

- 2. Amend § 232.101 by:
 - a. Removing the word “and” at the end of paragraph (b)(7);
 - b. Removing the period at the end of paragraph (b)(8) and in its place adding “; and”; and
 - c. Adding paragraph (b)(9).
The addition reads as follows.

§ 232.101 Mandated electronic submissions and exceptions.

* * * * *

(b) * * *

(9) Documents filed with the Commission pursuant to section 33 of the Investment Company Act (15 U.S.C. 80a-32).

* * * * *

Dated: February 8, 2006.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 06-1322 Filed 2-13-06; 8:45 am]

BILLING CODE 8010-01-P

DEPARTMENT OF THE TREASURY

Alcohol and Tobacco Tax and Trade Bureau

27 CFR Part 41

Importation of Tobacco Products and Cigarette Papers and Tubes

CFR Correction

In Title 27 of the Code of Federal Regulations, parts 1 to 399, revised as of April 1, 2005, on page 894, in § 41.86, paragraph (d), in the last sentence remove “ATF” and add in its place “TTB,” and on page 902, in § 41.126, last sentence, remove “regional director (compliance)” and add in its place “appropriate TTB officer.”

[FR Doc. 06-55506 Filed 2-13-06; 8:45 am]

BILLING CODE 1505-01-D

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R08-OAR-2005-UT-0001; FRL-8027-4]

Approval and Promulgation of Air Quality Implementation Plans; Utah; Rule Recodification

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is taking final action to approve State Implementation Plan (SIP) revisions submitted by the Governor of Utah on September 20,

1999 and February 5, 2001. The September 20, 1999 submittal revises the numbering and format of the Utah Administrative Code (UAC) rules within Utah’s SIP. The February 5, 2001 submittal restores a paragraph that was inadvertently deleted from Utah’s rules when the State submitted their SIP submittal dated September 20, 1999 that renumbered the UAC rules. The intended effect of this action is to make these provisions federally enforceable. In addition, the approval of Utah’s SIP revision dated September 20, 1999 supersedes and replaces previous SIP revisions submitted by Utah on October 26, 2000, September 7, 1999, two SIP revisions submitted February 6, 1996, and one submitted on January 27, 1995. Some of the provisions of the rules submitted in Utah’s SIP revisions will be addressed at a later date by more recent SIP actions that have been submitted which supersede and replace the earlier SIP submittal actions. EPA will be removing Utah’s Asbestos Work Practices, Contractor Certification, AHERA Accreditation and AHERA Implementation rule R307-1-8 and Eligibility of Pollution Control Expenditures for Sales Tax Exemption rule R307-1-6 from Utah’s federally enforceable SIP because these rules are not generally related to attainment of the National Ambient Air Quality Standards (NAAQS) and are therefore not required to be in Utah’s SIP. Finally, EPA will be removing Utah’s National Emission Standards for Hazardous Air Pollutants (NESHAPS) rule R307-1-4.12. Utah has delegation of authority for NESHAPS in 40 CFR part 61 (49 FR 36368), pursuant to 110(k)(6) of the Act, therefore we are removing the existing language (R307-1-4.12) that was approved into Utah’s current SIP because it is no longer required to be in the SIP. This action is being taken under section 110 of the Clean Air Act.

DATES: *Effective Date:* This rule is effective on March 16, 2006.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA-R08-OAR-2005-UT-0001. All documents in the docket are listed in the Regional Materials in EDOCKET (RME) index at <http://docket.epa.gov/rmepub/>. On November 28, 2005, RME, EPA’s electronic public docket and comment system, was replaced by an enhanced federal-wide electronic docket management and comment system located at <http://www.regulations.gov>. Therefore, you will be redirected to that site to access the docket EPA-R08-OAR-2005-UT-0001. Although listed in the index, some information is not publicly available, i.e., Confidential

Business Information (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: Catherine Roberts, EPA, Region 8, 999 18th Street, Ste. 300 (8P-AR), Denver, CO, 80202-2466, (303) 312-6025, roberts.catherine@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document, wherever “we”, “us”, or “our” are used, we mean the Environmental Protection Agency (EPA).

Table of Contents

- I. General Information
- II. Summary of Final Action
- III. Summary of Public Comments and EPA’s Response
- IV. Statutory and Executive Order Review

I. General Information

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* mean the State of Utah, unless the context indicates otherwise.

II. Summary of Final Action

On October 13, 2005 EPA published a notice of proposed rulemaking (NPR) for the State of Utah (70 FR 59681). The NPR proposed approval of the recodification of the UAC rules that had previously been approved into Utah’s SIP, removed from Utah’s SIP rule language that is obsolete or is generally not related to attainment of the NAAQS and is therefore not appropriate to be in Utah’s SIP and arranged rules to allow for a more coherent SIP structure. The formal SIP revisions were submitted by

the State of Utah on February 5, 2001, October 26, 2000, September 20, 1999, September 7, 1999, two SIP revisions submitted February 6, 2001 and one submitted January 27, 1995. A summary of these SIP submittals follows.

The September 20, 1999 submittal revises the numbering and format of the UAC rules within Utah's SIP. The renumbering and reformatting of the UAC rules within Utah's SIP provides for a more consistent numbering system and a coherent structure allowing provisions to be located more easily within Utah's rules. Some provisions of the rules submitted in Utah's SIP revision dated September 20, 1999 will be addressed at a later date. The following identifies the renumbered rule sections we are approving as replacing the prior numbered rule sections: R307-101-1 and 2 with the exception of the definitions for "actual emissions," "major modification," "part 70 source," "significant," and "volatile organic compound" effective September 15, 1998; R307-102-1 through R307-102-6 effective September 15, 1998 and R307-102-1(2) effective August 3, 2000; R307-105-1 and R307-105-2 effective September 15, 1998, R307-107-1 through R307-107-6 effective September 15, 1998; R307-110-1 through R307-110-9, R307-110-11, R307-110-13 through R307-110-15, R307-110-18, R307-110-20 through R307-110-28, R307-110-30, and R307-110-32 effective September 15, 1998; R307-115 effective September 15, 1998; R307-130-1 through R307-130-4 effective September 15, 1998; R307-165-1 through R307-165-4 effective September 15, 1998; R307-201-1 through R307-201-3 effective September 15, 1998; R307-202-1 through R307-202-6 effective September 15, 1998; R307-203-1 through R307-203-3 effective September 15, 1998; R307-206-1 through R307-206-5 effective September 15, 1998; R307-301-1, R307-301-2, and R307-301-4 through R307-301-14 effective November 12, 1998; R307-302-1, R307-302-2 and R307-302-4 effective September 15, 1998; R307-305-1 through R307-305-7 effective September 15, 1998; R307-307-1 through R307-307-3 effective September 15, 1998; R307-325-1 through R307-325-4 effective September 15, 1998; R307-326-1 through R307-326-7 effective September 15, 1998; R307-327-1 through R307-327-3 effective September 15, 1998; R307-328-1 through R307-328-5 effective September 15, 1998; R307-335-1 through R307-335-4 effective

September 15, 1998; R307-340-1 through R307-340-13 effective September 15, 1998; R307-341-1 through R307-341-3 effective September 15, 1998; R307-342-1 through R307-342-7 effective September 15, 1998; R307-401-9 and R307-401-10(1) effective September 15, 1998; R307-403-1 through R307-403-9 effective September 15, 1998; R307-405-1 through R307-405-8 effective September 15, 1998; R307-406-1 through R307-406-6 effective September 15, 1998; R307-413-7 effective September 15, 1998; and R307-414-1 through R307-414-3 effective September 15, 1998. These rules have only been renumbered, contain non-substantive changes to the rule that do not affect the meaning of the rule and/or have been modified to move definitions that have already been approved into the SIP to specific rule sections in which the definitions apply.

We are not acting to approve Utah's SIP submittal dated September 7, 1999 that deletes rule R307-150-1 (existing rule number R307-1-2.2) and rule R307-150-2 (existing rule number R307-1-3.1.7) because the renumbering of these rules have never been approved into the SIP and have since been superseded and replaced by Utah's SIP submittal dated February 5, 2001 and October 9, 1998. Rule R307-150-1 is restored to its appropriate rule section in Utah's SIP submittal dated February 5, 2001 which we are acting to approve in this action. Rule R307-150-2 will be addressed at a later date when EPA addresses Utah's SIP submittal dated October 9, 1998.

We are not acting to approve Utah's SIP submittal dated February 6, 1996 that pertains to Utah's rule R307-2 and portions of Utah's SIP submittal dated February 6, 1996 that pertains to rule R307-1-4. These SIP submittals and portions thereof are superseded and replaced by Utah's September 20, 1999 SIP submittal that is being approved in this action.

We are approving a portion of Utah's SIP submittal dated January 27, 1995 that pertains to Utah's rules R307-1-2.3.2, R307-1-3.1.4, and R307-1-3.2.3. Utah's rule R307-1-2.3.2 (renumbered to R307-102-4(1)) adds a reference to Utah's Code to clarify where to find further information regarding Utah's variance rule. Utah's rule R307-1-3.2.3 deletes provisions for special testing because the provisions are obsolete. We will not be addressing Utah's rule R307-1-3.1.4 or R307-1-3.2.3 in this notice. R307-1-3.1.4 will be addressed at a later date when EPA addresses Utah's SIP submittal dated October 9, 1998 and rule R307-1-3.2.3 will be addressed at

a later date when EPA addresses Utah's PM10 maintenance plan for Utah and Salt Lake County.

We are approving the removal of Utah's asbestos rule R307-1-8 and rule R307-1-6 pertaining to Utah's eligibility of pollution control expenditures for sales tax exemption from Utah's federally enforceable SIP because these rules are not generally related to attainment of the NAAQS and are therefore not appropriate to be in Utah's SIP. We are also not acting on Utah's SIP submittal dated October 26, 2000 because the SIP pertains to changes being made to Utah's asbestos rule R307-1-8 that we are removing from Utah's SIP in this action. We are also approving the removal of Utah's rule R307-1-4.12 titled "National Emission Standards for Hazardous Air Pollutants". Utah has delegation of authority for NESHAPs in 40 CFR part 61 (49 FR 36368), pursuant to 110(k)(6) of the Act, therefore we are removing the existing language (R307-1-4.12) that was approved into Utah's current SIP because it is no longer required to be in the SIP.

EPA is not acting to approve the follow rules or portions of these rule for reasons stated under section III.B of the NPR (70 FR 59681): R307-121, R307-122, R307-135, R307-214, R307-215, R307-220, R307-221, R307-320, R307-332, R307-410, R307-415, and R307-417.

Finally, EPA is not acting on the following rules because they have been superseded and replaced by other Utah SIP submittals as explained in the NPR (70 FR 59681): Utah's SIP submittal dated February 16, 1996 titled "Expansion of R307-2" that recodified and expanded Utah's R307-2; portions of Utah's SIP submittal dated February 6, 1996 that recodifies Utah's Emission Standards rule(s) that pertain to subsections: R307-1-4.9 and R307-1-4.12; Utah's SIP submittal dated February 6, 1996 that recodifies Utah's Emission Standards rule R307-1-4 that pertains to changes made in subsection R307-1-4.6; Utah's SIP submittal dated September 20, 1999 that pertain to rule sections R307-110-10, R307-110-12, R307-110-16, R307-110-17, R307-110-19, R307-110-29, R307-110-31, R307-110-33, R307-110-34, R307-110-35; Utah's SIP submittal dated September 20, 1999 that recodifies Utah's Continuous Emission Monitoring Systems rule R307-170; Utah's SIP submittal dated January 27, 1995 pertaining to rule R307-1-3.1.4 and rule R307-1-3.2.3; Utah's SIP submittal dated February 6, 1996 that recodifies Utah's Emission Standards rule R307-1-4 that pertains to changes made in

subsection R307-1-4.5; Utah's SIP submittal dated September 20, 1999 that recodifies Utah's rules includes rules R307-150 and rule R307-155; Utah's SIP submittal dated September 20, 1999 that recodifies Utah's rules includes rules R307-302-2(4) and R307-302-3; Utah's SIP submittal dated September 20, 1999 that pertain to the renumbering of rules R307-401-1 through R307-401-8, R307-401-10(2) and R307-401-11; and Utah's SIP submittal dated September 20, 1999 that pertain to the renumbering of rules R307-413-1 through R307-413-6, R307-413-8 and R308-413-9. Additional information regarding EPA's action on the above rules can be found within the NPR that published on October 13, 2005 (70 FR 59681).

III. Summary of Public Comments and EPA's Response

Comment: A comment received stated that certain sections of Utah's rule R307-110 had been previously approved by EPA and was not accurately reflected in the NPR under category 3, number 4. Specifically, Utah's rule section R307-110-12 was previously approved by EPA on August 1, 2005 (70 FR 44055) and again on September 14, 2005 (70 FR 54267). Section R307-110-31 was previously approved by EPA on October 9, 2002 (67 FR 62981). Section R307-110-34 was previously approved by EPA on September 12, 2002 (67 FR 57744). Finally section R307-110-35 was previously approved by EPA on September 14, 2005 (70 FR 54267).

Response: The commenter is correct. However, as stated in the NPR (70 FR 59681), EPA does not intend to act on the Recodification of these specific rule sections in this action. Therefore, the corrections raised by the commenter are not relevant to this action and thus do not affect our approval.

Comment: A comment received expressed concern that EPA intended to retain rule R307-2-18 within the SIP because EPA had yet to act on Utah's SIP submittal dated February 6, 1996 that would adopt rule R307-110-29 which EPA stated in the NPR would replace R307-2-18. This is incorrect. Rule R307-2-18 has never been related to rule R307-110-29 that pertains to the diesel inspection and maintenance (I/M) SIP and has already been recodified with EPA's approval of R307-110-31. Therefore, EPA should not retain the old rule number R307-2-18.

Response: The commenter is correct. Rule R307-2-18 has been superseded and replaced by EPA's approval of Utah's rule R307-110-31 (67 FR 62891) therefore, EPA will not be retaining the

old rule number R307-2-18 in this action and R307-110-29 will be acted on when EPA acts on Utah's February 6, 1996 SIP as stated in the NPR (70 FR 59681).

Comment: A comment received stated that rule R307-110-35 is listed twice within category 3, number 4 of the NPR (70 FR 59681) as a rule EPA will not be acting on because it has already been approved and is also listed as one that will be acted on at a later date.

Response: The commenter is correct. However, as stated in the NPR (70 FR 59681), EPA does not intend to act on this specific rule section in this action. Therefore, the correction raised by the commenter is not relevant to this action and thus does not affect our approval.

Comment: A comment received stated that under the NPR (70 FR 59681) category 3, number 8, where it states that rule sections R307-150-2 and R307-155 will be acted on at a later date when EPA takes action on an October 9, 1998 SIP submittal is incorrect because the October 9, 1998 SIP submittal has now been superseded by a December 12, 2003 SIP submittal.

Response: The commenter is correct. However, as stated in the NPR (70 FR 59681), EPA does not intend to act on these specific rule sections in this action. Therefore, the correction raised by the commenter is not relevant to this action and thus does not affect our approval.

IV. Statutory and Executive Order Reviews

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 (Pub. L. 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 April 17, 2006. 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, Sulfur oxides, Volatile organic compounds, Reporting and recordkeeping requirements.

Dated: January 19, 2006.

Robert E. Roberts,

Regional Administrator, Region 8.

■ 40 CFR parts 52, chapter I, title 40 are 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)(59) to read as follows:

§ 52.2320 Identification of plan.

* * * * *

(c) * * *

(59) On February 5, 2001, October 26, 2000, September 20, 1999, September 7, 1999, two State Implementation Plan (SIP) revisions submitted February 6, 1996 and one on January 27, 1995, the State of Utah submitted SIP revisions that recodifies Utah's rules that had previously been approved into Utah's SIP; removed from Utah's SIP language that is obsolete or is generally not related to attainment of the National Ambient Air Quality Standards (NAAQS) and is therefore not appropriate to be in Utah's SIP; and arranged rules to allow for a more coherent SIP structure.

(i) Incorporation by Reference.

(A) Utah Administrative Code (UAC) rule sections: R307-101-1 and 2 with the exception of the definitions for "actual emissions," "major modification," "part 70 source," "significant," and "volatile organic compound" effective September 15, 1998; R307-102-1 through R307-102-6 effective September 15, 1998 and R307-102-1(2) effective August 3, 2000; R307-105-1 and R307-105-2 effective September 15, 1998, R307-107-1 through R307-107-6 effective September 15, 1998; R307-110-1 through R307-110-9, R307-110-11, R307-110-13 through R307-110-15, R307-110-18, R307-110-20 through R307-110-28, R307-110-30, and R307-110-32 effective September 15, 1998; R307-115-1 effective September 15, 1998; R307-130-1 through R307-130-4 effective September 15, 1998; R307-165-1 through R307-165-4 effective September 15, 1998; R307-201-1 through R307-201-3 effective September 15, 1998; R307-202-1 through R307-202-6 effective September 15, 1998; R307-203-1 through R307-203-3 effective September 15, 1998; R307-206-1 through R307-206-5 effective September 15, 1998; R307-301-1, R307-301-2, and R307-301-4 through R307-301-14 effective November 12, 1998; R307-302-1, R307-302-2 and R307-302-4 effective September 15, 1998; R307-305-1 through R307-305-7 effective September 15, 1998; R307-307-1 through R307-307-3 effective September 15, 1998; R307-325-1 through R307-325-4 effective September 15, 1998; R307-326-1 through R307-326-7 effective September 15, 1998; R307-327-1 through R307-327-3 effective September 15, 1998; R307-328-1 through R307-328-5 effective September 15, 1998; R307-335-1 through R307-335-4 effective September 15, 1998; R307-340-1 through R307-340-13 effective September 15, 1998; R307-341-1 through R307-341-3 effective September 15, 1998; R307-342-1 through R307-342-7 effective September 15, 1998; R307-401-9 and R307-401-10(1) effective September 15, 1998; R307-403-1 through R307-403-9 effective September 15, 1998; R307-405-1 through R307-405-8 effective September 15, 1998; R307-406-1 through R307-406-6 effective September 15, 1998; R307-413-7 effective September 15, 1998; and R307-414-1 through R307-414-3 effective September 15, 1998.

(ii) Additional Material.

(A) Outline for Utah's Rules Reorganization effective September 15, 1998.

(B) July 6, 2000 letter from Richard Long, EPA Region VIII to Ursula Kramer, Director, Utah Division of Environmental Quality requesting Utah to withdraw Utah SIP submittals dated April 30, 1998, October 9, 1998, and April 19, 2000.

(C) October 6, 2000 letter from Richard Long, EPA Region VIII to Rick Sprott, Acting Director, Utah Division of Air Quality (UDAQ) notifying UDAQ of an October 6, 1995 EPA memorandum (included with the October 6, 2000 letter) stating that Clean Air Act section 172(c)(9) pertaining to contingency measures requirements would not apply to PM10 nonattainment areas that had attained the standard with at least 3 years of clean air quality and as long as the area continued to attain the standard.

(D) October 16, 2000 letter from Michael Leavitt, Governor of Utah to William Yellowtail, Regional Administrator, EPA Region VIII requesting the withdraw of Utah's SIP submittals dated April 30, 1998, October 9, 1998, and April 19, 2000.

(E) April 2, 2002 letter from Richard Long, EPA Region VIII to Rick Sprott, Director, Utah Division of Air Quality informing UDAQ of our intent to not act on Utah's SIP submittal dated October 26, 2000 and our intent to remove existing asbestos rule language (R701-1-8) from Utah's federally approved SIP.

(F) April 7, 2005 letter from Rick Sprott, Director, Utah Division of Air Quality agreeing with EPA on the exclusion of Utah rules R307-1-6, R307-121, R307-122, R307-135, R307-214, R307-215, R307-220, R307-221, R307-320, R307-332, R307-415, R307-417, and R307-1-8 from Utah's federally approved SIP.

■ 3. Section 52.2352 is amended by redesignating the existing paragraph as paragraph (a) and adding paragraph (b), (c) and (d) to read as follows:

§ 52.2352 Change to approved plan.

* * * * *

(b) Utah Administrative Code (UAC) rule R307-1-8, Asbestos Work Practices, Contractor Certification, AHERA Accreditation and AHERA Implementation, is removed from Utah's approved State Implementation Plan (SIP). This rule language pertains to the regulation of asbestos and is generally not related to attainment of the National Ambient Air Quality Standards (NAAQS) and therefore it is not appropriate to be in Utah's SIP.

(c) Utah Administrative Code (UAC) rule R307-1-4.12, National Emission Standards for Hazardous Air Pollutants (NESHAPs), is removed from Utah's approved State Implementation Plan (SIP). Utah has delegation of authority for NESHAPs in 40 CFR part 61 (49 FR 36368), pursuant to 110(k)(6) of the Act.

(d) Utah Administrative Code (UAC) rule R307-1-6, Eligibility of Pollution Control Expenditures for Sales Tax Exemption, is removed from Utah's approved State Implementation Plan (SIP). This rule language pertains to State Sales Tax Exemptions for Pollution Control Expenditures and is not generally related to attainment of the National Ambient Air Quality Standards (NAAQS) and is therefore not appropriate to be in Utah's SIP.

[FR Doc. 06-1310 Filed 2-13-06; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R09-OAR-2006-0033; FRL-8029-4]

Revisions to the California State Implementation Plan; San Joaquin Valley Unified Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is finalizing approval of revisions to the San Joaquin Valley Unified Air Pollution Control District's portion of the California State Implementation Plan (SIP). These revisions were proposed in the **Federal Register** on March 30, 2005, and concern particulate matter emissions from agricultural operations. We are approving a local rule that regulates these emission sources under the Clean Air Act as amended in 1990 (CAA or the Act).

DATES: *Effective Date:* This rule is effective on March 16, 2006.

ADDRESSES: EPA has established docket number EPA-R09-OAR-2006-0033 for this action. The index to the docket is available electronically at <http://www.regulations.gov> and in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California. While all documents in the docket are listed in the index, some information may be publicly available only at the hardcopy location (e.g., copyrighted material), and some may not be publicly available in either location (e.g., CBI). To inspect the hardcopy materials, please schedule an

appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Andrew Steckel, EPA Region IX, (415)947-4115, steckel.andrew@epa.gov.

SUPPLEMENTARY INFORMATION:

Throughout this document, "we," "us" and "our" refer to EPA.

I. Proposed Action

On March 30, 2005 (70 FR 16207), EPA proposed to approve San Joaquin Valley Unified Air Pollution Control District (SJVUAPCD) Rule 4550, Conservation Management Practices, and its associated List of Conservation Management Practices (CMP List), into the California SIP. Rule 4550 and the CMP List were adopted by the SJVUAPCD on May 20, 2004, and readopted without change on August 19, 2004. We proposed to approve Rule 4550 and the CMP List because we determined that they complied with the relevant CAA requirements. A more detailed discussion of SJVUAPCD particulate matter attainment planning, the CAA requirements for serious nonattainment areas, and how the CMP program complies with these requirements is provided in our proposed rule and technical support document (TSD).

II. Public Comments and EPA Responses

EPA's proposed action provided a 30-day public comment period. During this period, we received comments from the following parties:

1. Vanessa Stewart, Earthjustice; letter dated April 29, 2005.¹
2. San Joaquin Valley agricultural groups: California Cotton Ginners and Growers Associations, California Citrus Mutual, California Grape and Tree Fruit League, Fresno County Farm Bureau, Nisei Farmers League; letter dated April 29, 2005.

EPA appreciates the time and effort expended by the commenters in reviewing the proposed rule and providing comments. We have summarized the significant comments and provided our responses below.

Comment 1: Earthjustice comments that the San Joaquin Valley (SJV or the Valley) is subject to the requirements of

CAA section 188(e), including most stringent measures (MSM). Earthjustice states that nonattainment areas like the Valley "receiving additional time to attain the NAAQS" must demonstrate that "the plan for that area includes the most stringent measures (MSM) that are included in the implementation plan for any State or are achieved in practice in any state, and can feasibly be implemented in the area." Addendum at 42010.² The Valley, having submitted a PM-10 Plan with an attainment deadline almost a decade later than that authorized by the Act, is subject to the requirements of CAA section 188(e), including the MSM requirement.

Response: In our final rule approving the 2003 SJV PM-10 Plan, we determined that section 188(e), including its MSM requirement, does not apply to the SJV PM-10 nonattainment area. Instead we concluded that, having failed to attain its serious area deadline of December 31, 2001, the area falls within the scope of section 189(d) which does not contain an MSM requirement. 69 FR 30006, 30022 (May 26, 2004). Earthjustice appropriately raised the issue of the applicability of section 188(e) in its comments on EPA's proposed approval of the 2003 Plan. Earthjustice, representing Latino Issues Forum, Medical Advocates for Healthy Air and Sierra Club, subsequently challenged EPA's final approval in the U.S. Court of Appeals for the Ninth Circuit, raising this issue among others.³ On September 6, 2005, the Ninth Circuit upheld EPA's interpretation of the statute. *Association of Irrigated Residents et al. v. U.S.E.P.A. et al.*, 2005 U.S. App. LEXIS 19213 (9th Cir. 2005).

Comment 2: Earthjustice comments that the CMP program must provide for MSM. Earthjustice states that the CMP program does not demonstrate that it implements MSM, nor has EPA evaluated it under this standard. MSM evaluations are distinct from best available control measure (BACM) evaluations and may identify control measures that would not have been considered under a BACM evaluation. For example, EPA has concluded that the de minimis level for BACM "depends on whether requiring the application of BACM for such sources

¹ Paul Cort, Earthjustice, submitted an additional letter dated December 2, 2005, in which he seeks to supplement Ms. Stewart's comment letter. By letter dated December 20, 2005, David Crow, SJVUAPCD, responded to Mr. Cort's letter. The comment period for the proposed rule closed on April 29, 2005. Mr. Cort's letter and Mr. Crow's response are therefore over seven months late and EPA is not considering them in this final action.

² "State Implementation Plans for Serious PM-10 Nonattainment Areas, and Attainment Date Waivers for PM-10 Nonattainment Areas Generally; Addendum to the General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990," 59 FR 41998 (August 16, 1994).

³ The Association of Irrigated Residents also petitioned for review of EPA's final action and the cases were consolidated.