312	Aggregate Processing Operations for PM _{2.5} Nonattainment Areas	2/4/2016	[Insert Federal Register citation], [Insert date of publication in the Federal Register]	

R307-328. Ozone Nonattainment and Maintenance Areas and Utah and Weber Counties: Gasoline Transfer and Storage				
R307-328	Ozone Nonattainment and Maintenance Areas and Utah and Weber Counties: Gasoline Transfer and Storage	2/4/2016	[Insert Federal Register citation], [Insert date of publication in the Federal Register]	

[FR Doc. 2016-25148 Filed: 10/18/2016 8:45 am; Publication Date: 10/19/2016]