

§ 601.101 Effective date.

The provisions of the Purchasing Manual Issue 3, effective December 25, 2003, are applicable with respect to all covered purchasing activities of the Postal Service.

Stanley F. Mires,

Chief Counsel, Legislative.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[RME Docket Number R08-OAR-2004-UT-0002; FRL-7791-17]

Approval and Promulgation of Air Quality Implementation Plans; Utah; Revisions to New Source Review Rules

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action approving State Implementation Plan (SIP) revisions submitted by the State of Utah on November 9, 2001, and September 16, 2003. The revisions incorporate new and revise existing definitions in the State's New Source Review (NSR) rules. The revisions update the State's NSR rules so that they are consistent with the revisions EPA made to its NSR rules on July 21, 1992. These revisions were referred to as the WEPCO rule (for the Wisconsin Electric Power Company court ruling). In the July 1992 action, EPA adopted a broad NSR exclusion for utility pollution control projects and an "actual to future actual" methodology for determining whether all other non-routine physical or operational changes at utilities (other than the replacement of a unit or addition of a new unit) are subject to NSR, and modified its regulations to reflect changes made by Congress in the 1990 Amendments to the Clean Air Act to the applicability of new source requirements to clean coal technology (CCT) and repowering projects, and to "very clean" units. The purpose of this action is to make the changes to the State's rule federally enforceable. This action is being taken under section 110 of the Clean Air Act.

DATES: This rule is effective on October 18, 2004, without further notice, unless EPA receives adverse comment by September 20, 2004. If adverse comment is received, 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 R08-OAR-2004-UT-0002, by one of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the on-line instructions for submitting comments.
- Agency Web site: <http://docket.epa.gov/rmepub/index.jsp>. Regional Materials in EDOCKET (RME), EPA's electronic public docket and comment system for regional actions, is EPA's preferred method for receiving comments. Follow the on-line instructions for submitting comments.
- E-mail: long.richard@epa.gov and daly.carl@epa.gov.
- Fax: (303) 312-6064 (please alert the individual listed in the **FOR FURTHER INFORMATION CONTACT** if you are faxing comments).
- Mail: Richard R. Long, Director, Air and Radiation Program, Environmental Protection Agency, Region 8, Mailcode 8P-AR, 999 18th Street, Suite 300, Denver, Colorado 80202-2466.
- Hand Delivery: Richard R. Long, Director, Air and Radiation Program, Environmental Protection Agency, Region 8, Mailcode 8P-AR, 999 18th Street, Suite 300, Denver, Colorado 80202-2466. Such deliveries are only accepted Monday through Friday, 8 a.m. to 4:55 p.m., excluding Federal holidays. Special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID Nos. R08-OAR-2004-UT-0002. EPA's policy is that all comments received will be included in the public docket without change and may be made available at <http://docket.epa.gov/rmepub/index.jsp>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through EDOCKET, regulations.gov, or e-mail. The EPA's Regional Materials in EDOCKET and Federal.regulations.gov Web site are "anonymous access" systems, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through EDOCKET or regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact

information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit EDOCKET online or see the **Federal Register** of May 31, 2002 (67 FR 38102). For additional instructions on submitting comments, go to Section I. General Information of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: All documents in the docket are listed in the Regional Materials in EDOCKET index at <http://docket.epa.gov/rmepub/index.jsp>. Although listed in the index, some information is not publicly available, i.e., 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 either electronically in Regional Materials in EDOCKET or in hard copy at the Air and Radiation Program, Environmental Protection Agency (EPA), Region 8, 999 18th Street, Suite 300, Denver, Colorado 80202-2466. 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 a.m. to 4 p.m., excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Carl Daly, Air & Radiation Program, Mailcode 8P-AR, EPA, Region 8, 999 18th Street, Suite 300, Denver, Colorado 80202-2466, (303) 312-6416, daly.carl@epa.gov.

SUPPLEMENTARY INFORMATION:

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Definitions

For the purpose of this document, we are giving meaning to certain words or initials as follows:

- (i) The words or initials *Act* or *CAA* mean or refer to the Clean Air Act, unless the context indicates otherwise.

(ii) The words *EPA*, *we*, *us* or *our* mean or refer to the United States Environmental Protection Agency.

(iii) The initials *SIP* mean or refer to State Implementation Plan.

(iv) The words *state* or *Utah* mean the State of Utah, unless the context indicates otherwise.

I. General Information

A. What Should I Consider as I Prepare My Comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through Regional Materials in EDOCKET, regulations.gov or e-mail. 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.

2. *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.

II. Background

On July 21, 1992, EPA promulgated revisions to Federal PSD and nonattainment new source review (NSR)

permitting requirements, as well as to the Federal new source performance standard (NSPS) requirements in 40 CFR part 60, regarding utility pollution control projects (57 FR 32314–32339). Specifically, EPA made changes to the definition of “major modification” in 40 CFR parts 51 and 52 to set forth the conditions under which the addition, replacement, or use at existing utility generating units of any system or device whose primary function is the reduction of air pollutants (including the switching to less polluting fuel where the primary purpose of the switch will be the reduction of air pollutants) will or will not subject the source to preconstruction review.

In addition, in the July 1992 notice, EPA amended its NSR regulations as they apply to utilities to (1) clarify the NSR baseline for determining whether a proposed physical or operational change will subject a utility to the preconstruction review requirements of these provisions; (2) set forth an actual-to-future actual methodology for determining whether a physical or operational change is subject to NSR; (3) provide further clarification of the existing regulatory requirement that only those increases in emission that actually result from the physical change or change in the method of operation can be considered in determining whether the proposed change subjects the utility to NSR requirements; and (4) implement sections 409 and 415 of title IV of the 1990 Amendments of the Clean Air Act which create special NSPS treatment for certain repowering projects and limited NSR exemptions for temporary and permanent CCT projects and for certain “very clean” units. Refer to the July 21, 1992, **Federal Register** document for further information.

States were not required to adopt revisions to implement these changes, although these changes are in effect in areas where the Federal PSD permitting regulations apply. Utah has opted to revise its NSR program to incorporate the changes to EPA’s NSR rules promulgated on July 21, 1992.

III. Summary of SIP Revisions and EPA’s Review

On November 9, 2001, and September 16, 2003, the State of Utah submitted formal revisions to its State Implementation Plan (SIP).¹ Specifically, in the general definition rule, the submittals revise the definitions of “Actual Emissions” and

“Major Modification” and adds the following definitions: “Clean Coal Technology,” “Clean Coal Technology Demonstration Project,” “Electric Utility Steam Generating Unit,” “Emissions Unit,” “Pollution Control Project,” “Reactivation of Very Clean Coal-Fired Electric Utility Steam Generating Unit,” “Repowering,” “Representative Actual Annual Emissions,” and “Temporary Clean Coal Technology Demonstration Project.” In the prevention of significant deterioration (PSD) rule a definition for “major modification” was added.

We have reviewed the new and revised definitions submitted by Utah. We have found that the revisions are consistent with all of the regulatory revisions promulgated by EPA on July 21, 1992.

IV. Final Action

EPA is approving Utah’s SIP revisions submitted on November 9, 2001, and September 16, 2003. Specifically, in the general definitions regulation, R307–101–2, we are approving the revisions to the definitions of “Actual Emissions” and “Major Modification” and the addition of the definitions: “Clean Coal Technology,” “Clean Coal Technology Demonstration Project,” “Electric Utility Steam Generating Unit,” “Emissions Unit,” “Pollution Control Project,” “Reactivation of Very Clean Coal-Fired Electric Utility Steam Generating Unit,” “Repowering,” “Representative Actual Annual Emissions,” and “Temporary Clean Coal Technology Demonstration Project.” In the PSD regulation, R307–405–1, we are approving the addition of a definition for “Major Modification.”

EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. EPA does not anticipate any adverse comments as this Utah SIP approval is only a change to bring Utah’s current SIP into alignment with the NSR revisions EPA promulgated on July 21, 1992 (57 FR 32314). However, in the “Proposed Rules” section of today’s **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision if adverse comments are filed. This rule will be effective October 18, 2004, without further notice unless the Agency receives adverse comments by September 20, 2004. If the EPA receives adverse comments, EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. EPA will address all public comments in a subsequent final rule based on the proposed rule. The EPA will not

¹ The September 16, 2003, submittal contains non-substantive changes to correct minor errors in the November 9, 2001, submittal.

institute a second comment period on this action. Any parties interested in commenting must do so at this time. Please note that if 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, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

V. Statutory and Executive Order Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a “significant regulatory action” and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, “Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use” (66 FR 28355, May 22, 2001). This action merely approves State law as meeting Federal requirements and imposes no additional requirements beyond those imposed by State law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under State law and does not impose any additional enforceable duty beyond that required by State law, it 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).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a State rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the

Clean Air Act. This rule also is not subject to Executive Order 13045 “Protection of Children from Environmental Health Risks and Safety Risks” (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA’s role is to approve State choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

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 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. 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 October 18, 2004. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule 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, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: July 14, 2004.

Max H. Dodson,

Acting Regional Administrator, Region 8.

■ 40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

■ 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 is amended by adding paragraph (c)(58) to read as follows:

§ 52.2320 Identification of plan.

* * * * *

(c) * * *

(58) On November 9, 2001 and September 16, 2003 the State of Utah submitted revisions to its State Implementation Plan (SIP) to incorporate new and revise existing definitions in the new source review (NSR) rules. The revisions update the State’s NSR rules so that they are consistent with the revisions EPA made to its NSR rules on July 21, 1992.

(i) Incorporation by reference.

(A) Revisions to the Utah Air Conservation Regulations, R307–101–2, the definitions “Actual Emissions,” “Clean Coal Technology,” “Clean Coal Technology Demonstration Project,” “Electric Utility Steam Generating Unit,” “Emissions Unit,” “Pollution Control Project,” and “Representative Actual Annual Emissions,” effective 7/12/01.

(B) Revisions to the Utah Air Conservation Regulations, R307–101–2, the definitions “Major Modification,” “Reactivation of Very Clean Coal-Fired Electric Utility Steam Generating Unit,” “Repowering,” and “Temporary Clean Coal Technology Demonstration Project,” effective 6/1/03.

(C) Revisions to the Utah Air Conservation Regulations, R307–405–1, the definition “Major Modification” effective 6/1/03.

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