

inspection during normal business hours at the following locations: Air Programs Branch, U.S. Environmental Protection Agency, Region VIII, 999 18th Street, suite 500, Denver, Colorado 80202-2466; and Division of Air Quality, Utah Department of Environmental Quality, P.O. Box 44820, 150 North 1950 West, Salt Lake City, Utah 84114-4820.

**FOR FURTHER INFORMATION CONTACT:** Vicki Stamper, 8ART-AP, U.S. Environmental Protection Agency, Region VIII, 999 18th Street, suite 500, Denver, Colorado 80202-2466, (303) 293-1765.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

*A. Nonattainment NSR Requirements of the Amended Act*

The air quality planning requirements for nonattainment NSR are set out in part D of title I of the Act. The EPA has issued a "General Preamble" describing EPA's preliminary views on how EPA intends to review SIPs and SIP revisions submitted under part D, including those State submittals containing nonattainment area NSR SIP requirements (see 57 FR 13498 (April 16, 1992) and 57 FR 18070 (April 28, 1992)). Because EPA is describing its interpretations here only in broad terms, the reader should refer to the General Preamble for a more detailed discussion of the interpretations of part D advanced in this notice and the supporting rationale. A brief discussion of the specific elements required in a State's nonattainment NSR program is also included in Section II.B. of this notice.

EPA is currently developing rule revisions to implement the changes under the 1990 Clean Air Act Amendments in the NSR provisions of parts C and D of title I of the Act. The EPA anticipates that the proposed rule will be published for public comment in early 1995. If EPA has not taken final action on States' NSR submittals by that time, EPA may generally refer to the proposed rule as the most authoritative guidance available regarding the approvability of the submittals. EPA expects to take final action to promulgate the rule revisions to implement the part C and D changes in early 1996. Upon promulgation of those revised regulations, EPA will review NSR SIPs to determine whether additional SIP revisions are necessary to satisfy the requirements of the rulemaking.

Prior to EPA approval of a State's NSR SIP submission, the State may continue permitting only in accordance with the new statutory requirements for permit

applications completed after the relevant SIP submittal date. This policy was explained in transition guidance memoranda from John Seitz dated March 11, 1991 and September 3, 1992.

As explained in the March 11 memorandum, EPA does not believe Congress intended to mandate the more stringent title I NSR requirements during the time provided for SIP development. States were thus allowed to continue to issue permits consistent with requirements in their current NSR SIPs during that period, or to apply 40 CFR 51, Appendix S for newly designated areas that did not previously have NSR SIP requirements.

The September 3, 1992 memorandum also addressed the situation where States did not submit the part D NSR SIP revisions by the applicable statutory deadline. For permit applications complete by the SIP submittal deadline, States may issue final permits under the prior NSR rules, assuming certain conditions in the September 3 memorandum are met. However, for applications completed after the SIP submittal deadline, EPA will consider the source to be in compliance with the Act where the source obtains from the State a permit that is consistent with the substantive new NSR part D provisions in the amended Act. EPA believes this guidance continues to apply to permitting pending final action on Utah's NSR SIP submittal.

*B. Volatile Organic Compound Definition*

On February 3, 1992, EPA promulgated a definition of volatile organic compounds (VOCs) in 40 CFR 51.100(s). See 57 FR 3941-3946. Therefore, Utah updated its definition of VOCs in its regulations to reflect the federal definition. That revised definition was submitted by the State on June 10, 1994.

**II. Analysis of State Submission**

Section 110(k) of the Act sets out provisions governing EPA's review of SIP submittals (see 57 FR 13565-13566).

*A. Procedural Background*

**1. New Source Review Rules**

The Act requires States to observe certain procedural requirements in developing implementation plans and plan revisions for submission to EPA. Section 110(a)(2) of the Act provides that each implementation plan submitted by a State must be adopted after reasonable notice and public

hearing.<sup>1</sup> Section 110(l) of the Act similarly provides that each revision to an implementation plan submitted by a State under the Act must be adopted by such State after reasonable notice and public hearing.

The EPA also must determine whether a submittal is complete and therefore warrants further EPA review and action (see section 110(k)(1) and 57 FR 13565, April 16, 1992). The EPA's completeness criteria for SIP submittals are set out at 40 CFR part 51, appendix V. The EPA attempts to make completeness determinations within 60 days of receiving a submission. However, a submittal is deemed complete by operation of law under section 110(k)(a)(B) if a completeness determination is not made by EPA within 6 months after receipt of the submission.

The State of Utah held public hearings on June 2, 1993 for the VOC/nitrogen oxides (NO<sub>x</sub>) offset provisions and on August 4, 1993 for the other NSR revisions to entertain public comment on these SIP revisions. Following the public hearings, the VOC/NO<sub>x</sub> offset rule was adopted by the State on June 17, 1993 and the other NSR revisions were adopted on September 30, 1993. These rule revisions were submitted to EPA on November 12, 1993 as a proposed revision to the SIP, along with other ozone SIP revisions and the ozone redesignation request for the Salt Lake and Davis County nonattainment areas.

Specifically, the State submitted revisions to its NSR permitting regulations in Utah Air Conservation Regulation (UACR) R307-1-1 and R307-1-3. The revisions to the State's NSR regulations were made to bring the State's NSR rules for all of its nonattainment areas up-to-date with the amended Act.

The SIP revisions were reviewed by EPA to determine completeness shortly after its submittal, in accordance with the completeness criteria referenced above. The initial submittal was found to be incomplete, and a letter dated January 19, 1994 was forwarded to the Governor indicating the administrative and technical deficiencies in the submittal. The State of Utah sued EPA on March 18, 1994 regarding EPA's incompleteness finding (State of Utah v. EPA, Case No. 94-9520). As part of the lawsuit settlement, EPA agreed to allow the State to repackage its submittal and request parallel processing of the ozone redesignation request for Salt Lake and Davis Counties. Therefore, on June 27,

<sup>1</sup> Section 172(c)(7) of the Act provides that plan provisions for nonattainment areas shall meet the applicable provisions of Section 110(a)(2).