ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R08–OAR–2006–0013; FRL–9087–5]

Approval and Promulgation of Air Quality Implementation Plans; Utah; Redesignation Request and Maintenance Plan for Salt Lake County; Utah County; Ogden City PM_{10} Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to disapprove the State of Utah's requests under the Clean Air Act to redesignate the Salt Lake County, Utah County, and Ogden City PM_{10} nonattainment areas to attainment, and to approve some and disapprove other associated State Implementation Plan (SIP) revisions. The Governor of Utah submitted the redesignation requests and associated SIP revisions on September 2, 2005. EPA is proposing to disapprove the redesignation requests because the areas do not meet all Clean Air Act requirements for redesignation. Regarding the SIP revisions, EPA is proposing to approve several definitions in Utah rule R307–101–2 (''Definitions'') and portions of Utah rule R307–302 (''Davis, Salt Lake, Utah, Weber Counties: Residential Fireplaces and Stoves''). EPA is proposing to approve these SIP revisions because they meet Clean Air Act requirements. EPA is proposing to disapprove the maintenance plans for Salt Lake County, Utah County, and Ogden City, including the motor vehicle emissions budgets in those plans. EPA is also proposing to disapprove all other SIP revisions that the Governor submitted on September 2, 2005 that EPA is not proposing to approve, except that EPA is proposing to take no action on revised Utah rule R307–310 (''Salt Lake County: Trading of Emission Budgets for Transportation Conformity''). EPA is proposing to disapprove these SIP elements because they do not meet Clean Air Act requirements. EPA is proposing to take no action on Utah's revised R307–310 because acting on the revised rule would serve no purpose. EPA is also proposing that it need not act on certain revisions to the Utah PM_{10} SIP that the Governor submitted on July 11, 1996 and June 2, 1997. These revisions have been superseded by subsequent revisions to the Utah PM_{10} SIP.

This action is being taken under sections 107, 110, and 175A of the Clean Air Act.

DATES: Comments must be received on or before December 31, 2009.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R08–OAR–2006–0013, by one of the following methods:

- *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *E-mail: videtich.callie@epa.gov.*
- *Fax:* (303) 312–6064 (please alert the individual listed in **FOR FURTHER INFORMATION CONTACT** if you are faxing comments).
- *Mail:* Callie Videtich, Director, Air Program, Environmental Protection Agency (EPA), Region 8, Mailcode 8P–AR, 1595 Wynkoop St., Denver, Colorado 80202–1129.
- *Hand Delivery:* Callie Videtich, Director, Air Program, Environmental Protection Agency (EPA), Region 8, Mail Code 8P–AR, 1595 Wynkoop St., Denver, Colorado 80202–1129. Such deliveries are only accepted Monday through Friday, 8:00 a.m. to 4:30 p.m., excluding Federal holidays. Special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–R08–OAR–2006–0013. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov*, 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 *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an anonymous access system, 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 *http://www.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 the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.* 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 *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the Air Program, Environmental Protection Agency (EPA), Region 8, 1595 Wynkoop St., Denver, Colorado 80202–1129. EPA requests that, if at all possible, you contact the individual listed in **FOR FURTHER INFORMATION CONTACT** to view the hard copy of the docket. You may view the hard copy of the docket Monday through Friday, 8:00 a.m. to 4:00 p.m., excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Catherine Roberts, Air Program, Mail Code 8P–AR, Environmental Protection Agency (EPA), Region 8, 1595 Wynkoop St., Denver, Colorado 80202–1129, (303) 312–6025, *roberts.catherine@epa.gov.*

SUPPLEMENTARY INFORMATION:

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Definitions

For the purpose of this document, the following definitions apply:

(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 the State Implementation Plan.

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

(v) The phrase *PM_{10}* means particulate matter with an aerodynamic diameter less than or equal to a nominal ten micrometers.

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 *http://www.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:

a. Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).

b. 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.

c. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

d. Describe any assumptions and provide any technical information and/or data that you used.

e. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

f. Provide specific examples to illustrate your concerns, and suggest alternatives.

g. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

h. Make sure to submit your comments by the comment period deadline identified.

II. Background of State Submittal

This proposal addresses Clean Air Act (CAA) requirements for the pollutant PM_{10} as they apply to three adjacent areas in the greater Salt Lake City metropolitan area: Salt Lake County, Utah County, and Ogden City. As described below, Utah has asked EPA to approve changes to the CAA plans for each of these areas and change the areas' planning status under the Act from nonattainment to attainment.

Under section 109 of the Act, EPA has promulgated national ambient air quality standards (NAAQS) for certain pollutants, including PM_{10} (40 CFR 50.6). NAAQS define levels of air quality which the Administrator judges are necessary to protect public health and welfare (40 CFR 50.2(b)). Once EPA promulgates a NAAQS, section 107 of the Act specifies a process for the designation of all areas within a state, generally as either an attainment area (an area attaining the NAAQS) or as a nonattainment area (an area not attaining the NAAQS, or that contributes to nonattainment of the NAAQS in a nearby area). For PM_{10}, certain areas have also been designated ''unclassifiable.'' These various designations, in turn, trigger certain state planning requirements.

For all areas, regardless of designation, section 110 of the Act requires that each state adopt and submit for EPA approval a plan to provide for implementation, maintenance, and enforcement of the NAAQS. This plan is commonly referred to as a State Implementation Plan (SIP). Section 110 contains requirements that any SIP must meet to gain EPA approval.[1] For nonattainment areas, SIPs must meet additional requirements contained in part D of Title I of the Act. Usually, SIPs include measures to control emissions of air pollutants from various sources, including stationary, mobile, and area sources. For example, a SIP may specify emission limits at power plants or other industrial sources.

Under the 1990 amendments to the CAA, Salt Lake and Utah Counties were designated nonattainment for PM_{10} and classified as moderate areas by operation of law as of November 15, 1990 (56 FR 56694, 56840, November 6, 1991). The air quality planning requirements for moderate PM_{10} nonattainment areas are set out in subparts 1 and 4, part D, Title I of the Act. As described in sections 110 and 172 of the Act, areas designated nonattainment based on a failure to meet the PM_{10} NAAQS are required to develop SIPs with sufficient control measures to expeditiously attain and maintain the NAAQS.

On July 8, 1994, EPA approved the PM_{10} SIP for Salt Lake and Utah Counties (59 FR 35036). The SIP included a demonstration of attainment and various control measures, including emission limits at stationary sources. Because emissions of sulfur dioxide (SO_2) and nitrogen oxides (NO_X) contribute significantly to the PM_{10} problem in the area, the SIP included limits on emissions of SO_2 and NO_X in addition to emissions of PM_{10}.

On December 6, 1999, EPA approved revisions to the road salting and sanding programs for the two counties (64 FR 68031). On July 1, 2002, EPA approved additional revisions to the Salt Lake County PM_{10} SIP that allowed trading between PM_{10} and NO_X motor vehicle emissions budgets for transportation conformity determinations (67 FR 44065). On December 23, 2002, EPA approved additional revisions to the Utah County PM_{10} SIP that updated attainment demonstrations, established new 24-hour emission limits for major stationary sources, and established new motor vehicle emission budgets (67 FR 78181).

On September 26, 1995, EPA designated Ogden City as nonattainment for PM_{10} and classified the area as moderate under section 107(d)(3) of the Act (60 FR 38726, July 28, 1995). EPA has not approved a PM_{10} attainment demonstration for Ogden City.[2]

Under section 107(d)(3)(D) of the Act, a state may ask EPA to change the designation of an area. On September 2, 2005, Utah requested that EPA redesignate Salt Lake County, Utah County, and Ogden City from nonattainment to attainment for PM_{10}. Section 175A of the Act requires that a state include with its redesignation request a maintenance plan that provides for maintenance of the NAAQS for at least 10 years after redesignation. On September 2, 2005, Utah also submitted maintenance plans for each of the three areas (Utah SIP sections IX.A.10, 11, and 12). While the three maintenance plans are mostly identical, some elements are different—for example, they contain different emission limits for stationary sources

[1] EPA's approval of a SIP has several consequences. For example, after EPA approves a SIP, EPA and citizens may enforce the SIP's requirements in Federal court under section 113 and section 304 of the Act; in other words, EPA's approval of a SIP makes the SIP ''Federally enforceable.'' Also, once EPA has approved a SIP, a state cannot unilaterally change the Federally enforceable version of the SIP. Instead, the state must first submit a SIP revision to EPA and gain EPA's approval of that revision.

[2] Under EPA's ''Clean Data Policy,'' EPA may determine that Ogden City does not need to submit an attainment demonstration or certain other SIP elements (See, e.g., 71 FR 63642, October, 30, 2006; 71 FR 13021, March 14, 2006; 71 FR 6352, February 8, 2006; 71 FR 27440, May 11, 2006; and 72 FR 14422, March 28, 2007). We will address this issue in a separate action. Because we are proposing to disapprove the redesignation request for Ogden City, on unrelated grounds, we need not address this issue further in this action.

and different monitoring requirements. Finally, on September 2, 2005, Utah submitted other revisions to the current EPA-approved Federally enforceable SIP (hereafter referred to as ''EPA-approved SIP''). As described in footnote 1, the Act allows states to adopt and submit revisions to their SIPs, but the revisions must meet certain CAA requirements before EPA will approve them. The following are the other SIP revisions that Utah submitted to us for approval on September 2, 2005:

1. Revised Sections IX.H.1 through 4 of the Utah PM_{10} SIP. These sections contain limits and requirements for stationary sources in Salt Lake County and Utah County. Utah made numerous changes to the EPA-approved version of sections IX.H.1 through 3, including deletion of some emission limits, changes to others, and changes to methods for determining compliance with emission limits. The PM_{10} maintenance plans for Salt Lake County and Utah County rely on and assume EPA approval of revised sections IX.H.1 through 3. As a matter of State law, the EPA-approved versions of sections IX.H.1 through 3 no longer exist. Section IX.H.4 is an entirely new section that contains procedures for establishing alternative stationary source requirements.

2. Revised Utah rules R307–110–10 and 110–17, which incorporate by reference into Utah's rules the PM_{10} maintenance plans for Salt Lake County, Utah County, and Ogden City, and the stationary source provisions in revised sections IX.H.1 through 4, respectively.

3. Revised Utah rule R307–101–2, which contains Utah's set of generally applicable definitions for air rules in the State. Utah revised, removed, and added certain definitions.

4. Revised Utah rule R307–165, which contains generic emission testing requirements for all areas of the State.

5. Revised Utah rule R307–302, which contains provisions related to residential fireplaces and stoves in Davis, Salt Lake, Utah, and Weber Counties.

6. Revised Utah rule R307–305, which contains generic emission standards for sources in PM_{10} nonattainment and maintenance areas.

7. Revised Utah rule R307–306, which contains provisions related to abrasive blasting in PM_{10} nonattainment and maintenance areas.

8. Revised Utah rule R307–309, which contains provisions related to fugitive emissions and fugitive dust in PM_{10} nonattainment and maintenance areas.

9. Revised Utah rule R307–310, which contains provisions related to trading between emissions budgets for PM_{10} transportation conformity in Salt Lake County.

In addition to the foregoing, in 1996 and 1997, Utah submitted revisions to the Salt Lake County and Utah County PM_{10} SIPs. Specifically, on July 11, 1996, Utah submitted revisions to section 9.A and appendix A, 2.2.A, of the PM_{10} SIP, and to Utah rule R307–2–1, to account for proposed changes to emission limits at the former Amoco refinery in Salt Lake County.[3] We have not acted on those revisions. The former Amoco refinery is now owned by Tesoro, and the proposed SIP revisions that Utah submitted on September 2, 2005 contain a new SIP section IX.H.2.l and limits for Tesoro that replace Utah's prior section 2.2.A and limits for Amoco. Because Utah replaced the emission limits for Amoco with emission limits for Tesoro as a matter of State law, and submitted the Tesoro provisions to us for approval in 2005, we consider the July 11, 1996 submittal to be superseded and effectively withdrawn. Thus, we are proposing that no action is required on Utah's July 11, 1996 submittal.

Similarly, on June 2, 1997, Utah submitted revisions to sections IX.A and H of the PM_{10} SIP, and to Utah rules R307–2–10 and R307–2–17,[4] to account for proposed changes to emissions limits for various stationary sources in Utah County, and particularly Geneva Steel. We have not acted on those revisions. On July 3, 2002, Utah submitted new SIP sections IX.A and H with new limits for stationary sources in Utah County. These new sections IX.A and H completely replaced as a matter of State law the versions of sections IX.A and H that Utah submitted on June 2, 1997. On December 23, 2002, in an action we reference above, we approved the new sections IX.A and H that Utah submitted on July 3, 2002, along with accompanying changes to Utah rules R307–110–10 and R307–110–17 (67 FR 78181). Also, the proposed SIP revisions that Utah submitted on September 2, 2005 contain further proposed revisions to sections IX.A and H. Because Utah completely replaced sections IX.A and H as contained in Utah's June 2, 1997 SIP submittal with new sections IX.A and H as a matter of State law, and submitted the replacement versions of those sections to us in 2002 and 2005, we consider the June 2, 1997 submittal to be superseded and effectively withdrawn. Thus, we are proposing that no action is required on Utah's June 2, 1997 submittal.

[3] Utah subsequently changed the numbering of its SIP and rules. Section 9 is now section IX. Appendix A is now section IX.H. R307–2–1 is now R307–110–1.

[4] Utah subsequently changed the numbering of rules R307–2–10 and R307–2–17 to R307–110–10 and R307–110–17.

III. Evaluation Criteria for the Redesignation Request

Section 107(d)(3)(E) of the Act provides that EPA may not promulgate a redesignation of a nonattainment area to attainment unless:

1. The area has attained the relevant NAAQS;

2. EPA has fully approved the applicable implementation plan for the area under section 110(k) of the Act;

3. The improvement in air quality in the area is due to permanent and enforceable reductions in emissions resulting from implementation of the applicable implementation plan and applicable Federal air pollutant control regulations and other permanent and enforceable reductions;

4. EPA has fully approved a maintenance plan for the area meeting the requirements of section 175A of the Act; and

5. The State containing the area has met all requirements applicable to the area under section 110 and Part D of the Act.

If any of these criteria is not met, we must disapprove the redesignation request.

In addition, on September 4, 1992, EPA issued guidance outlining how it intended to process redesignation requests. (Memorandum entitled, ''Procedures for Processing Requests to Redesignate Areas to Attainment,'' signed by John Calcagni, Director, Air Quality Management Division, Office of Air Quality Planning and Standards; hereafter referred to as the ''Calcagni Memo.'') For further information, you may want to read the Calcagni Memo.

IV. EPA Analysis of the Redesignation Request

The areas that Utah seeks to redesignate do not meet all five criteria for redesignation. Specifically, we cannot determine that Salt Lake and Utah Counties have attained the NAAQS, and we cannot approve the maintenance plans for the three areas. Thus, we are proposing to disapprove the redesignation requests.[5] We provide more detail below.

A. Redesignation Criterion 1—the Area Must Have Attained the PM_{10} NAAQS

1. The level of the primary and secondary PM_{10} NAAQS is 150

[5] Because we are finding that the redesignation submissions for these areas do not satisfy these criteria, we do not find it necessary to address whether the additional criteria for redesignation have been met.

micrograms per cubic meter (μg/m^3), 24-hour average concentration (40 CFR 50.6). Under the rounding convention contained in EPA's regulations, a monitored concentration lower than 155 μg/m^3 is considered to be attaining the PM_{10} NAAQS (40 CFR part 50, appendix K).

To determine whether an area has attained the PM_{10} NAAQS for purposes of redesignation, we rely on ambient air quality data from a monitoring network representing maximum PM_{10} concentrations (40 CFR 50.6; 40 CFR part 50, appendix K; 40 CFR part 58; Calcagni Memo, page 2). The data must be quality assured and recorded in EPA's Air Quality System database (AQS). The NAAQS are attained when the expected number of exceedances of the NAAQS at each monitoring site in the area is less than or equal to 1.0 per year, based on three consecutive years of data.[6] For example, if the expected number of exceedances at a monitor for each of three consecutive years is 1.0, the expected number of exceedances averaged over the three years would also be 1.0 (3.0 divided by 3), which would not be a violation. However, if the expected number of exceedances in year one of the three-year period were 2.0 instead of 1.0 and the values remained at 1.0 for years two and three, the expected number of exceedances averaged over the three years would be 1.33 (4.0 divided by 3), which would be a violation.

For redesignations, EPA's consistent interpretation has been that the area must have attained the standard in the base year for the maintenance demonstration and in all subsequent years up through EPA's action on the redesignation request. (See, e.g., EPA's final and proposed disapprovals of the redesignation requests for various areas, including Pittsburgh (61 FR 19193, May 1, 1996), Richmond (59 FR 22757, May 3, 1994), Kentucky portion of Cincinnati-Hamilton (61 FR 50718, September 27, 1996), Ohio portion of Cincinnati-Hamilton (62 FR 7194, February 18, 1997), and Birmingham (62 FR 23421, April 30, 1997); the proposed correction of the designation for Lafourche Parish (62 FR 38237, July 17, 1997); and the Calcagni Memo, page 5.)

Between 1985 and 2006, Utah operated a total of 15 PM_{10} monitors, which were either State and Local Air Monitoring Stations (SLAMS) or National Air Monitoring Sites (NAMS), in the Salt Lake County, Utah County, and Ogden City PM_{10} nonattainment areas.[7] Currently, four PM_{10} SLAMS operate in Salt Lake County, two operate in Utah County, and one operates in Ogden City.

a. Salt Lake County

In June 2001, we determined that Salt Lake County had attained the PM_{10} NAAQS as of December 31, 1995 (66 FR 32752, June 18, 2001). However, beginning in 2001, which is the base year for Utah's maintenance demonstration, Salt Lake County began experiencing exceedances of the PM_{10} NAAQS that resulted in violations. Specifically, two exceedances of the PM_{10} NAAQS in 2001 at the Magna monitoring site resulted in a violation of the NAAQS in each three-year period that includes 2001—i.e., 1999–2001, 2000–2002, and 2001–2003.[8] On 12 days from 2002 through 2007, there were 15 more measured exceedances at three monitors. At least one Salt Lake County monitor has been in violation of the PM_{10} NAAQS in every three-year period since 2001. The table below summarizes the actual PM_{10} exceedances recorded in Salt Lake County in 2001 through 2007 that contributed to or are associated with violations, as well as the calculated expected number of exceedances and the violations.

TABLE 1—PM_{10} EXCEEDANCES CONTRIBUTING TO VIOLATIONS IN SALT LAKE COUNTY, 2001 THROUGH 2007

Year	Date	Monitor and AQS ID No.	PM_{10}, (μg/m^3)	Expected number of exceedances	Contribution to violations
2001	March 14, 2001	Magna, 49–035–1001	201	6.4	Constitutes a violation for 1999–2001 through 2001–2003 data sets.
	April 22, 2001	Magna, 49–035–1001	156		
2003	February 1, 2003	North Salt Lake City, 49–035–0012.	169	3.1	No violation as of end of 2003, but contributes to violation with 2004 data; see below.[9]
	April 1, 2003	North Salt Lake City, 49–035–0012.	358		
	April 2, 2003	North Salt Lake City, 49–035–0012.	209		
	April 1, 2003	Magna, 49–035–1001	421	3.1	No new violation, but adds to other violations.
2004	May 10, 2004	North Salt Lake City, 49–035–0012.	189	1.0	Constitutes a violation in combination with 3.1 exceedances in 2003; 2002–2004 and 2003–2005 data sets violate.
2005	September 10, 2005	Magna, 49–035–1001	177	3.3	Constitutes a violation for 2003–2005 through 2005–2007 data sets.

[6] 40 CFR part 50, appendix K describes how to determine the expected number of exceedances each year. For monitors operating less than daily, or for monitors with data missing on some days within quarters in which exceedances are measured, the expected number of exceedances is calculated to account for possible exceedances on unsampled days within calendar quarters. Thus, for example, a single recorded exceedance at a monitor in a given year could result in an expected number of exceedances at that monitor significantly greater than 1.0 for the year.

[7] SLAMS monitoring stations are defined in 40 CFR 58.1, and are those ambient air monitors operated by State and local governments primarily used for comparison to the NAAQS. NAMS monitors were formerly defined in 40 CFR 58.1 as a subset of the SLAMS network; the NAMS monitor type was discontinued through changes to 40 CFR part 58 promulgated in 2006 (71 FR 61236, October 17, 2006).

[8] A violation occurred in each of these periods because the two measured exceedances in 2001 resulted in a calculated expected number of exceedances in that year alone of 6.4. The two measured exceedances resulted in a calculated expected number of exceedances of 6.4 because the Magna monitor operates only once every three days. (See 40 CFR part 50, appendix K.) Even if averaged with a value of zero expected exceedances in two other years, a value of 6.4 expected exceedances in a single year causes a violation (6.4 divided by 3 exceeds 1.0).

TABLE 1—PM_{10} EXCEEDANCES CONTRIBUTING TO VIOLATIONS IN SALT LAKE COUNTY, 2001 THROUGH 2007—Continued

Year	Date	Monitor and AQS ID No.	PM_{10}, ($\mu g/m^3$)	Expected number of exceedances	Contribution to violations
2006	July 4, 2006	North Salt Lake City, 49–035–0012.	188	2.2	Constitutes a new violation for the 2004–2006 data set.
	July 26, 2006	North Salt Lake City, 49–035–0012.	164		
2007	July 7, 2007	North Salt Lake City, 49–035–0012.	174	4.3	Constitutes a violation for 2005–2007 through 2007–2009 data sets.
	July 11, 2007	North Salt Lake City, 49–035–0012.	156		
	July 13, 2007	North Salt Lake City, 49–035–0012.	166		
	October 25, 2007	North Salt Lake City, 49–035–0012.	172		

State and local monitoring agencies may apply a ''flag'' (a flag is a code placed on the data in the AQS database) to an exceedance recorded in AQS when they believe an exceptional event such as high winds or wildfires caused the measured exceedance of the NAAQS. The State or local agency may then provide EPA with documentation on the exceptional event and request that EPA remove the data from the dataset EPA uses to calculate violations. Currently, EPA's Exceptional Events Rule governs the flagging of data (72 FR 13560, March 22, 2007, and 72 FR 28612, May 22, 2007). Before May 22, 2007, EPA's Natural Events Policy (NEP) applied.[10] Utah has placed high wind exceptional event flags on each of the data values in the table above, with the exception of the value at North Salt Lake City on October 25, 2007, and claims these data values should be excluded from EPA's regulatory calculations.

Under the NEP, EPA indicated that it would exclude data from its decisions regarding an area's attainment status when those data were attributable to uncontrollable natural events, which under certain circumstances could include high winds. The policy defined a high wind event as an event with unusually high winds where the dust originated from either (1) nonanthropogenic sources (not man made), or (2) anthropogenic sources (man made) controlled with the best available control measures (BACM).[11] When natural events such as high winds caused a violation of the PM_{10} NAAQS, states were to develop a natural events action plan (NEAP) that included certain elements listed in the NEP. For high winds, the NEAP should have included the application of BACM, and the application criteria required analysis of the technological and economic feasibility of individual control measures. In addition, a state seeking exclusion of data impacted by natural events had the responsibility to submit documentation establishing ''a clear causal relationship between the measured exceedance and the natural event.'' (NEP, page 10). In its submission, a state had to show that BACM were required at anthropogenic sources of dust and that these sources were in compliance at the time of the high wind event. Finally, for areas allegedly affected by natural events seeking redesignation, such as the Salt Lake County nonattainment area, a state had to include the NEAP in its maintenance plan.

While Utah applied a high wind flag to the exceedances recorded at Magna, Utah on March 14, 2001 and April 22, 2001, Utah's submission to EPA failed to meet the criteria for exclusion of data under the policy. Utah's documentation identified the source of windblown dust as Kennecott Utah Copper, a major permitted source that was not in compliance with its permit at the time of the exceedances. As discussed above, Utah had to show in its submission, among other things, that anthropogenic sources of dust were in compliance at the time of the high wind event (NEP, page 11).[12] Thus, EPA did not concur on Utah's flags in AQS for the 2001 exceedances at Magna. As stated above, because the Magna monitor operates on a once in three-day schedule, the expected number of exceedances calculated for 2001 is 6.4 (see 40 CFR part 50, appendix K), which results in a PM_{10} NAAQS violation at the Magna monitoring site for any 3-year period containing 2001 (1999–2001, 2000–2002 and 2001–2003).

As stated above, Utah also placed high wind flags on later exceedances of the PM_{10} NAAQS at the Magna and North Salt Lake City monitors. While Utah submitted documentation with respect to these exceedances and a NEAP, Utah failed to include the NEAP as part of the maintenance plan submitted to EPA in 2005, as it should have done under the NEP. In addition, the analysis in the NEAP did not establish that BACM was implemented at the time of the exceedances for the three main anthropogenic sources of emissions identified as causing or contributing to the exceedances: (1) Kennecott tailings; (2) agriculture; and (3) construction. For example, the NEAP asserted that for Kennecott sources, a best available control technology (BACT) analysis had been done historically and that BACT is generally more stringent than BACM, but the NEAP did not analyze whether the control requirements constituted BACM for wind blown dust at the time of the events. Similarly, the NEAP mentioned certain control measures that the other contributing anthropogenic sources were currently implementing, but did not include a BACM analysis evaluating these control measures. Also, Utah did not determine the high wind conditions that would overcome BACM (See NEP, page 7). Thus, we were unable to concur on Utah's data flags under the NEP.

We are also unable to disregard the flagged data under our Exceptional Events Rule, which took effect on May 22, 2007. The rule implements section 319 of the CAA, as amended by section 6013 of the Safe Accountable Flexible Efficient-Transportation Equity Act: A

[9] Per 40 CFR part 50, appendix K, the three-year average based on 3.1 expected exceedances in 2003 and zero expected exceedances in 2001 and 2002 is 1.03 (3.1 divided by 3), which rounds down to 1.0 and is not a violation.

[10] Memorandum from Mary D. Nichols, Assistant Administrator for Air and Radiation, entitled, ''Areas Affected by PM_{10} Natural Events,'' May 30, 1996.

[11] See 59 FR 42010, August 16, 1994, for a discussion of PM_{10} BACM.

[12] Similarly, under the current Exceptional Events Rule discussed below, an event is not eligible for consideration as an exceptional event and exclusion of data if there is source noncompliance (40 CFR 50.1(j).)

Legacy for Users (SAFE–TEA–LU) of 2005. The rule establishes procedures and criteria to govern the review and handling of air quality monitoring data influenced by exceptional events, and under certain circumstances, EPA may exclude such data from regulatory actions under the CAA, including redesignations to attainment or nonattainment.

Under the Exceptional Events Rule, a state asking EPA to exclude data from its regulatory calculations must, after notice and opportunity for public comment, submit a demonstration that shows to EPA's satisfaction that the flagged event caused a specific concentration in excess of the NAAQS at the particular monitor location. The state must submit the demonstration and any public comments to EPA within 3 years of the calendar quarter following the event, but no later than 12 months prior to an EPA regulatory decision (40 CFR 50.14(c)(3)(i)). Of particular note, 40 CFR 50.14(c)(2)(ii) states that data shall not be excluded from determinations with respect to exceedances or violations of the NAAQS, and that all flags are considered for information only, until such time as a state submits the demonstration and EPA concurs on the flags.

To date, Utah has not submitted any demonstrations for PM_{10} high wind flags under the Exceptional Events Rule, and the regulatory deadlines for submitting such demonstrations for any of the events before 2006 have passed.[13] Since concurrence was not possible on these flags under the NEP, and demonstrations meeting the requirements of the current Exceptional Events Rule have not been submitted, the flagged concentrations recorded in Salt Lake County between 2001 and 2005 may not be excluded as exceptional events from our calculations of violations. Thus, Salt Lake County violated the PM_{10} NAAQS from 2001 through 2007 based on exceedances measured in 2001, 2003, 2004, and 2005.

Similarly, because Utah has not submitted demonstrations meeting the requirements of the Exceptional Events Rule, EPA must consider the flags on exceedances in 2006 and 2007 as being informational only per 40 CFR 50.14(c)(2)(ii). Thus, these exceedances represent new PM_{10} violations that are relevant to the evaluation of attainment for 2005–2007, 2006–2008, and 2007–2009. Finally, 2008 data in AQS, not yet certified by Utah, show new exceedances at the North Salt Lake City monitor on April 15, 2008 (188 $\mu g/m^3$) and April 19, 2008 (181 $\mu g/m^3$). Additionally, the data show an exceedance at the Cottonwood monitor (AQS ID49–035–0003) on April 15, 2008 (177 $\mu g/m^3$), which, assuming the data are certified, would result in a new violation of the PM_{10} NAAQS.

Based on the monitored violations of the PM_{10} NAAQS during and subsequent to the base year for the maintenance demonstration, we are unable to determine that the Salt Lake County area has attained the NAAQS in accordance with section 107(d)(3)(E) of the Act. Therefore, Salt Lake County is currently ineligible for redesignation to attainment for the PM_{10} NAAQS.

b. Utah County

While there were exceedances of the PM_{10} NAAQS in Utah County in 2002, 2003, and 2004, there were no violations in the area in any three-year period from 1993 through 2007. However, 2008 data in AQS, not yet certified by Utah, show four exceedances of the PM_{10} NAAQS at the Lindon monitor in Utah County: 164 $\mu g/m^3$ on April 15, 2008; 181 $\mu g/m^3$ on April 19, 2008; 155 $\mu g/m^3$ on April 29, 2008; and 177 $\mu g/m^3$ on May 20, 2008. Assuming the data are certified, the four exceedances would represent a violation of the PM_{10} NAAQS in Utah County for the three-year periods that include 2008. Utah has flagged these exceedances as high wind exceptional events, but EPA must consider these flags as informational only until the demonstration requirements of the Exceptional Events Rule are met and EPA concurs on the flags.[14] Thus, given the fact that these exceedances are currently in AQS and EPA has not yet determined that they should be excluded from consideration, we are unable to determine that the area has attained the NAAQS for purposes of redesignation under section 107(d)(3)(E). Therefore, Utah County is currently ineligible for redesignation to attainment for the PM_{10} NAAQS.

c. Ogden City

While there were exceedances of the PM_{10} NAAQS in Ogden City in 2002, 2003, and 2004, there were no violations in the area in any three-year period from 1993 through 2007. Similarly, 2008 data in AQS, not yet certified by Utah, indicate there were no violations through 2008. Thus, Ogden City data indicate that the area is currently attaining the NAAQS. However, the area fails to meet other redesignation requirements, as discussed below.

B. Redesignation Criterion 4—The Area Must Have a Fully Approved Maintenance Plan That Meets the Requirements of Section 175A

1. Deficiencies applicable to all three maintenance plans.

a. The State did not adequately define 24-hour stationary source inputs to modeling. For purposes of demonstrating maintenance, Utah conducted dispersion modeling for all three nonattainment areas combined using the UAM-Aero model. While the modeling outcomes indicate the areas will maintain the PM_{10} NAAQS at least through 2017,[15] we are unable to determine and confirm the 24-hour major stationary source inputs used in the modeling. This key information is not contained in Utah's electronic data files. Thus, we cannot determine what 24-hour emission rates were used in the modeling analysis to evaluate model performance[16] or to show maintenance of the PM_{10} standard. Without this information, we cannot determine that the model met relevant performance standards, and we cannot determine that major stationary source emission limits in the Utah SIP will be adequate to maintain the NAAQS for the 10-year period required by the CAA.

While Utah did compile annual baseline and projected inventories of major stationary source emissions in its Technical Support Document (TSD),

[13] Between May 22, 2007 (the effective date of the Exceptional Events Rule) and December 31, 2007, EPA permitted states to choose to comply with either the rule or the NEP. This flexibility was limited to situations where the following two conditions were met: (a) Before May 22, 2007, a state had flagged data and submitted a timely demonstration to attempt to show that an exceptional event caused a NAAQS exceedance reflected in the data; and (b) EPA had not already determined whether an exceptional event caused the exceedance. Unless the state, in the limited circumstances described above, specifically requested that EPA evaluate a natural or exceptional event demonstration under the NEP, EPA presumed that the rule applied after May 22, 2007.

[14] The Lindon monitor recorded an additional exceedance of 200 $\mu g/m^3$ on March 4, 2009. Utah has also placed a high wind flag on this exceedance. This exceedance alone would not represent a new violation of the NAAQS.

[15] Section 175A of the Act requires that the maintenance plan demonstrate maintenance for at least 10 years following EPA's approval of a redesignation to attainment. As of the date of this proposal, the 2017 maintenance year in the Utah maintenance plans would not meet the 10-year-maintenance requirement.

[16] The performance of a photochemical grid model like UAM–Aero must be verified before it is used to model maintenance. Roughly speaking, this is done by inputting actual emissions and meteorological data for a period with known, monitored ambient values—in the case of the Utah PM_{10} plans, certain 24-hour ''episodes'' during 2001 and 2002—and determining whether the model predictions are sufficiently close to actual monitored values.

these are not a substitute for 24-hour inventories, and they are not a substitute for electronic data files containing 24-hour major stationary source inputs for the dispersion modeling. In addition, we cannot determine from Utah's annual inventories whether Utah evaluated and regulated all significant stationary emission sources in the maintenance plan. For example, we cannot determine whether Utah evaluated refinery flare emissions in the maintenance demonstration. Flares can be a significant source of emissions. Also, Utah's SIP submittal does not include emission limits for several major stationary sources located outside the designated PM_{10} nonattainment areas but inside the modeling domain for Utah's maintenance demonstration. It appears these sources were not included in Utah's annual inventories, but we cannot determine why they were excluded or whether exclusion was appropriate.

b. Utah did not properly model Kennecott's banked emissions. Kennecott has ''banked'' thousands of tons per year of SO_2 emissions reductions.[17] In the maintenance demonstration, Utah modeled 12,567 tons per year of these banked emissions as though they were being emitted from Kennecott's 1200-foot stack.[18] This assumption is not reasonable. For example, if several companies purchased these banked SO_2 emissions from Kennecott, it is highly unlikely the companies would emit the SO_2 from 1200-foot stacks. An appropriate assumption, which Utah employed when modeling other banked emissions, is that Kennecott's banked emissions would be emitted from within a core industrial area in Salt Lake County at a height of 65 meters (213 feet) or less.

This difference in the assumed stack height of future emissions is significant. Generally, the higher that emissions are released from ground level, the more the emissions disperse and the less they impact pollutant concentrations at the surface.[19] Under wintertime inversion conditions in the Salt Lake area, when the inversion height is typically 1,000 feet or less, it is particularly unlikely that pollutants emitted from a 1200-foot stack (i.e., above the inversion height) would be mixed to the surface and contribute to PM_{10} concentrations at the surface. Thus, we believe Utah's modeling substantially underestimates the potential PM_{10} impact of Kennecott's banked SO_2 emissions. This would affect the maintenance demonstration for Salt Lake County and may affect the maintenance demonstration for Utah County and Ogden City as well. In order to quantify the exact effect, the model would need to be re-run with appropriate assumptions for the location and height of release of the banked emissions. Therefore, we propose to find that the modeled maintenance demonstrations for all three areas are invalid.

c. Use of improper estimates of road dust emissions in modeling. For purposes of estimating mobile source road dust emissions in its maintenance demonstration, Utah used EPA's AP–42 document to calculate PM_{10} road dust emissions estimates but then discounted those estimates by 75%. This discount is not supported.

As discussed in EPA's policy memoranda of February 24, 2004 [20] and August 2, 2007,[21] EPA's MOBILE6.2 is the approved model for calculating direct PM_{10} and $PM_{2.5}$ from vehicle exhaust and brake and tire wear. Both memoranda state that Chapter 13.2 of AP–42 (specifically sections 13.2.1, ''Paved Roads,'' and 13.2.2, ''Unpaved Roads'') contains the EPA-approved methods for calculating re-entrained road dust emissions. The August 2, 2007 memorandum indicates that November 1, 2006 revisions to AP–42 will lower estimates of $PM_{2.5}$ re-entrained road dust emissions from paved roads by 40% and from unpaved roads by 33%. But, the memorandum affirms that ''* * * *PM*$_{10}$ *road dust estimates are unchanged* from the previous version.'' [Emphasis in the original.]

While our February 24, 2004 policy memorandum suggests that states may be able to justify deviations from AP–42 and EPA's approved mobile source inventory methodology, Utah has not justified a 75% discount of re-entrained PM_{10} road dust emissions estimates. Utah's TSD indicated that the 75% discount method resulted in part from consultation with Sonoma Technologies, but provided insufficient detail (TSD, tab 2.d.ii(3)(iii), page 17). In its response to comments on the draft maintenance plan, Utah also referenced some general studies that discussed the difficulties and inaccuracies in estimating paved and unpaved road dust emissions (June 27, 2005 Response to Comments, response to comment #104, page 7). Specifically, Utah referenced ''A Conceptual Model to Adjust Fugitive Dust Emissions to Account for Near Source Particle Removal in Grid Model Applications,'' by Thompson G. Pace, US EPA, August 22, 2003. This paper discusses, ''some recent studies and proposes refinements to the ''divide-by-four'' factor that may be applicable to these source categories'' (Pace, 2003, page 1). (Dividing estimated emissions by four has the same impact as reducing them by 75%.) As noted by Pace, an across-the-board 75% reduction requires ''refinement'' and case-by-case analysis. Furthermore, Pace refers to a study by the Desert Research Institute [22] that states:

> This enormous range of removal rates emphasizes that it is not appropriate to apply a single correction factor to all fugitive dust emissions as a means of accounting for near-field particle removal. Though not documented, the community of scientists and professionals has, in the last several years, been circulating the idea that if fugitive dust emissions were divided by a factor of four, then the discrepancy between emissions and ambient measurements of geological PM_{10} would disappear. While it is possible that this is true on an average basis (i.e. over large spatial domains), it is unlikely that this factor of four is applicable to every combination of air shed, land use distribution, and atmospheric conditions. Each combination of setting and meteorological conditions should be considered separately in a modeling framework that makes use of the known physics of particle dispersion and deposition.

Thus, the paper Utah relies on to discount the AP–42-estimated PM_{10} emissions actually supports EPA's view that it is *not* appropriate to employ a 75% reduction or divide-by-four methodology in all situations, and suggests that, while some change may be appropriate, the specific conditions along the Wasatch Front must be considered. Any reduction proposed by

[17] Utah allows sources who permanently reduce their emissions to ''bank'' the emissions reductions and later use or sell them to offset emission increases from new or modified sources anywhere in the nonattainment area. Kennecott made changes to its smelter that reduced SO_2 emissions by thousands of tons and banked the reductions.

[18] In predicting ground-level concentrations, dispersion models account for the height and location of the emissions point.

[19] Modeling for maintenance and attainment predicts pollutant concentrations at ground level because compliance with the NAAQS is evaluated against ground-level ambient concentrations. This is based on the fact that people breathe ground-level air.

[20] ''Policy Guidance on the Use of MOBILE6.2 and the December 2003 AP–42 Method for Re-Entrained Road Dust for SIP Development and Transportation Conformity,'' signed by Margo Oge of EPA's Office of Transportation and Air Quality and Steve Page of EPA's Office of Air Quality Planning and Standards.

[21] ''Policy Guidance on the Use of the November 1, 2006, Update to AP–42 for Re-entrained Road Dust for SIP Development and Transportation Conformity,'' signed by Merrylin Zaw-Mon of EPA's Office of Transportation and Air Quality and Peter Tsirigotis of EPA's Office of Air Quality Planning and Standards.

[22] ''Field Testing And Evaluation Of Dust Deposition And Removal Mechanisms: Final Report,'' Etyemezian, et. al, Desert Research Institute, prepared for: The WESTAR Council, January1, 2003; found January 18, 2006 at: *http://www.westar.org/Docs/Dust/Transportable_Dust_Final_Report_DRI_WESTAR.pdf.*

Utah must be supported by an analysis that explains why the reduction is appropriate for the area, considering the local geography, land use, and atmospheric conditions. Utah did not provide such an analysis.

To further evaluate the issue, EPA conducted its own analysis to determine whether a 75% reduction could be supported. EPA evaluated available information regarding the transportable fraction of PM_{10} re-entrained road dust emissions, as discussed below.

EPA has developed a method to estimate a transportable fraction of fugitive dust emissions [23] for grid modeling inventories. In that method, EPA has considered the land use, vegetation, topography, and other factors and estimated an aggregate transportable fraction for counties around the United States. The transportable fraction for each county can be seen at EPA's webpage at: *http://www.epa.gov/ttn/chief/emch/dustfractions/.*

The transportable fractions estimated for Utah, Salt Lake, and Weber Counties are .69, .66, and .75, respectively. These transportable fractions indicate that appropriate emission reductions from AP–42-based estimates, when considering the specific features of the areas, are 31% for Utah County, 34% for Salt Lake County, and 25% for Weber County, which includes the Ogden City PM_{10} nonattainment area. Thus, EPA's supplemental analysis does not support Utah's use of a 75% reduction from AP–42 estimates of PM_{10} road dust emissions. Utah's use of such reduction is inappropriate; by overestimating the reduction in re-entrained road dust emissions, Utah underestimated ambient concentrations of PM_{10} in its maintenance demonstrations for all three areas. Without accurate estimates of emissions and ambient concentrations, we cannot determine that the maintenance plans will be adequate to maintain the NAAQS for the 10-year period.

2. Deficiencies Applicable to the Maintenance Plans for Salt Lake and Utah Counties

a. Utah has not attained the NAAQS. The Calcagni Memo states that the attainment inventory used in the maintenance demonstration must come from a period for which the area attains the NAAQS. The attainment inventory used for the maintenance demonstration came from 2001, a year in which Salt Lake County did not attain the NAAQS. (See discussion in section IV.A above.) In addition, Salt Lake County has violated the PM_{10} NAAQS in every three-year period since 2001. These persistent violations indicate that the underlying basis of the maintenance demonstration for Salt Lake County is not valid.

As discussed above in section IV.A.1.b, 2008 data in AQS, not yet certified by Utah, indicate exceedances that would comprise violations of the PM_{10} NAAQS in Utah County for any three-year period that includes 2008. These data call into question the maintenance demonstration for Utah County.

b. Maintenance plans rely on inadequate methods for intermittent sources. The maintenance plans for Salt Lake and Utah Counties rely on controls contained in submitted SIP section IX.H,[24] including opacity limits for intermittent sources. Section IX.H.1 specifies a method for conducting opacity observations. The last sentence in submitted SIP section IX.H.1.g says: ''For intermittent sources and mobile sources, opacity observations shall be conducted using procedures similar to Method 9, but the requirement for observations to be made at 15-second intervals over a six-minute period shall not apply.'' This language is not sufficiently clear.[25] The language must indicate what test method will apply. Without this, we cannot be assured that the opacity limits for intermittent and mobile sources will be enforceable or that the maintenance plan is adequate to ensure maintenance of the NAAQS.

3. Deficiencies Applicable to the Salt Lake County Maintenance Plan

a. Maintenance plan relies on deficient control measures for stationary sources in Salt Lake County. Utah revised as a matter of State law the Salt Lake County stationary source control measures in section IX.H of the SIP, incorporated these State-revised measures into its proposed maintenance plan (see submitted SIP section IX.A.10, pages 30–31), and based its maintenance demonstration on the assumption that these State-revised measures would be approved into the SIP by EPA and would therefore be in place.[26] For the reasons set forth below, many parts of State-revised section IX.H are not approvable, therefore, the maintenance plan, which relies upon assumed approval of the State's revisions to section IX.H, does not demonstrate that the area will maintain the NAAQS for ten years after redesignation.

(i) For a number of the source emission limits, submitted SIP section IX.H does not contain adequate compliance determining and reporting requirements, as required by section 110 of the Act. Absent adequate compliance determining and reporting requirements, there is no assurance that the emission limits relied on to demonstrate maintenance in Salt Lake County will be met. Thus, these flaws render the specific source requirements and the maintenance plan as a whole, which relies on them, unapprovable. The following are examples of inadequate compliance determining and reporting requirements.

(A) Lack of emission factors for PM_{10} and NO_X. For Chevron, Flying J, Holly Refining, and Tesoro West Coast, submitted SIP sections IX.H.2.c, d, f, and l, respectively, require that PM_{10} emissions from external combustion process equipment be determined daily by ''multiplying the appropriate emission factor from section IX.H.1.i.2 or from testing listed below by the relevant parameter (e.g., hours of operation, feed rate, or quantity of fuel combusted) at each affected unit, and summing the results for the group or affected unit.'' The same approach is prescribed for determining NO_X emissions. Submitted SIP section IX.H.1.i.(2) does not list any emission factors for PM_{10} or NO_X. The SIP should specify the appropriate emission factors and equations for determining compliance with the emission limits. In contrast to submitted SIP section IX.H.1.i.(2), the EPA-approved SIP specifies the numerical value of the emission factors for PM_{10} and NO_X at each refinery, for each type of fuel used in external combustion process equipment. The lack of specificity in submitted SIP sections IX.H.1 and 2 renders the emission limits unenforceable.

(B) Lack of metering or other measurement techniques. Submitted SIP section IX.H.1.i.(2) of the general requirements for refineries does not specify how the ''hours of operation,

[23] ''Methodology to Estimate the Transportable Fraction (TF) of Fugitive Dust Emissions for Regional and Urban Scale Air Quality Analyses,'' Thompson G. Pace, US EPA (August 3, 2005 Revision).

[24] Hereafter, when we refer to the submitted SIP or a submitted SIP section, revision, or rule, we mean the SIP or SIP section, revision, or rule that Utah submitted to us for approval on September 2, 2005, as opposed to the EPA-approved SIP or SIP section, revision, or rule.

[25] We recognize that this language is similar to language in the EPA-approved SIP. However, due to the potential problems with this language, it would be inappropriate for us to re-approve it or accept reliance on it for purposes of the maintenance plan.

[26] Note that revising the EPA-approved SIP is a two-step process. First, the state adopts changes as a matter of state law and submits them to EPA. Then, EPA either approves or disapproves those changes. Only if EPA approves the changes do they take effect as a matter of Federal law.

feed rate, or quantity of fuel combusted'' are to be measured. No metering devices or other measurement techniques are specified. The submitted SIP departs from the EPA-approved SIP, which specifies the monitoring devices and measurement techniques. Because Utah did not specify the methods to measure the hours of operation, feed rate, or quantity of fuel combusted in submitted SIP section IX.H.1.i.(2), the corresponding emission limits are unenforceable.

(C) Lack of enforceable requirement for re-establishing emission factor at Flying J refinery. For the Catalyst Regeneration system at Flying J refinery, submitted SIP section IX.H.2.d.(1)(a)(ii) says the PM_{10} emission factor of 22 pounds per thousand barrels (lbs/kbbl) ''may be re-established by stack testing'' but does not specify a schedule for such stack testing. The PM_{10} emission control equipment (an electrostatic precipitator) could deteriorate over time without proper maintenance, and the emission factor could change. Under these circumstances, the SIP must require at least annual stack testing to re-establish the emission factor. The lack of at least annual stack testing renders the submitted SIP's methods for determining compliance with the PM_{10} limits inadequate.

(D) Lack of required technique for calculating Sulfur Recovery Unit (SRU) efficiency. Submitted SIP section IX.H.1.i.(1)(a) requires removal of a ''minimum of 95% of the sulfur from feed streams processed by the SRU'' at refineries. For demonstrating compliance, ''SRU efficiency shall be estimated and reported to the Executive Secretary a minimum of once per year.'' Since no technique is specified for calculating SRU efficiency, this is not a practically enforceable requirement. Also, once-per-year reporting is not frequent enough. Performance problems can easily develop at SRUs over a shorter period of time than a year.

Continuous Emission Monitoring Systems (CEMS) for SO_2 are installed at each SRU to collect data continuously. Thus, the requirement should be to demonstrate 95% sulfur removal efficiency on a daily basis (24-hour block average) via SO_2 CEMS data, with reporting through quarterly compliance reports. The lack of such requirements renders the submitted SIP inadequate.

(E) Lack of practical enforceability of PM_{10}, SO_2, and NO_X emission limits at Kennecott Power Plant. Submitted SIP section IX.H.2.i.(1)(f), which applies to Kennecott Power Plant, does not specify any metering devices or other measurement techniques for monitoring the rate of fuel consumption at the Kennecott Power Plant. Values for fuel consumption are needed to determine compliance with emission limits in submitted SIP sections IX.H.2.i(1)(a) and (b). In contrast to the submitted SIP, the EPA-approved SIP does specify the location and technique of measuring natural gas consumption. Without specific, accurate, and replicable techniques for measuring both the natural gas consumption and the coal consumption, Utah's submitted emission limits for Kennecott Power Plant are not practically enforceable and the submitted SIP is not approvable. In addition, the opening sentence in submitted SIP section IX.H.2.i.(1)(f) reads, ''To determine compliance with a daily limit owner/operator shall calculate a daily limit.'' This is unclear. This lack of clarity also undermines SIP enforceability.

(F) Stack tests once every five years are not frequent enough for re-establishing NO_X emission factors at Central Valley Water Reclamation. Submitted SIP section IX.H.2.b.(2), which applies to Central Valley Water Reclamation, requires a stack test at least once every five years, for re-establishing emission factors necessary to show compliance with NO_X emission limits at the engines. All of the engines are equipped with air-fuel ratio controllers that must be adjusted properly to avoid excessive NO_X emission rates, and some of the engines are also equipped with catalytic converters for NO_X control that can degrade if not maintained properly. Thus, EPA considers once every five years not frequent enough to ensure compliance with the limit. Once every year or every three years typically appears in other sections of the EPA-approved SIP for other sources where emission control devices are involved, and should be required here also. Less frequent stack testing is not acceptable without monitoring of catalyst degradation and proper adjustment of air-fuel ratio controllers on a reasonable frequency.

Unlike the submitted SIP, the EPA-approved SIP requires monthly NO_X emission measurement by a portable analyzer at all engines at Central Valley Water Reclamation. For the engines equipped with catalytic converters, the EPA-approved SIP also requires monthly evaluation of catalyst degradation.

The EPA-approved SIP also restricts Central Valley Water Reclamation's fuel to natural gas or digester gas, a restriction that Utah assumed would continue to apply when it prepared its emission inventory for its maintenance plan. However, Utah did not include the restriction in the submitted SIP. This restriction must be enforceable to be a valid assumption in the maintenance demonstration.

(ii) Blanket exemptions from emission limits at refineries during startup/shutdown/malfunction periods. Submitted SIP section IX.H.1.h.(1)(a) says the requirement for 95% sulfur removal efficiency at refinery SRUs applies ''except for startup, shutdown, or malfunction of the SRU.'' Similarly, submitted SIP section IX.H.1.h.(1)(b) indicates that the requirement to reduce the hydrogen sulfide (H_2S) content of the refinery plant gas to 0.10 grains per dry standard cubic foot (160 parts per million or less) applies ''except for startup, shutdown, or malfunction of the amine plant.'' These provisions constitute blanket exemptions during startups, shutdowns, and malfunctions. EPA's interpretations regarding treatment of emissions during these periods in SIPs are more fully described in the following EPA Federal Register notices and policy memoranda: (1) September 20, 1999, memorandum from Steve Herman and Robert Perciasepe, EPA Assistant Administrators, to EPA Regional Offices, entitled ''State Implementation Plans: Policy Regarding Excess Emissions During Malfunctions, Startup, and Shutdown''; (2) April 27, 1977, final rule, ''Utah SO_2 Control Strategy'' (42 FR 21472); and 3) November 8, 1977, final rule, ''Idaho SO_2 Control Strategy'' (42 FR 58171.) In short, EPA believes that it is inconsistent with the CAA to allow blanket exemptions from compliance with emission standards in SIPs for periods of startup, shutdown, and malfunction. This is because excess emissions during such periods may aggravate air quality so as to prevent attainment or interfere with maintenance of the NAAQS. Generally, EPA has said that such excess emissions must be treated as violations.[27] Thus,

[27] In our September 20, 1999, policy memorandum, we indicated that in certain limited circumstances, it may be appropriate for states, in consultation with EPA, to create narrowly-tailored exceptions in their SIPs to otherwise applicable emission limits during startup and shutdown. A state seeking to include such a narrowly-tailored startup/shutdown exception in its SIP would need to analyze the potential worst-case emissions that could occur during startup and shutdown and associated impacts on ambient air quality. The memorandum also identified other factors that EPA believes it would be important for a state to address. Also, in our September 1999 memorandum, we indicated that a SIP revision including such a narrowly-tailored startup/shutdown exception should, among other things, require the source owner or operator to show, following an exceedance of the otherwise applicable emission limit, that it operated its facility in a manner consistent with good practice for minimizing emissions; that it used

Continued

EPA proposes to disapprove the maintenance plan because it includes by reference these inappropriate exemptions in submitted SIP section IX.H.

(iii) Lack of appropriate restrictions for flaring emissions at refineries. Submitted SIP section IX.H.1.i.(2)(f) says: ''Emissions due to upset flaring shall not be included in the daily (24-hr) or annual compliance demonstrations.'' As indicated above, EPA cannot approve SIP provisions that provide blanket exemptions from compliance with emission standards for malfunction or upset emissions. We recognize that flares are sometimes used as emergency devices, but this does not justify excluding upset flare emissions at the refineries from limits in the SIP. (See, e.g., the Billings/Laurel SO_2 Federal Implementation Plan, 73 FR 21418, April 21, 2008.) We are concerned that flare emissions during upsets might interfere with maintenance of the NAAQS, and that submitted SIP section IX.H.1.i(2) would explicitly ignore such emissions for purposes of assessing compliance with daily and annual emissions caps.

The submitted SIP also does not properly address flare emissions during periods other than upsets. In submitted SIP section IX.H.2, it is unclear whether Utah intended flare emissions (even in non-upset situations) to be accounted for in determining compliance with the daily and annual emission caps at the refineries. For example, submitted SIP section IX.H.2.c.(2)(a) for Chevron provides: ''Combined emissions of sulfur dioxide from gas-fired compressor drivers and all external combustion process equipment, including the FCC CO Boiler and Catalyst Regenerator, shall not exceed 2.977 tons/day.'' A similar form of emission limit is expressed for the other four refineries as well. It is unclear whether the term ''external combustion process equipment'' includes the refinery flares. Refinery flaring can be a significant source of emissions that should be clearly accounted for in the maintenance plan. Even if it were clear that flare emissions were included in the emission limits for the refineries, Utah's submitted SIP does not specify an adequate means to determine flare emissions. The submitted SIP states that emissions from external combustion process equipment shall be determined by multiplying the appropriate emission factor (from section IX.H.1.i.2 or from testing) by the relevant parameter (e.g. hours of operation, feed rate, or quantity of fuel combusted). However, as noted above, submitted SIP section IX.H.1.i.2 specifies no emission factors for PM_{10} and NOx. For SO_2, an emission factor is specified, based on sampling of H_2S in refinery fuel gas. But, it is highly unlikely that H_2S content sampled in the refinery fuel gas would be representative of H_2S going to the flare during all periods of operation. Also, this approach would not account for other sulfur compounds that may be going to the flare. Finally, Utah's submitted SIP provides no means to determine flow to the flares (in either normal operation or upset situations), which would be essential to determining flare emissions. Because Utah did not properly address flare emissions, the maintenance plan is unapprovable.

(iv) Deletion of certain NO_X emission limits at Bountiful City Power. The EPA-approved SIP includes NO_X emission limits of 79.5 lbs/hr and 3.70 grams/hp-hr for the 9,750-horsepower dual-fuel engine, which is by far the largest potential emitting unit at the Bountiful facility. No emission limits or restrictions on operating hours are included for this engine in the submitted SIP. Similarly, the submitted SIP deletes emission limits for other dual-fuel engines, but contains no restriction on their operation. The maintenance plan's inventory and maintenance demonstration does not properly account for the lack of restrictions or limits on these engines.

(v) Permits for Kennecott Power Plant superseding the SIP. For Kennecott Power Plant, submitted SIP sections IX.H.2.i.(1)(a) and (g) provide that the requirements in submitted SIP sections IX.H.2.i.(1)(a) through (f) for emission limits and compliance demonstration requirements apply ''unless and until'' a Notice of Intent (i.e., New Source Review permit application) is submitted for ''specific technologies'' and an Approval Order (permit) is issued. This revision would undermine the enforceability of the SIP because a control measure relied on in the maintenance plan could be changed through an Approval Order, making the original limit unenforceable. Also, the process for issuing an Approval Order is an inadequate substitute for revising the SIP. The latter requires EPA approval and public involvement at both state and Federal levels. Section 110(i) of the Act, with exceptions not relevant here, does not allow a state to revise stationary source SIP requirements through issuance of an Approval Order (i.e., a New Source Review permit.)

(vi) Lack of restriction on annual NO_X emissions at Kennecott Bingham Canyon Mine, and lack of restriction on daily emissions of any pollutant. Utah's inventory assumes that NO_X emissions from the mine are limited to 5,078 tons per year, but submitted SIP section IX.H.2.h.(1) contains no corresponding NO_X limit or operating restrictions consistent with NO_X emission rates used in the inventory. It only limits SO_2 emissions. Submitted SIP section IX.H.2.h.(1) also does not restrict daily emissions of PM_{10}, NO_X, or SO_2. Since the PM_{10} maintenance plan must address the PM_{10} NAAQS, which is a 24-hour standard, the maintenance plan must include a daily emissions limit or daily operating restriction corresponding to the daily PM_{10}, NO_X, and SO_2 emission rates necessary to demonstrate maintenance. The lack of these limits renders the maintenance demonstration invalid.

(vii) Lack of requirement for control of fugitive particulate emissions at Kennecott Bingham Canyon Mine. Submitted SIP section IX.H.2.h.(1) does not include any requirements to control fugitive particulate emissions, even though the inventory and maintenance demonstration assume that fugitive dust emissions from the mine are limited. This is a significant change from the EPA-approved SIP, which contains numerous measures for control of fugitive particulate emissions from the mine.

Because of the numerous deficiencies in submitted SIP section IX.H, the maintenance plan for Salt Lake County is inadequate to ensure maintenance of the PM_{10} NAAQS as required by section 175A(a) of the Act.

b. Prior stationary source control measures for Salt Lake County sources are not included as potential contingency measures. Pursuant to section 175A(d) of the Act, the maintenance plan must include as potential contingency measures all control measures that were contained in the SIP for the area before redesignation. As noted above, as part of its adoption of the maintenance plan for Salt Lake County, Utah revised as a matter of State law the stationary source limits for Salt Lake County sources in section IX.H of the SIP, sometimes removing them entirely and sometimes making them less stringent. Contrary to the

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best efforts to meet the otherwise applicable emission limit; that it took all possible steps to minimize the impact of emissions during startup and shutdown on ambient air quality; and that it minimized to the maximum extent practicable the frequency and duration of operation in startup or shutdown mode. Utah has not provided any analysis demonstrating the effects of these exceptions, as they relate to startup and shutdown periods, on the ability of the area to attain and maintain the standard, nor has Utah attempted to address any of the other criteria that EPA has recommended to support a narrowly-tailored exemption for periods of startup and shutdown.

requirement of section 175A(d) of the Act, the Salt Lake County maintenance plan does not list as a potential contingency measure the re-implementation of the prior version of the Salt Lake County stationary source control measures. While we are proposing to disapprove Utah's proposed changes to the Salt Lake County stationary source control measures, this is an additional, independent reason we are proposing to disapprove the Salt Lake County maintenance plan. Put another way, even if we could approve all of Utah's proposed changes to the stationary source control measures, we would be unable to approve the maintenance plan because it fails to list as a potential contingency measure the re-implementation of the relevant measures.

4. Deficiencies Applicable to the Utah County Maintenance Plan

a. Maintenance plan relies on deficient measures for stationary sources in Utah County. Utah revised as a matter of State law the stationary source control measures for Utah County in section IX.H.3 of the SIP, incorporated these State-revised measures into its proposed maintenance plan (see submitted SIP Section IX.A.10, pages 30–31), and based its maintenance demonstration on the assumption that these State-revised measures would be approved into the SIP by EPA and would therefore be in place. Utah's revisions to section IX.H.3 are not approvable. Specifically, Utah has added emission limits for Payson City Power to IX.H.3. As part of those limits, Utah has included an exemption from opacity limits for certain periods during startup and shutdown. Utah has not adequately explained or justified this exemption as a narrowly-tailored exception to the otherwise applicable emission limits in accordance with our interpretation of the Act or established appropriate conditions for such an exception. (See discussion above in section IV.B.3.a.ii of this action regarding excess emissions during startup, shutdown, and malfunctions.) This is another reason the Utah County maintenance plan, which relies on the control measures in submitted SIP section IX.H.3, is unapprovable.

V. Sections IX.H.1–4 of Utah's September 2, 2005 Submission

We are proposing to disapprove the provisions contained in submitted SIP sections IX.H.1–4. In section IV of this action, above, we identify a number of deficiencies in submitted sections IX.H.1–3. Based on these deficiencies, submitted sections IX.H.1–3 do not meet the requirements of section 110 of the Act.

We also note in section IV, above, that Utah has either removed or altered a number of stationary source requirements in section IX.H.2. Section 110(l) of the Act provides that EPA shall not approve a SIP revision if it would interfere with any applicable requirement concerning attainment and reasonable further progress or any other applicable requirement of the Act. The maintenance plan for PM_{10} is not approvable, and there has been no section 110(l) demonstration that these proposed changes will not interfere with attainment of the PM_{10} or other NAAQS, or with additional Act requirements. We believe these proposed changes pose a problem under section 110(l) of the Act because they will likely result in an increase in emissions in the Salt Lake County area, which is already experiencing violations of the PM_{10}, $PM_{2.5}$, and ozone NAAQS. Thus, this is another reason we cannot approve Utah's submitted revisions to section IX.H.2.

We are proposing to disapprove submitted SIP section IX.H.4 (''Establishment of Alternative Requirements'') because this section depends on the validity of submitted sections IX.H.1–3, which we are proposing to disapprove. Submitted section IX.H.4 would permit Utah to establish alternatives to the requirements in sections IX.H.1–3 through the use of Utah's Title V operating permits program. Submitted section IX.H.4 reads, in part, as follows:

> In lieu of the requirements imposed pursuant to Subsections IX.H.1, 2 and 3 above, a facility owner may comply with alternative requirements, provided the requirements are established pursuant to the permit issuance, renewal, or significant permit revision process found in R307–415 and are consistent with the streamlining procedures and guidelines set forth in Subsections b and c below.

In other words, the requirements of submitted sections IX.H.1–3 are a necessary benchmark for the implementation of submitted section IX.H.4. Because we are proposing to disapprove submitted sections IX.H.1–3, we are also proposing to disapprove submitted section IX.H.4.

VI. Rule Revisions

With the redesignation requests and maintenance plans, Utah submitted several specific rule revisions. Utah relied on some of these revised rules to support the maintenance plans. Evidently, Utah made other rule revisions in anticipation that we would redesignate the areas from nonattainment to attainment. We evaluate each of these provisions below.

A. R307–101–2. ''Definitions.'' Utah deleted certain definitions from this rule and revised or added others. We evaluate these various changes below.

1. Utah deleted the definition for ''Actual Area of Nonattainment.'' We are proposing to disapprove this change because at least one other rule in the EPA-approved SIP uses this term. EPA-approved R307–403–2 requires a source constructed in an actual area of nonattainment to meet certain emission limits. Utah has not given us a revision to R307–403–2 to replace the term ''Actual Area of Nonattainment.'' Also, the term may appear in other provisions of the EPA-approved SIP that EPA has not identified.

2. Utah revised the definition of ''Baseline Date'' so as to redefine the major source baseline date in areas redesignated to attainment. We are proposing to disapprove this change because there is no provision in the Act or our regulations that allows a state to establish a major source baseline date other than January 6, 1975 for PM_{10} and SO_2. (See section 169(4) of the CAA and 40 CFR 51.166(b)(14)(i).)

3. Utah added a definition of ''EPA Method 9.'' Since the definition merely cross-references EPA's definition of Method 9, at 40 CFR part 60, we are proposing to approve it.

4. Utah added a definition for ''Maintenance Area.'' The definition reads, '' 'Maintenance Area' means an area that is subject to the provisions of a maintenance plan that is included in the Utah state implementation plan, and that has been redesignated by EPA from nonattainment to attainment of any National Ambient Air Quality Standard.'' The definition then lists maintenance areas in Utah for different pollutants. We are proposing to approve the first paragraph and subsections (a) and (b) of this addition and to disapprove subsections (c) and (d). Subsections (a) and (b) list maintenance areas for ozone and carbon monoxide. We have redesignated the listed areas from nonattainment to attainment and have approved maintenance plans for the areas. Subsections (c) and (d) list maintenance areas for PM_{10} and SO_2. However, for the listed areas—Salt Lake County, Utah County, and Ogden City for PM_{10}, and Salt Lake County and the eastern portion of Tooele County above 5600 feet for SO_2—we have not approved redesignations or maintenance plans. In addition, in this action, we are proposing to disapprove the redesignation requests and maintenance plans for PM_{10} for Salt Lake County,

Utah County, and Ogden City. While subsections (c) and (d), with one exception, provide that these PM_{10} and SO_2 areas would not be considered maintenance areas until EPA approves the maintenance plans for the areas, we think it would merely confuse the public and the regulated community if we were to approve language that implies that these areas may be maintenance areas or that we may approve redesignation requests and maintenance plans for these areas. The one exception we refer to pertains to Tooele County. Subsection (d) of the definition indicates that the eastern portion of Tooele County above 5600 feet is a maintenance area for SO_2 and contains no condition based on EPA approval of a maintenance plan for the area. Because EPA has not approved a redesignation request or maintenance plan for this area, it is still designated nonattainment for sulfur dioxide (40 CFR 81.34), and it would be inappropriate for us to approve a definition that indicates the area is a maintenance area.

5. Utah revised the definition of ''Nonattainment Area.'' The revised definition reads, '' 'Nonattainment Area' means an area designated by the Environmental Protection Agency as nonattainment under Section 107, Clean Air Act for any National Ambient Air Quality Standard. The designations for Utah are listed in 40 CFR 81.345.'' We are proposing to approve the revised definition because it merely cross-references our official area designations at 40 CFR 81.345.

6. Utah deleted the definition of ''PM10 Nonattainment Area.'' The definition reads, '' 'PM10 Nonattainment Area' means Salt Lake County, Utah County, or Ogden City.'' We are proposing to approve the deletion of this definition based on Utah's revision to the definition of ''Nonattainment Area,'' described immediately above. If we finalize our proposal, the meaning of the term PM_{10} Nonattainment Area will depend on the PM_{10} area designations appearing at 40 CFR 81.345.

7. Utah replaced the term ''PM10 Particulate Matter'' with the term ''PM10.'' We are proposing to approve this change because Utah only changed the term. Utah did not change the definition of the term.

8. Utah revised the definition of ''PM10 Precursor'' to delete the sentence, ''It includes sulfur dioxide and nitrogen oxides.'' The revised definition reads, '' 'PM10 Precursor' means any chemical compound or substance, which, after it has been emitted into the atmosphere, undergoes chemical or physical changes that convert it into particulate matter, specifically PM10.'' We are proposing to approve this change because the deletion of the one sentence will not change the meaning of the term. Sulfur dioxide and nitrogen oxides would still be considered PM_{10} precursors under Utah's revised definition. In a memorandum to the Utah Air Quality Board dated June 23, 2005, the Utah Division of Air Quality indicated that the specific reference to sulfur dioxide and nitrogen dioxides was removed to avoid the implication that there were no other PM_{10} precursors to consider.

9. Utah added a definition of ''Road.'' We are proposing to approve this definition as it merely defines the term to mean any public or private road.

10. Utah changed the definition of ''Significant'' by substituting the term ''PM10'' for the term ''PM10 Particulate Matter.'' We are proposing to approve this change because it coincides with Utah's substitution of the term ''PM10'' for ''PM10 Particulate Matter'' elsewhere in the Definitions section.

B. R307–165. ''Emission Testing.'' Utah's revised rule contains five sections: R307–165–1, ''Purpose;'' R307–165–2, ''Testing Every 5 Years;'' R307–165–3, ''Notification of DAQ;'' R307–165–4, ''Test Conditions;'' and R307–165–5, ''Rejection of Test Results.'' R307–165–1 is new. The other four sections are contained in the EPA-approved SIP, but Utah has renumbered them and made revisions to them. R307–165–2 provides that emission testing is required at least once every five years for all sources with emission limits in Approval Orders or in section IX.H of the SIP (i.e., the PM_{10} SIP limits). In addition, R307–165–2 provides that the Utah Air Quality Board may grant exceptions to the mandatory testing requirements of R307–165–2 that are consistent with the purposes of R307. We believe five years is not frequent enough to satisfy the requirements of the Act and our regulations for practical enforceability and periodic testing and inspection of stationary sources. (See, e.g., sections 110(a)(2)(A), (C), and (F) of the Act; 40 CFR 51.210, 51.212.) We recognize that the five-year period is contained in the EPA-approved SIP. However, it would be inappropriate for us to re-approve this provision. It would also be inappropriate for us to re-approve the Board's discretionary authority to grant exceptions to R307–165–2's mandatory testing requirements because the exercise of such discretionary authority would undermine the enforceability of the SIP.

C. R307–302. ''Davis, Salt Lake, Utah, Weber Counties: Residential Fireplaces and Stoves.'' Utah's revised R307–302 contains residential fuel-burning restrictions and has five sections: R307–302–1, ''Definitions;'' R307–302–2, ''Applicability;'' R307–302–3, ''No-Burn Periods for Fine Particulate;'' R307–302–4, ''No-Burn Periods for Carbon Monoxide;'' and R307–302–5, ''Opacity for Residential Heating.'' R307–302–1 is unchanged from the EPA-approved rule. R307–302–2 is new. R307–302–3 and 4 are contained in the EPA-approved rule, but Utah has renumbered and made revisions to them. The restrictions in R307–302–5, which are new to R307–302, also appear in EPA-approved R307–201–3; but, the geographic scope of R307–302–5 is more limited. Finally, Utah has deleted EPA-approved R307–302–4, ''Violations,'' from its State rules.

We are proposing to approve some parts of Utah's revised R307–302 and disapprove other parts. We are proposing to approve R307–302–1, R307–302–2(1), and R307–302–3, as submitted by Utah, and we are proposing to approve Utah's deletion of EPA-approved R307–302–4, for the following reasons:

1. R307–302–1 merely defines ''Sole Source of Heat'' and is unchanged from the current SIP. The definition is acceptable, and, thus, we are proposing to re-approve it.

2. R307–302–2(1), part of Utah's new ''Applicability'' section, specifies that the residential fuel burning restrictions for particulate matter contained in R307–302–3 (''No-Burn Periods for Fine Particulate'') apply in parts of Utah County, all of Salt Lake County, all of Davis County, and in parts of Weber County. This represents an expansion of the geographic scope of the EPA-approved particulate matter provision, which applies in only part of Davis County and does not apply in any part of Weber County. This expansion in area strengthens the rule. Thus, we are proposing to approve R307–302–2(1).

3. Revised R307–302–3 (''No-Burn Periods for Fine Particulate''), specifies residential fuel-burning restrictions and requirements for particulate matter only, including the trigger levels for mandatory no-burn periods. These provisions are essentially the same as those contained in the EPA-approved rule, except that Utah has expanded the area in which the rule would apply through the applicability provisions in revised R307–302–2(1) and has submitted for our approval contingency provisions that are not part of the EPA-approved SIP. If the contingency provisions are triggered, no-burn periods would start when monitored PM_{10} levels reached 110 micrograms per cubic meter instead of the normal 120

micrograms per cubic meter, and restrictions on sale and installation of solid fuel burning devices would go into effect. Because these changes would strengthen the SIP, we are proposing to approve them.[28]

4. The EPA-approved version of R307–302–4 (''Violations'') provides that it is a violation of R307–302 to operate a residential solid fuel burning device or fireplace during a mandatory no-burn period. Utah deleted this provision from R307–302 and indicated in response to comments that it removed this provision because it was redundant and unnecessary. According to Utah, ''As with all of our other rules, if a person does not comply with the requirements, it is considered a violation of the rule.'' We agree that this deletion will not affect the State's, EPA's, or citizens' ability to enforce the requirements of the rule. Thus, we are proposing to approve the deletion of R307–302–4 (''Violations'').

We are proposing to disapprove R307–302–2(2) and (3), R307–302–4, and R307–302–5, as submitted by Utah, and we are proposing to disapprove Utah's proposed deletion of EPA-approved R307–302–3. These provisions are distinct from the parts of R307–302 we are proposing to approve because they either relate to a different pollutant (carbon monoxide) or a different requirement (opacity limit.) We are proposing to disapprove these submitted provisions for the following reasons:

1. R307–302–2(2), R307–302–4, and Utah's proposed deletion of current EPA-approved R307–302–3. The current EPA-approved version of R307–302–3 (''No-Burn Periods for Carbon Monoxide'') contains residential fuel burning restrictions for carbon monoxide. Its no-burn requirements apply to Orem City as well as Provo. Utah has renumbered R307–302–3 as R307–302–4. In addition, through the addition of new applicability provisions in R307–302–2(2) and changes within R307–302–4, Utah has reduced the area to which the no-burn requirements for carbon monoxide would apply. Specifically, they would no longer apply to Orem City. As noted previously, section 110(l) of the Act provides that EPA shall not approve a SIP revision if it would interfere with any applicable requirement concerning attainment and reasonable further progress or any other applicable requirement of the Act. There has been no section 110(l) demonstration that this change would not interfere with attainment or maintenance of NAAQS. We believe the change poses a problem under section 110(l) of the Act because it may result in an increase in emissions from residential fuel burning in Orem City that could have a negative effect on attainment or maintenance of one or more NAAQS. Thus, we are proposing to disapprove R307–302–2(2) and R307–302–4, as submitted by Utah, as well as Utah's proposed deletion of the current EPA-approved version of R307–302–3.[29]

2. R307–302–2(3) and R307–302–5. R307–302–2(3), part of Utah's new ''Applicability'' section in R307–302, specifies that the opacity limits in R307–302–5 (''Opacity for Residential Heating'') apply in ''both areas,'' which is a reference to the geographic areas specified in R307–302–2(1) and R307–302–2(2). As noted above, we are proposing to disapprove submitted R307–302–2(2). If we disapprove R307–302–2(2) as proposed, the meaning of R307–302–2(3), and the geographic scope of R307–302–5, will be unclear. Thus, we are also proposing to disapprove submitted R307–302–2(3) and R307–302–5.

As mentioned above, the same opacity restrictions contained in R307–302–5 are also contained in current EPA-approved R307–201–3. The only difference is that R307–201–3 applies everywhere in the State, while R307–302–5 was apparently only intended to apply in certain areas along the Wasatch Front. Utah has not submitted changes to R307–201–3 or proposed that it be deleted from the EPA-approved SIP. Because R307–201–3 is still in the EPA-approved SIP, there will be no gap in the coverage of the opacity limits on residential heating if we disapprove submitted R307–302–2(3) and R307–302–5.

D. R307–305. ''Nonattainment and Maintenance Areas for PM_{10}: Emission Standards.'' Utah's revised R307–305 specifies certain generic requirements and standards that would apply within PM_{10} nonattainment and maintenance areas. The rule would replace the current EPA-approved version of R307–305 (''Davis, Salt Lake and Utah Counties and Ogden City, and Nonattainment Areas for PM_{10}: Particulates''). The revised rule has seven sections: R307–305–1, ''Purpose;'' R307–305–2, ''Applicability;'' R307–305–3, ''Visible Emissions;'' R307–305–4, ''Particulate Emission Limitations and Operating Parameters (PM_{10});'' R307–305–5, ''Compliance Testing (PM_{10});'' R307–305–6, ''Automobile Emission Control Devices;'' and R307–305–7, ''Compliance Schedule for New Nonattainment Areas.'' R307–305–1, –2, –6, and –7 are new. R307–305–3 through 5 are contained in the EPA-approved rule as R307–305–1 through 3, but Utah has made revisions to these sections. Also, Utah has deleted EPA-approved rule sections R307–305–4, ''Compliance Schedule (PM_{10});'' R307–305–5, ''Particulate Emission Limitations and Operating Parameters (TSP);'' R307–305–6, ''Compliance Schedule (TSP);'' and R307–305–7, ''Compliance Testing (TSP).''

We are proposing to disapprove Utah's revised R307–305 for the following reasons:

1. Revised R307–305–3 contains opacity limits for various sources in PM_{10} nonattainment and maintenance areas. While Utah kept the generic opacity limit of 20% for most sources and clarified various aspects of the rule, Utah deleted a 40% opacity limit that applied to certain older sources in areas other than PM_{10} nonattainment areas. Utah has not explained the deletion of the 40% opacity limit. There has been no section 110(l) demonstration that the deletion of the 40% opacity limit would not interfere with attainment of NAAQS or other Act requirements. We believe that deletion of this standard poses a problem under section 110(l) of the Act because it may lead to an increase in emissions that could have a negative impact on attainment or maintenance of one or more NAAQS. Therefore, we cannot approve the deletion.

Utah also added an exemption, at R307–305–3(4), from R307–305–3's opacity limits for short exceedances during various periods, including startup and shutdown. We recognize that EPA-approved R307–201 contains the same exemption. However, Utah has not explained or justified this exemption as a narrowly tailored exception to the otherwise applicable emission limits in accordance with our interpretation of the Act or established appropriate conditions for such an exception. (See discussion above in section IV.B.3.A.ii of this action regarding excess emissions during startup, shutdown, and malfunctions.) Thus, we do not consider it appropriate to re-approve the exemption.

2. Utah's revised R307–305 deletes various provisions from the EPA-

[28] We note that Utah did not submit one subsection of revised R307–302–3 to us for approval—specifically, R307–302–3(4), which contains no-burn triggers based on $PM_{2.5}$ concentrations. This is an entirely new provision that is not in the EPA-approved version of the rule. Because Utah did not submit it to us, we cannot act on it.

[29] If we finalize our proposal, both the current EPA-approved version of R307–302–3, which relates to no-burn periods for carbon monoxide, and Utah's revised R307–302–3, which relates to no-burn periods for particulate matter and that we are proposing to approve today, would be part of the Federally enforceable SIP.

approved SIP (R307–305–5 through –7) that pertain to control of total suspended particulates in Weber County, including emission limits for seven sources. There has been no section 110(l) demonstration that the deletion of these emission limits and related requirements will not interfere with attainment of NAAQS or other Act requirements. Utah, in its response to comments for its rulemaking action, indicated that some of the sources listed in EPA-approved R307–305–5 no longer exist, but did not specify which sources no longer exist. Utah also said that source Approval Orders contain equivalent or more stringent emission limits, but such Approval Orders are not a substitute for limits in the SIP. We believe that deletion of the limits poses a problem under section 110(l) of the Act because it may lead to an increase in emissions that could have a negative impact on attainment or maintenance of one or more NAAQS.

In addition, section 193 of the Act provides that no control requirement in effect before November 15, 1990 (which would include the provisions in EPA-approved R307–305–5 through –7) in any area which is nonattainment for any pollutant may be modified in any manner unless the modification insures equivalent or greater emission reductions of such air pollutant. Ogden City, where some of the sources may be located, is nonattainment for PM_{10}, and Weber County has recorded a violation of the $PM_{2.5}$ NAAQS and has been designated nonattainment for that standard. We are unable to determine that Utah's proposed revisions to R307–305 will insure equivalent or greater emission reductions of $PM_{2.5}$ or PM_{10}.

Because we are unable to conclude that approval would be consistent with the requirements of sections 110(l) and 193 of the Act, we are proposing to disapprove Utah's revised R307–305.

E. R307–306. ''PM_{10} Nonattainment and Maintenance Areas: Abrasive Blasting.'' Utah's R307–306 establishes requirements that apply to abrasive blasting operations in PM_{10} nonattainment and maintenance areas. The EPA-approved SIP does not include a rule numbered R307–306. However, the EPA-approved SIP does include R307–206, which contains essentially the same requirements for abrasive blasting requirements, but applies to both attainment and nonattainment areas.

We are proposing to disapprove R307–306 because the test method for measuring opacity at intermittent abrasive blasting operations is not adequate. As with the test method specified in submitted SIP section IX.H.1.g, which we discuss in section IV.B.2.b of this action, subsection R307–306–5 of R307–306 says: ''Visible emissions from intermittent sources shall use procedures similar to Method 9, but the requirement for observations to be made at 15 second intervals over a six minute period shall not apply.'' This language is not sufficiently clear.[30] The language must indicate what test method will apply. Without this, we cannot be assured that the opacity limits for intermittent abrasive blasting operations will be enforceable.

F. R307–309. ''Nonattainment and Maintenance Areas for PM10: Fugitive Emissions and Fugitive Dust.'' This rule, which is not in the EPA-approved SIP, establishes work practices and emission standards for sources of fugitive emissions and fugitive dust listed in section IX.H of the SIP or located in PM_{10} nonattainment or maintenance areas. The EPA-approved SIP does include R307–1–4.05 (''Emissions Standards. Fugitive Emissions and Fugitive Dust''), which contains provisions to control fugitive emissions and fugitive dust in both attainment and nonattainment areas.

We are proposing to disapprove R307–309. First, the rule doesn't adequately specify in an enforceable form the requirements that sources must meet to limit fugitive dust and fugitive emissions. For example, for mining activities and tailings piles and ponds, owners or operators must ''take steps to minimize fugitive dust'' (R307–309–10 and R307–309–11). This is not sufficiently defined to be an enforceable standard. R307–309–6(2) merely suggests potential control measures. Further detail is left to a fugitive dust control plan that is not part of the rule and that can be approved or modified without EPA approval or public input. EPA is unable to verify that the control plans for such sources are adequate to ensure attainment and maintenance of the NAAQS or meet other Act requirements.

Second, R307–309–5, a subsection of R307–309, specifies opacity limits for fugitive dust, but then indicates these limits do not apply when wind speeds exceed 25 miles per hour and the owner or operator is taking ''appropriate actions to control fugitive dust.'' This exemption does not appear in EPA-approved R307–1–4.05, and we believe the exemption could lead to an increase in emissions. Furthermore, the rule defines ''appropriate actions to control fugitive dust'' by reference to the fugitive dust control plan, which, as explained above, EPA has no opportunity to review or approve. Finally, the rule does not adequately define or specify the method for measuring opacity at intermittent sources. We discuss this issue in greater detail in section IV.B.2.b of this action.

Third, R307–309 contains certain requirements that pertain to roads that would constitute a relaxation of EPA-approved R307–1–4.05.

There has been no section 110(l) demonstration that the various changes R307–309 would make to EPA-approved R307–1–4.05 would not interfere with attainment or maintenance of NAAQS or other Act requirements. We believe the proposed changes pose a problem under section 110(l) of the Act because they may lead to an increase in emissions that could have a negative impact on attainment or maintenance of one or more NAAQS, particularly since Salt Lake County and Utah County have already experienced exceedances of the PM_{10} NAAQS associated with fugitive emissions and dust.

We're also concerned that approval of R307–309 would make it difficult for us to delineate which aspects of EPA-approved R307–1–4.05 remain in force and which do not. We recognize that EPA-approved R307–1–4.05 contains some of the same flaws we describe above. However, once we've identified issues with the enforceability of current provisions, it would be inappropriate for us to reapprove them.

G. R307–310. ''Salt Lake County: Trading of Emission Budgets for Transportation Conformity.'' EPA is proposing to take no action on the change to this rule. Utah has merely added section R307–310–5, ''Transition Provision,'' to the EPA-approved R307–310 (which contains only R307–310–1 through 4), but has resubmitted the entire rule. R307–310–5 indicates that R307–310–1 through –4 only remain in effect until EPA approves the conformity budgets in Utah's PM_{10} maintenance plan for Salt Lake County. R307–310–1 through –4 allow trading between the Salt Lake County PM_{10} attainment plan's motor vehicle emission budgets for PM_{10} and NO_X.[31] EPA is proposing to disapprove the Salt Lake County PM_{10} maintenance plan and, as noted in section VII below, the maintenance plan's motor vehicle emission budgets. Our disapproval of the motor vehicle emissions budgets would moot any potential effect of R307–310–5; thus, there would be no

[30] We recognize that this language is similar to language in EPA-approved R307–201, which applies to R307–206. However, due to the problems with this language, it would be inappropriate for us to re-approve it.

[31] EPA approved the PM_{10} attainment plan on July 8, 1994 (59 FR 35036.)

purpose in our acting on R307–310–5. If, as proposed, we do not act on Utah's revised R307–310, the provisions of EPA-approved R307–310–1 through 4 will continue in effect.

H. R307–110–10. ''Section IX, Control Measures for Area and Point Sources, Part A, Fine Particulate Matter.'' The rule incorporates by reference into Utah's rules the submitted PM_{10} maintenance plans for Salt Lake County, Utah County, and Ogden City. Because we are proposing to disapprove the maintenance plans, we are also proposing to disapprove this rule.

I. R307–110–17. ''Section IX, Control Measures for Area and Point Sources, Part H, Emissions Limits.'' The rule incorporates by reference into Utah's rules the stationary source requirements contained in submitted SIP section IX.H. Because we are proposing to disapprove the provisions in submitted IX.H.1–4, we are also proposing to disapprove this rule.

VII. Transportation Conformity—Motor Vehicle Emissions Budgets

We are proposing to disapprove the motor vehicle emissions budgets contained in the submitted Salt Lake County, Utah County, and Ogden City PM_{10} maintenance plans. The transportation conformity provisions of section 176(c)(2)(A) of the CAA require regional transportation plans and programs to show that ''* * * emissions expected from implementation of plans and programs are consistent with estimates of emissions from motor vehicles and necessary emissions reductions contained in the applicable implementation plan* * *'' These ''estimates of emissions'' are in the form of motor vehicle emissions budgets (40 CFR 93.118).

Consistent with 40 CFR 93.118(e)(4)(iv), EPA will not approve a motor vehicle emissions budget unless the budget, ''when considered together with all other emissions sources, is consistent with applicable requirements for * * * maintenance.'' As described in section IV.B of this action, above, we are proposing to disapprove the submitted PM_{10} maintenance plans and maintenance demonstrations for Salt Lake County, Utah County, and Ogden City. In that section, we identify a number of concerns with the assumptions Utah used in the modeling, including Utah's inappropriate treatment of Kennecott's banked SO_2 emissions and unjustified reduction of re-entrained road dust emissions. We also identify concerns with the control measures underlying Utah's maintenance demonstration. Due to these various concerns, we cannot find that the submitted maintenance plans will be adequate to maintain the PM_{10} NAAQS for the 10-year period, as required by section 175A of the Act.

Utah modeled its proposed motor vehicle emission budgets in its submitted maintenance plans along with emission projections for all other source categories. Under 40 CFR 93.118(e)(4)(iv), we cannot evaluate the adequacy of the motor vehicle emission budgets without considering the overall adequacy of the maintenance demonstrations, and in particular the modeling supporting the demonstrations, because the same modeling provided the basis for the proposed motor vehicle emissions budgets. Because the maintenance demonstrations for all three areas are invalid, we are unable to conclude that the motor vehicle emissions budgets, when considered together with all other emissions sources, are consistent with maintenance of the PM_{10} NAAQS.

If we finalize our proposed disapproval of the motor vehicle emissions budgets in the submitted maintenance plans, those budgets will be unavailable for use in conformity determinations, and the areas will need to continue [32] addressing transportation conformity as follows:

A. Salt Lake County: Per 40 CFR 93.118, conformity will have to be shown to the following 2003 motor vehicle emissions budgets: 40.30 tons per day (tpd) of direct PM_{10} and 32.30 tpd of NO_X. These values are derived from the Salt Lake County PM_{10} attainment plan that EPA approved on July 8, 1994 (59 FR 35036).

B. Utah County: Per 40 CFR 93.118, conformity will have to be shown to the following motor vehicle emissions budgets, which are contained in the Utah County PM_{10} attainment plan that EPA approved on December 23, 2002 (67 FR 78181):

Year	Direct PM_{10} (tpd)	NO_X (tpd)
2003	6.57	20.35
2010	7.74	12.75
2020	10.34	5.12

C. Ogden City: Because EPA has not approved a PM_{10} SIP revision for the Ogden City area, there are no motor vehicle emissions budgets as defined in 40 CFR 93.101. Instead, conformity demonstrations will have to show that direct PM_{10} and NO_X emissions are either not greater than 1990 emissions or not greater than ''no build'' emissions (40 CFR 93.119(d)). The 1990 direct PM_{10} emissions and NO_X emissions for the Ogden City area are currently defined as 4.57 tpd and 2.28 tpd, respectively.

[32] The submitted maintenance plans' motor vehicle emissions budgets have not been available for use pending this action because EPA never determined the budgets to be adequate pursuant to 40 CFR 93.118(e) and (f).

VIII. Proposed Action

As described above, EPA is proposing to disapprove Utah's September 2, 2005 redesignation requests for the Salt Lake County, Utah County, and Ogden City PM_{10} nonattainment areas, the submitted PM_{10} maintenance plans for these areas, and the motor vehicle emissions budgets contained in the maintenance plans. EPA is proposing to approve some of the associated SIP revisions, disapprove others, and take no action on one rule revision.

EPA is also proposing to find that it is not required to act on proposed SIP revisions that Utah submitted on July 11, 1996 and June 2, 1997 because those revisions have been superseded by revisions Utah subsequently adopted.

EPA is soliciting public comments on its proposed rulemaking as discussed in this document. These comments will be considered before taking final action. Interested parties may participate in the Federal rulemaking process by submitting written comments to EPA as discussed in this action.

IX. Statutory and Executive Order Reviews

A. Executive Order 12866, Regulatory Planning and Review

Under Executive Order 12866, (58 FR 51735 (October 4, 1993)) the Agency must determine whether the regulatory action is ''significant'' and therefore subject to the Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Order defines ''significant regulatory action'' as one that is likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.''

The OMB has exempted this regulatory action from Executive Order 12866 review.

B. Paperwork Reduction Act

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* This action merely proposes to partially approve and partially disapprove revisions to the Utah State Implementation Plan and to disapprove a redesignation request.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

This proposed rule will not have a significant impact on a substantial number of small entities because SIP approvals and disapprovals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements, but simply approve or disapprove requirements that the state is already imposing. Similarly, disapproval of a redesignation request only affects the legal designation of an area under the Clean Air Act and does not create any new requirements. Therefore, because the Federal SIP approval/disapproval and redesignation disapproval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities.

Moreover, due to the nature of the Federal-state relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.,* v. *U.S. EPA,* 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub. L. 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to state, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

EPA has determined that this rule does not contain a Federal mandate that may result in expenditures of $100 million or more for state, local, and tribal governments, in the aggregate, or the private sector in any one year. This Federal action proposes to partially approve and partially disapprove pre-existing requirements under state or local law, and to disapprove a redesignation request, and imposes no new requirements. Accordingly, no additional costs to state, local, or tribal governments, or to the private sector, result from this action. Thus, today's rule is not subject to the requirements of sections 202 and 205 of the UMRA.

E. Executive Order 13132, Federalism

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure ''meaningful and timely input by state and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that 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.''

This proposed rule does not have federalism implications. It will 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. This rule merely proposes to partially approve and partially disapprove state rules implementing a Federal standard, and to disapprove a redesignation request, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. Thus, Executive Order 13132 does not apply to this rule.

F. Executive Order 13175, Coordination With Indian Tribal Governments

Executive Order 13175, entitled Consultation and Coordination with Indian Tribal Governments (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications. This proposed rule does not have tribal implications, as specified in Executive Order 13175. It will not have substantial direct effects on tribal governments, 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. This action does not involve or impose any requirements that affect Indian Tribes. Thus, Executive Order 13175 does not apply to this rule.

EPA specifically solicits additional comment on this proposed rule from tribal officials.

G. Executive Order 13045, Protection of Children From Environmental Health Risks and Safety Risks

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) is determined to be economically significant as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and

explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Order has the potential to influence the regulation. This proposed rule is not subject to Executive Order 13045 because it proposes to partially approve and partially disapprove a state rule implementing a Federal program and to disapprove a redesignation request.

H. Executive Order 13211, Actions That Significantly Affect Energy Supply, Distribution, or Use

This rule is not subject to Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (''NTTAA''), Public Law 104–113, 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This proposed rulemaking does not involve technical standards. Therefore, EPA is not considering the use of any voluntary consensus standards.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements.

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

Dated: November 18, 2009.

Carol Rushin,

Acting Regional Administrator, Region 8.

[FR Doc. E9–28692 Filed 11–30–09; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 09–2263; MB Docket No. 09–190; RM–11566]

Radio Broadcasting Services; Stonewall, Texas

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document sets forth a proposal to amend the FM Table of Allotments, Section 73.202(b) of the Commission's rules, 47 C.F.R. Section 73.202(b). The Commission requests comment on a petition filed by Katherine Pyeatt proposing the allotment of FM Channel 280A as a first local service at Stonewall, Texas. Channel 280A can be allotted at Stonewall in compliance with the Commission's minimum distance separation requirements with a site restriction of 13.8 km (8.6 miles) southwest of Stonewall, at 30–08–45 North Latitude and 98–45–45 West Longitude. See Supplementary Information infra.

DATES: The deadline for filing comments is December 31, 2009. Reply comments must be filed on or before 15 days following the deadline for initial comments.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW, Washington, DC 20554. In addition to filing comments with the FCC interested parties should serve petitioner, as follows: Katherine Pyeatt, 2215 Cedar Springs Road, Suite 1605, Dallas, Texas 75201.

FOR FURTHER INFORMATION CONTACT: Deborah A. Dupont, Media Bureau, (202) 418–7072.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MB Docket 09–190, adopted October 21, 2009, and released October 23, 2009. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Information Center (Room CY–A257), 445 12th Street, SW., Washington, DC. 20554.

The complete text of this decision may also be purchased from the Commission's copy contractor, Best Copy and Printing, Inc., 445 12th Street, SW, Room CY–B402, Washington, DC 20554, 800–378–3160 or via the company's website, http://www.bcpiweb.com.

This document does not contain proposed information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, therefore, it does not contain any proposed information collection burden ''for small business concerns with fewer than 25 employees,'' pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, see 44 U.S.C. 3506(c)(4).

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all ex parte contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible ex parte contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

PART 73 – RADIO BROADCAST SERVICES

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, 336.

$ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Texas, is amended by adding Stonewall, Channel 280A.

Federal Communications Commission.

Federal Communications Commission.

John A. Karousos,

Assistant Chief,

Audio Division,

Media Bureau.

[FR Doc. E9–28671 Filed 11–30–09; 8:45 am]

BILLING CODE 6712–01–S