



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R08-OAR-2017-0469; FRL-9967-67-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 Rule for Attainment of Fine Particulate Matter Standards.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve portions of the fine particulate matter (PM_{2.5}) State Implementation Plan (SIP) and related rule revisions submitted by the State of Utah. The EPA is proposing to approve revisions submitted on May 9, 2013 and August 25, 2017 for Utah's fugitive dust control rule, and to approve the State's associated reasonable available control measures (RACM) determination, submitted on December 16, 2014. This action is being taken under section 110 of the Clean Air Act (CAA or Act).

DATES: Written comments must be received on or before **[Insert date 30 days after date of publication in the Federal Register]**.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R08-OAR-2017-0469 at <https://www.regulations.gov>. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from <https://www.regulations.gov>. The EPA may publish any comment received to the public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information,

the disclosure of which 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 <https://www.epa.gov/dockets/commenting-epa-dockets>.

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. General Information

a. *Submitting CBI.* Do not submit CBI to the EPA through <https://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 the 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:

- i. Identify the rulemaking by docket number and other identifying information

(subject heading, Federal Register date and page number).

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

II. Background

A. Regulatory 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 (UT)-Idaho (ID) nonattainment areas. The EPA originally designated these areas

under CAA title I, part D, subpart 1, which required Utah to submit an attainment plan for each area no later than three years from the date of their nonattainment designations. These plans needed to provide for the attainment of the PM_{2.5} standard as expeditiously as practicable, but no later than five years from the date the areas were designated nonattainment.

Subsequently, on January 4, 2013, the U.S. Court of Appeals for the District of Columbia held that the EPA should have implemented the 2006 PM_{2.5} 24-hour standard based on both CAA title I, part D, subpart 1 and subpart 4. *NRDC v. EPA*, 706 F.3d 428 (D.C. Cir. 2013). Under subpart 4, nonattainment areas are initially classified as Moderate, and Moderate area attainment plans must address the requirements of subpart 4 as well as subpart 1. Additionally, CAA subpart 4 sets a different SIP submittal due date and attainment year. For a Moderate area, the attainment SIP is due 18 months after designation, and the attainment year is the end of the sixth calendar year after designation. On June 2, 2014 (79 FR 31566), the EPA finalized the Identification of Nonattainment Classification and Deadlines for Submission of State Implementation Plan (SIP) Provisions for the 1997 Fine Particulate (PM_{2.5}) National Ambient Air Quality Standard (NAAQS) and 2006 PM_{2.5} NAAQS (“the Classification and Deadline Rule”). This rule classified to Moderate the areas that were designated in 2009 as nonattainment, and set the attainment SIP submittal due date for those areas at December 31, 2014.

On August 24, 2016, the EPA finalized the Fine Particulate Matter National Ambient Air Quality Standards: State Implementation Plan Requirements (“PM_{2.5} Implementation Rule”), 81 FR 58010, which partially addressed the January 4, 2013 court ruling. The final implementation rule details how air agencies can meet the statutory SIP requirements under subparts 1 and 4 that apply to areas designated nonattainment for any PM_{2.5} NAAQS, such as: general requirements

for attainment plan due dates and attainment demonstrations; provisions for demonstrating reasonable further progress (RFP); quantitative milestones; contingency measures; Nonattainment New Source Review (NNSR) permitting programs; and RACM (including reasonably available control technology (RACT)). The statutory attainment planning requirements of subparts 1 and 4 were established to ensure that the following goals of the CAA are met: (i) that states implement measures that provide for attainment of the PM_{2.5} NAAQS as expeditiously as practicable; and, (ii) that states adopt emissions reduction strategies that will be the most effective at reducing PM_{2.5} levels in nonattainment areas.

B. RACT and RACM Requirements for PM_{2.5} Attainment Plans

Section 172(c)(1) of the Act (from subpart 1) requires that attainment plans, in general, shall provide for the implementation of all RACM (including RACT) as expeditiously as practicable and shall provide for attainment of the national primary ambient air quality standards. CAA section 189(a)(1)(C) (from subpart 4) requires Moderate area attainment plans to contain provisions to assure that RACM is implemented no later than four years after designation.

The EPA stated its interpretation of the RACT and RACM requirements of subparts 1 and 4 in the 1992 General Preamble for the Implementation of Title I of the CAA Amendments of 1990, 57 FR 13498 (April 16, 1992). For RACT, the EPA followed its "historic definition of RACT as the lowest emission limitation that a particular source is capable of meeting by the application of control technology that is reasonably available considering technological and economic feasibility." 57 FR 13541, April 16, 1992. Like RACT, the EPA has historically considered RACM to consist of control measures that are reasonably available, considering technological and economic feasibility. *See* PM_{2.5} Implementation Rule, 81 FR 58010, August

24, 2016.

C. Utah's PM_{2.5} Attainment Plan Submittals

Prior to the January 4, 2013 decision of the D.C. Circuit Court of Appeals, Utah developed a PM_{2.5} attainment plan intended to meet the requirements of subpart 1. The EPA submitted written comments dated November 1, 2012, to the Utah Division of Air Quality (UDAQ) on Utah's draft PM_{2.5} SIP, technical support document (TSD), and area source and other rules. After the court's decision, Utah amended its attainment plan to address requirements of subpart 4. The EPA's comment letter can be found within the docket for this action on www.regulations.gov. We are proposing to act on revisions to R307-309, Nonattainment and Maintenance Areas for PM₁₀ and PM_{2.5}: Fugitive Emissions and Fugitive Dust submitted by Utah on May 9, 2013 and August 25, 2017. This rule is applicable to the Utah SIPs for PM_{2.5} nonattainment areas.

III. EPA's Evaluation of Utah's Submittals

The State of Utah submitted SIP revisions for R307-309 on May 9, 2013, and August 25, 2017. However, the EPA identified issues with R307-309 relating to director's discretion, ambiguous language, and other general language issues. In response, Utah submitted a letter dated September 30, 2016, that committed to revise R307-309 in specific ways to address these issues. Before the EPA could conditionally approve Utah's September 30, 2016 committed revisions, Utah submitted the specific revisions on August 25, 2017. Thus, the EPA is proposing to approve the submittals and to approve the corresponding RACM determination for R307-309 in the December 16, 2014 submittal for Utah's Moderate PM_{2.5} SIPs.

The following is a summary of the EPA's evaluation of the rule revisions. In general, we

reviewed the rule for: enforceability; RACM requirements (for those rules submitted as RACM); and other applicable requirements of the Act, including those found in 40 CFR part 51.

1. *R307-309, Nonattainment and Maintenance Areas for PM₁₀ and PM_{2.5}: Fugitive Emissions and Fugitive Dust.*

The area source rule and corresponding RACM analysis from Utah's PM_{2.5} Moderate SIPs is R307-309 – Nonattainment and Maintenance Areas for PM₁₀ and PM_{2.5}: Fugitive Emissions and Fugitive Dust, which we are proposing to approve in this action. Rule R307-309 is an existing rule that was part of the PM₁₀ SIP approved by the EPA on July 8, 1994 (59 FR 35036). This rule establishes minimum work practice and emission standards for sources of fugitive emissions and fugitive dust. R307-309 applies to all sources of fugitive dust and fugitive emissions, except as specified in R307-309-3(2), that are located in PM₁₀ and PM_{2.5} nonattainment and maintenance areas.

The rule requires any person owning or operating a new or existing source of fugitive dust one-quarter acre or greater in size to submit a fugitive dust control plan to UDAQ. Sources of fugitive dust include: storage, hauling or handling operations, earthmoving, excavation, and moving trucks or construction equipment, among many others. Activities regulated by R307-309 may not commence before the fugitive dust control plan is approved either electronically or by hard copy. UDAQ submitted the format for the fugitive dust control plan to the EPA and the document can be found in the docket for this action.

The rule also sets a generally applicable opacity limit of 10% at property boundaries and 20% onsite, except during high wind events. During these events, the owner or operator must continue to follow the fugitive dust control plan and take one or more specified actions. Under

Utah's August 25, 2017 SIP, the actions are: (1) pre-event watering; (2) hourly watering; (3) adding additional chemical stabilization; and/or (4) ceasing or reducing fugitive dust producing operations to the extent practicable. The rule contains additional requirements regarding roads, mining activities, and tailings ponds and piles.

R307-309 was previously approved for PM₁₀ nonattainment areas and amended in 2012 to include the PM_{2.5} nonattainment counties. UDAQ reviewed other western state programs (including South Coast & San Joaquin Valley, California; Washoe & Clark Counties, Nevada; and Maricopa, Arizona) for the RACM analysis on R307-309. Based on this review, UDAQ updated R307-309 as follows: (1) re-wording the high wind provision in R307-309 so that it is clear that sources must continue to implement control measures; (2) requiring a high wind contingency plan; (3) removal of the 30-day dust plan filing window; (4) requiring that dust generating activities may not commence before obtaining an approved dust plan; (5) developing best management practices (BMPs) for all dust source categories; (6) replacing the suggested control measures language in R307-309 with a requirement to implement BMPs; and (7) creating a one-stop shop for a storm-water permit and fugitive dust control plan filing.

UDAQ noted that the number of dust complaints has significantly decreased since 2008 and only a very small number of complaints were related to an exceedance of the PM_{2.5} standard. From 2009 to 2012 there were a total of 2,126 inspections done by UDAQ resulting in only eight violations of the relevant dust control plan. The RACM and rule analysis can be found within Chapter 5 of the PM_{2.5} Moderate SIP TSD.

For construction, buildings, single family residential, double unit residential, multiple units, and non-residential industries, UDAQ expects control efficiency (CE), rule effectiveness

(RE) and rule penetration (RP) to be 37%, 80%, and 95%, respectively. The calculated PM_{2.5} reduction for the affected sources in Box Elder, Cache, Davis, Tooele and Weber Counties would be 28%.¹ For sand and gravel and related industries, UDAQ expects CE, RE and RP to be 40%, 80% and 95%, respectively, with a calculated PM_{2.5} reduction of 30% for the affected sources in Box Elder, Cache, Davis, Tooele and Weber Counties. No reductions were taken in Utah County and Salt Lake County as the program was in place as part of the PM₁₀ SIP.

On July 11, 2012, the Air Quality Board proposed for public comment revisions to R307-309. The public comment period was held from August 1 to August 31, 2012, with a public hearing being held on August 15, 2012. Comments were submitted by industry, environmental associations, and the EPA. The EPA submitted written comments dated November 1, 2012, on Utah's draft PM_{2.5} SIP and TSD, which included revisions and RACM analysis for R307-309. UDAQ made changes to R307-309 based on comments that were received and the rule became effective on January 1, 2013. Compliance with the rule was required for Salt Lake County, Utah County and the city of Ogden by January 1, 2013. The compliance date for the remaining affected sources began either 30 or 90 days after January 1, 2013, depending on the applicable portion of the rule. On May 9, 2013, UDAQ submitted these revisions to R307-309 to the EPA; however, the EPA identified additional issues with R307-309 relating to director's discretion provisions, ambiguous language, and other general language issues.

UDAQ committed to correct the identified issues in a commitment letter dated September 30, 2016, which can be found in the docket for this proposed rulemaking. On May 3, 2017, the

¹ Control Efficiency (CE), Rule Effectiveness (RE), and Rule Penetration (RP) are described in the December 16, 2014, Utah Moderate PM_{2.5} SIP TSD in Chapter 5 – Control Strategies, Section b – Area Sources, pages 5.b.1-2 to 5.b.1-6.

Air Quality Board proposed for public comment revisions found in the September 30, 2016 commitment letter to R307-309. The comment period was held from June 1 to July 3, 2017, with no public hearing being requested. Comments were submitted by an environmental association and the EPA. The EPA submitted a comment on June 1, 2017, specifying the proposed revisions represented revisions committed to in the September 30, 2016 commitment letter. The rule became effective on August 4, 2017. On August 25, 2017, UDAQ submitted these revisions to R307-309 to the EPA. As stated previously, Utah submitted the specific revisions found in the September 30, 2016 commitment letter before the EPA could conditionally approve R307-309; thus, the EPA will be proposing to approve R307-309 and proposing approval of Utah's determination that R307-309 constitutes RACM.

IV. What Action is EPA Proposing?

The EPA is proposing to approve revisions to R307-309 submitted on May 9, 2013, and August 25, 2017, and proposing to approve Utah's determination in their December 16, 2014 submittal that R307-309 constitutes RACM for Utah's Moderate PM_{2.5} SIPs. We are not proposing 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.

V. Consideration of Section 110(l) of the CAA

Under section 110(l) of the CAA, the EPA cannot approve a SIP revision if the revision would interfere with any applicable requirements concerning attainment and RFP toward attainment of the NAAQS, or any other applicable requirement of the Act. In addition, section 110(l) requires that each revision to an implementation plan submitted by a state shall be adopted by the state after reasonable notice and public hearing.

The Utah SIP revisions that the EPA is proposing to approve do not interfere with any applicable requirements of the Act. The Utah Division of Administrative Rules (DAR) section R307-300 Series revisions submitted by the UDAQ on May 9, 2013, and August 25, 2017, are intended to strengthen the SIP and to serve as RACM for certain area sources for the Utah PM_{2.5} SIP. Therefore, CAA section 110(l) requirements are satisfied.

VI. Incorporation by Reference

In this rule, the EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is proposing to incorporate by reference the UDAQ rules promulgated in the DAR, R307-300 Series as discussed in section III of this preamble. The EPA has made, and will continue to make, these materials generally available through <https://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).

VII. 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, the EPA’s role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely proposes to approve state law as meeting federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed 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 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 proposed 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).

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: August 31, 2017.

Debra H. Thomas,
Acting Regional Administrator,
Region 8.

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