as specified by Executive Order 13175 (59 FR 22951, November 9, 2000).

Executive Order 13132: Federalism

This action also does not have Federalism implications because it does not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely disapproves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the CAA.

Executive Order 13045: Protection of Children From Environmental Health and Safety Risks

This rule also is not subject to Executive Order 13045 ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it disapproves a state rule implementing a Federal Standard.

National Technology Transfer Advancement Act

In reviewing state submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. In this context, in the absence of a prior existing requirement for the state to use voluntary consensus standards (VCS), EPA has no authority to disapprove a state submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a state submission, to use VCS in place of a state submission that otherwise satisfies the provisions of the CAA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply.

Paperwork Reduction Act

This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. section 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 14, 2012. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Ozone, Particulate matter, Reporting and recordkeeping requirements.

Dated: May 30, 2012.

Susan Hedman,

Regional Administrator, Region 5.

Therefore, 40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

■ 1. The authority citation for part 52 continues to read as follows:

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

■ 2. Amend § 52.2591 by adding paragraphs (c) and (d) to read as follows:

§ 52.2591 Section 110(a)(2) infrastructure requirements.

* * * * *

(c) *Disapproval.* EPA is disapproving the portions of Wisconsin's infrastructure SIP for the 1997 ozone NAAQS with respect to two narrow issues that relate to section 110(a)(2)(C):

(1) The requirement for consideration of NOx as a precursor to ozone; and

(2) The definition of ''major modification'' related to fuel changes for certain sources.

(d) *Disapproval.* EPA is disapproving the portions of Wisconsin's infrastructure SIP for the 1997 $PM_{2.5}$ NAAQS with respect to two narrow issues that relate to section 110(a)(2)(C):

(1) The requirement for consideration of NOx as a precursor to ozone; and

(2) The definition of ''major modification'' related to fuel changes for certain sources.

[FR Doc. 2012–14417 Filed 6–14–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R08–OAR–2011–0719; FRL–9683–1]

Approval, Disapproval and Promulgation of Air Quality Implementation Plan; Utah; Maintenance Plan for the 1-Hour Ozone Standard for Salt Lake and Davis Counties

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is partially approving and partially disapproving State Implementation Plan (SIP) revisions submitted by the Governor of Utah on February 22, 1999. These revisions updated the State of Utah's maintenance plan for the 1-hour ozone standard for Salt Lake County and Davis County. As part of this action, EPA is also addressing certain actions it took in 2003 concerning such maintenance plan. This action is being taken under section 110 of the Clean Air Act (CAA).

DATES: This action is effective on July 16, 2012.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–R08–OAR–2011–0719. All documents in the docket are listed on the *http://www.regulations.gov* Web site. Although listed in the index, some information may not be publicly available, i.e., Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *http://www.regulations.gov* or in hard copy at EPA Region 8, Air Quality Planning Unit (8P–AR), 1595 Wynkoop Street, Denver, Colorado 80202. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding federal holidays.

FOR FURTHER INFORMATION CONTACT: Jody Ostendorf, Air Program, Mailcode 8P–

AR, Environmental Protection Agency, Region 8, 1595 Wynkoop Street, Denver, Colorado 80202–1129, (303) 312–7814, or *ostendorf.jody@epa.gov*.

SUPPLEMENTARY INFORMATION:

Information is organized as follows:

Table of Contents

I. Background of State Submittal
II. EPA's Analysis of the Revisions to the Maintenance Plan for the 1-Hour Ozone Standard for Salt Lake County and Davis County
III. Response to Comments
IV. Final Action
V. Statutory and Executive Order Reviews

Definitions

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

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

(ii) The initials *ACT* mean or refer to Alternative Control Guidance Document.

(iii) The initials *CO* mean or refer to carbon monoxide.

(iv) The initials *EPA,* and the words ''*we,*'' ''*us,*'' or ''*our,*'' mean or refer to the Environmental Protection Agency.

(v) The initials *NAAQS* mean or refer to national ambient air quality standards.

(vi) The initials NO_X mean or refer to nitrogen oxides.

(vii) The initials *RACT* mean or refer to reasonably available control technology.

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

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

I. Background of State Submittal

Under the CAA enacted in 1970, EPA established national ambient air quality standards (NAAQS) for certain pervasive air pollutants, such as photochemical oxidant, carbon monoxide (CO), and particulate matter. The NAAQS represent concentration levels below which public health and welfare are protected. The 1970 Act also required states to adopt and submit SIPs to implement, maintain, and enforce the NAAQS.

SIP revisions are required from time-to-time by the CAA to account for new or amended NAAQS or to meet other changed circumstances. The CAA was significantly amended in 1977, and under the 1977 Amendments, EPA promulgated attainment status designations for all areas of the country with respect to the NAAQS.

The CAA requires EPA to periodically review and revise the NAAQS, and in 1979, EPA established a new NAAQS of 0.12 ppm for ozone, averaged over 1 hour. This new NAAQS replaced the oxidant standard of 0.08 ppm. See 44 FR 8202 (February 8, 1979). Areas designated nonattainment for oxidant were considered to be nonattainment for ozone as well. Part D of CAA Title I requires special measures for areas designated nonattainment. In 1984, EPA approved Utah's SIP for the 1-hour ozone standard for the Salt Lake County and Davis County nonattainment area (49 FR 32575).

Congress significantly amended the CAA again in 1990. Under the 1990 Amendments, each area of the country that was designated nonattainment for the 1-hour ozone NAAQS, including Salt Lake County and Davis County, was classified by operation of law as marginal, moderate, serious, severe, or extreme nonattainment depending on the severity of the area's air quality problem. The ozone nonattainment designation for Salt Lake County and Davis County continued by operation of law according to section 107(d)(1)(C)(i) of the CAA, as amended in 1990. Furthermore, the area was classified by operation of law as moderate for ozone under CAA section 181(a)(1).

Under CAA section 175A, states may request redesignation of a nonattainment area to attainment if monitoring data showed that the area has met the NAAQS and certain other requirements. On July 18, 1995, both Salt Lake and Davis Counties were found to be attaining the 1-hour ozone standard (60 FR 36722). On July 17, 1997, EPA approved the State's request to redesignate Salt Lake and Davis County to attainment for the 1-hour ozone standard. As part of that action, EPA approved the State's 1-hour ozone maintenance plan (62 FR 38213).

On July 18, 1997, EPA promulgated an 8-hour ozone NAAQS (62 FR 38856). This standard was intended to replace the 1-hour ozone standard.

On February 22, 1999, partially in response to EPA's promulgation of the 8-hour ozone NAAQS, but for other purposes as well, Utah submitted six revisions to its approved 1-hour maintenance plan. These revisions consisted of the following: (1) Changes to the nitrogen oxides (NO_X) Reasonably Available Control Technology (RACT) provisions; (2) clarification of the transportation conformity provisions; (3) removal of budgets for sources other than on-road mobile sources; (4) changes to the trigger for contingency measures; (5) removal of the commitment to develop an annual inventory for point sources; and (6) removal of references to CO in various sections of the maintenance plan. EPA did not act on the revisions at the time, in part because of a 1999 legal challenge to the 1997 8-hour ozone NAAQS.

On December 31, 2002, Utah submitted what it characterized as non-substantive changes to the 1-hour ozone maintenance plan. The primary purpose of the changes was to revise cross-references in the 1-hour maintenance plan to Utah air rules whose numbering Utah had changed. EPA approved these changes in 2003 (68 FR 37744, June 25, 2003). Subsequently, EPA discovered that in the June 25, 2003 action it had inadvertently incorporated by reference certain changes to the contingency measures provision in the 1-hour ozone maintenance plan that were substantive in nature and had not been previously approved—i.e., the proposed changes to the contingency measures that Utah had submitted on February 22, 1999. On October 15, 2003, EPA issued a technical correction to delete the changes to the contingency measures provision from the approved SIP (68 FR 59327).

We have since discovered that Utah's December 31, 2002, submittal included other revisions from its February 22, 1999, submittal that were substantive in nature. These revisions included the (1) Changes to the NO_X RACT provisions, (2) removal of the commitment to develop an annual inventory for point sources, and (3) removal of references to CO in some sections of the maintenance plan. Because we were not aware that we had inadvertently approved these revisions in 2003, we did not issue a technical correction to reverse our approval. As we explain more fully below, in this action we are proposing to ratify our 2003 inadvertent approval of these revisions.

On April 30, 2004, EPA designated areas of the country for the 1997 8-hour ozone standard. EPA designated all areas in Utah, including Salt Lake County and Davis County, as unclassifiable/attainment for the 1997 8-hour ozone NAAQS (69 FR 23858, April 30, 2004).

Also, on April 30, 2004, EPA revoked the pre-existing 1-hour NAAQS (69 FR 23951; 40 CFR 50.9(b)). As part of this rulemaking, EPA also established certain requirements to prevent backsliding in those areas that were designated as nonattainment for the 1-hour ozone standard at the time of designation for the 8-hour ozone standard, or that were redesignated to ''attainment'' but subject to a maintenance plan, as is the case for Salt Lake County and Davis County. These requirements are codified at 40 CFR 51.905.

In the case of Utah, one of these requirements was to submit a maintenance plan for the 1997 8-hour ozone standard. Also, the rule clarifies

that revisions to pre-existing 1-hour ozone maintenance plans must be approved by EPA and must meet the requirements of CAA sections 110(l) and 193. It also clarifies that EPA will not approve certain changes to the 1-hour ozone maintenance plan until a state in Utah's position has submitted and EPA has approved the maintenance plan for the 1997 8-hour ozone standard. We have not approved a maintenance plan for the 1997 8-hour ozone standard for Salt Lake County or Davis County.

On March 22, 2007, the Governor of Utah submitted a maintenance plan for the 1997 8-hour ozone standard for Salt Lake County and Davis County, and associated rule revisions. EPA is not taking action on that submittal at this time.[1] Rather, EPA is only acting on the revisions to the maintenance plan submitted on February 22, 1999.

II. EPA's Analysis of the Revisions to the Maintenance Plan for the 1-Hour Ozone Standard for Salt Lake County and Davis County

The State's February 22, 1999, submittal included six revisions to the 1-hour ozone maintenance plan. As noted above, the State's December 31, 2002, submittal included some of the same revisions, and we inadvertently approved some of those revisions. We describe the various revisions and our analysis of them in the following paragraphs.

A. Section IX.D.2.b(4)(a), ''NO_X RACT.'' The State's 1999 submittal proposed to remove from the maintenance plan a commitment to address new ''Alternative Control Guidance Documents (ACTs)'' for NO_X issued by EPA. That commitment read as follows:

> As the EPA publishes ACT documents containing new determinations of what constitutes RACT for various source categories of NO_X located within nonattainment areas for ozone, the State will either make a negative declaration for that source category in Salt Lake and Davis Counties, or will revise the Air Conservation Rules to reflect such determinations. This documentation will then be submitted to EPA for approval as a specific SIP revision according to the schedule included in the final guidance. In the absence of such an implementation schedule the State will act as expeditiously as practicable.

As noted, we inadvertently approved the removal of this commitment and accompanying introductory language in our 2003 action, in which we only intended to approve non-substantive changes to numbering and cross-references.

In this action, we are proposing to ratify our 2003 approval for the following reasons. First, when we approved the maintenance plan in 1997, we simultaneously approved Utah's NO_X RACT exemption request for major stationary sources in the 1-hour ozone nonattainment area, except to the extent the SIP already included specific NO_X RACT requirements (62 FR 28403, May 23, 1997; 62 FR 38213, July 17, 1997). The basis for our approval was that ambient air quality monitoring data showed that the area met the 1-hour ozone standard of 0.12 ppm without additional RACT measures. Thus, if the maintenance plan had omitted the commitment regarding future NO_X ACTs, we would have approved it; the commitment was not required or necessary, and the purpose of Utah's revision to the maintenance plan was to align the plan with the NO_X RACT exemption request. In light of our approval of that exemption request, the removal of the commitment in the maintenance plan is reasonable, since it is not needed to ensure maintenance of the 1-hour ozone NAAQS.

Second, ACTs do not determine what constitutes RACT; instead they evaluate a range of potential control options. EPA has updated only two NO_X ACTs since we approved the maintenance plan in 1997—one for cement manufacturing and one for internal combustion engines—and we do not read those updates as being ''new determinations of what constitutes RACT.'' In other words, we conclude that the commitment has not been triggered, even if there are sources in the maintenance area for which the updated ACTs would be relevant. We also conclude that the commitment will not be triggered in the future because EPA does not determine RACT in ACTs. Thus, we conclude that the removal of the commitment from the maintenance plan will not interfere with attainment of any NAAQS or any other applicable requirement of the CAA. See CAA section 110(l).

B. Section IX.D.2.f(3), ''Safety Margin,'' and Table 9, ''Safety Margin.'' The State's 1999 submittal proposed to modify the maintenance plan's language regarding the use of any safety margin for transportation conformity determinations and to add new Table 9, which specifies the safety margin available for various years. For a maintenance plan, our regulations define safety margin as the amount by which the total projected emissions from all sources of a given pollutant are less than the total emissions that would satisfy the maintenance requirement. 40 CFR 93.101. The existing language in Utah's 1-hour ozone maintenance plan uses the term ''emissions credit'' rather than ''safety margin.'' Also, the existing language doesn't identify the available safety margin. The revised language uses the term ''safety margin,'' which is consistent with EPA's regulations, and indicates that the safety margin is defined in Table 9 of the maintenance plan. Our regulations require that the safety margin be explicitly quantified in the SIP before it may be used for conformity purposes. 40 CFR 93.124. The revised language also clarifies and strengthens the procedures for use of the safety margin for transportation or general conformity determinations. Use of all or a portion of the safety margin for general conformity purposes would require EPA approval of a SIP revision. Also, the Utah Board would need to approve the use of any part of the safety margin for either transportation or general conformity purposes. We find that the revisions to Section IX.D.2.f(3) and the addition of Table 9 are consistent with our conformity regulations and will not interfere with maintenance of the 1-hour ozone standard, attainment or maintenance of any other NAAQS, or any other CAA requirement.

C. Section IX.D.2.f, Table 8. The State's 1999 submittal proposed to remove from Table 8 of the maintenance plan the budgets for sources other than on-road mobile sources. The previously approved maintenance plan contains budgets for area sources, non-road mobile sources, and point sources, in addition to the budgets for on-road mobile sources. These budgets are specified for years 1994 through 2006, 2007 (the end of the maintenance period), 2015, and 2020. The 2007 budgets are identical to the inventory values used to demonstrate maintenance in 2007. Under our general conformity regulations, these 2007 inventory values for sources other than on-road mobile sources are defined as budgets for general conformity regardless of whether they are explicitly stated in the maintenance plan. We also note that the 2007 budgets are more stringent than the 2015 and 2020 budgets (except for two instances in which the differences are very slight). Thus, we find that the removal of the 2015 and 2020 budgets for sources other than on-road mobile sources will make it more difficult to show general conformity. In this sense, removal of such budgets will make the SIP more stringent. In addition, we have confirmed with the State that the State

[1] The area violated the 1997 8-hour ozone standard based on monitored data for 2005–2007. Thus, we have suggested that Utah withdraw and revise its maintenance plan for the 1997 8-hour ozone standard.

has never allowed reliance on such budgets for a general conformity showing. Finally, such budgets are not needed to ensure ongoing maintenance of the 1-hour ozone NAAQS; nor will their removal from the maintenance plan interfere with the attainment or maintenance of other NAAQS or compliance with other CAA requirements. Thus, we approve the removal from the maintenance plan of the budgets for area, on-road mobile, and point sources.

D. Section IX.D.2.h(2), ''Determination of Contingency Action Level.'' The State's 1999 submittal proposed to change the maintenance plan's trigger for contingency measures. Instead of a defined trigger, the revised plan would allow the State to consider several factors in deciding whether contingency measures should be implemented to attain or maintain the 8-hour ozone standard. The revision would also redefine the contingency trigger date to be the date the State determines that one or more contingency measures should be implemented. EPA is disapproving these changes.

Our consistent interpretation has been that contingency measures in a maintenance plan must include a pre-defined trigger, such as a violation of the standard. In the maintenance plan, the State must commit to implement one or more contingency measures within a set period after the violation. The revised SIP does not include a pre-defined trigger, and, thus, we disapprove the State's revisions to Section IX.D.2.h(2) of the maintenance plan.[2]

While 40 CFR 51.905(e) discusses modifications that may be implemented upon revocation of the 1-hour standard, including removal of the obligation to implement contingency measures upon a violation of the 1-hour NAAQS, the modifications only apply to areas with an approved maintenance plan for the 8-hour ozone standard. The State does not have an approved 8-hour ozone maintenance plan.

E. Section IX.D.2.j(1), ''Tracking System for Verification of Emission Inventory.'' The State's 1999 submittal proposed to remove the maintenance plan's reference to an annual inventory for point sources. Specifically, section IX.D.2.j(1)(b) of the previously approved maintenance plan includes the State's commitment to develop an annual inventory for point sources in the area. A separate section of the previously approved maintenance plan—section IX.D.2.j(1)(a)—includes a commitment to update the inventory for all source categories every three years. The State's 1999 submittal did not propose to change this latter commitment.

As noted, in our 2003 action we inadvertently approved the removal of the State's commitment to develop an annual inventory for point sources. In that 2003 action, we only intended to approve non-substantive changes to numbering and cross-references. In this action, we are ratifying our 2003 approval of the State's removal of the commitment to develop an annual inventory for point sources. Approval is warranted because such an inventory is not needed to ensure maintenance of the 1-hour ozone NAAQS. Nor will removal of the commitment to submit an annual inventory for point sources interfere with attainment or maintenance of any other NAAQS or compliance with any other CAA requirement. The maintenance plan retains the requirement that the State update its inventory of all source categories every three years. This is consistent with EPA's regulatory requirements for inventories, and we find that a three-year frequency is adequate to track emissions relevant to the maintenance plan.

F. Various Sections. The State's 1999 submittal proposed to remove all references to CO because CO is not a significant contributor to ozone formation. These references occur in a variety of locations in the 1-hour ozone maintenance plan. For example, the maintenance plan includes inventories for CO, transportation conformity budgets for CO, budgets for CO for sources other than on-road mobile sources, and references to inspection and maintenance provisions for CO.

As noted, we inadvertently approved the removal of some of these references to CO in our 2003 action, in which we only intended to approve non-substantive changes to numbering and cross-references. In this action, we are ratifying our 2003 approval of the State's removal of some of the references to CO and approving the State's removal of all other references to CO in the 1-hour ozone maintenance plan.

First, we agree with the State that CO is not a significant contributor to ozone formation. Thus, there is no need for CO measures to ensure maintenance of the 1-hour ozone standard or any other ozone standard. Second, the removal of the CO measures in the 1-hour ozone maintenance plan will not interfere with attainment or maintenance of any other NAAQS or compliance with any other CAA requirement. In particular, there are no CO nonattainment areas in Utah. Within Salt Lake and Davis Counties, the only maintenance area for CO is Salt Lake City. It has its own maintenance plan, with its own motor vehicle emissions budgets and CO measures. In addition, recent monitored ambient CO values for Salt Lake City and other areas in Utah are well below the level of the CO NAAQS.

Thus, the removal of CO measures in the 1-hour ozone maintenance plan is consistent with continued maintenance of the 1-hour ozone NAAQS and with CAA section 110(l).

G. Miscellaneous. As noted above, we previously approved revisions to the 1-hour ozone maintenance plan that the State submitted on December 31, 2002, a date that post-dates the date of the revisions we are proposing to act on today. In particular, in our June 25, 2003 action on the December 31, 2002 submittal, we approved Utah's updating of references in the 1-hour ozone maintenance plan to Utah air rules whose numbering Utah had changed after it submitted revisions to the 1-hour ozone maintenance plan in 1999. See 68 FR 37744. We are retaining the updated references to Utah air rules as we approved them in our June 25, 2003 action. We are not replacing these updated references with the older references contained in the 1-hour ozone maintenance plan that Utah submitted in 1999.

III. Response to Comments

We received one comment letter on our April 10, 2012 notice of proposed rulemaking, from the Utah Division of Air Quality (UDAQ). Below we provide a summary of, and our response to, the State's comment.

Comment: UDAQ comments on EPA's proposed disapproval of Utah's revisions to the contingency measure provisions in the 1-hour ozone maintenance plan. UDAQ recommends that EPA approve the revisions. In the alternative, UDAQ asks that if partial disapproval is deemed necessary, EPA indicated that it will not require a revision of the plan or initiate work on a Federal Implementation Plan. UDAQ reasons that it would not be an acceptable use of limited state or EPA resources to prepare a revised plan for the 1-hour ozone standard, which has not been violated in the area since 1992 and which was revoked in 2005. UDAQ also indicates that ozone levels have continued to drop and that Salt Lake and Davis Counties were declared attainment areas for both the 1997 and 2008 ozone NAAQS. UDAQ asserts that it is not possible for Utah to revise the

[2] We note that one of the potential contingency measures (stage two vapor recovery) has not been approved by EPA as a stand-alone SIP measure; however it is part of the maintenance plan.

1-hour ozone maintenance plan because any new regulatory requirements for ozone in Utah must reflect the current ozone standard, not the standard that was in effect 15 years ago and has been revoked in Utah. UDAQ also suggests that the contingency measure language in the federally-approved SIP is not practically enforceable by EPA. UDAQ states that it submitted a new maintenance plan in 2007 that addresses the 1997 ozone NAAQS and that contains an automatic trigger for contingency measures and a different set of contingency measures. UDAQ notes that EPA has not acted on the 2007 maintenance plan.

Response: The comments do not provide a basis for us to reverse our proposed disapproval of Utah's revisions to the contingency measure provisions. As noted in our April 10, 2012 proposal (77 FR 21515) and in section II, above, EPA's consistent interpretation has been that contingency measures in a maintenance plan must include a pre-defined trigger, such as a violation of the standard. In the maintenance plan, the State must commit to implement one or more contingency measures within a set period after the violation. The revised maintenance plan does not include a pre-defined trigger. Therefore, we cannot approve the State's revision.

This disapproval does not trigger a FIP obligation because the approved SIP remains in place and, contrary to UDAQ's assertion, remains federally enforceable. This is a well-established principle concerning SIPs—once approved, their provisions remain federally enforceable unless and until EPA approves a revision. As a practical matter, this may have little significance because Utah has been attaining the 1-hour ozone standard for many years and the relevant areas were designated unclassifiable/attainment for the 1997 and 2008 ozone standards. Thus, a violation of the 1-hour standard is unlikely. Nonetheless, as noted in our proposal and in section I above, the revocation of the 1-hour ozone standard did not automatically eliminate existing 1-hour ozone plan provisions from the SIP. Any changes require EPA approval, and EPA will not approve the removal of contingency measures for the 1-hour ozone standard until an area has an approved maintenance plan for the 8-hour ozone NAAQS. 77 FR 21514, 21515; 40 CFR 51.905(e). We intend to address Utah's 2007 maintenance plan for the 1997 ozone standard and any plans for the 2008 standard in separate actions, as necessary.[3]

IV. Final Action

For the reasons described above, we are taking the following actions concerning Utah's revisions to the 1-hour ozone maintenance plan for Salt Lake and Davis Counties:[4]

A. We are ratifying our June 25, 2003 approval (at 68 FR 37744) of the following revisions to the 1-hour ozone maintenance plan that Utah submitted on December 31, 2002:

1. The revisions to Section IX.D.2.b(4)(a), ''NOx RACT;''

2. The revisions to subsection IX.D.2.j(1)(b) of Section IX.D.2.j(1), ''Tracking System for Verification of Emission Inventory;'' and

3. The removal of references to CO in the sections of the plan that we approved on June 25, 2003.

B. We are approving the revisions to the 1-hour ozone maintenance plan that Utah submitted on February 22, 1999 except for the following:

1. The revisions to Section IX.D.2.h(2), ''Determination of Contingency Action Level,'' which EPA is disapproving;

2. The revisions to the remainder of Section IX.D.2.h, which were superseded by the revisions to the plan that EPA approved on June 25, 2003;

3. The revisions to Sections IX.D.2.b, IX.D.2.d(1)(a), IX.D.2.e(1), IX.D.2.f(1)(a), IX.D.2.i, and IX.D.2.j, which were superseded by the revisions to the plan that EPA approved on June 25, 2003.

V. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations (42 U.S.C. 7410(k), 40 CFR 52.02(a)). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this final action merely approves some state law as meeting Federal requirements and disapproves other state law because it does not meet Federal requirements; this action does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and,
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have Tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the State, and EPA notes that it will not impose substantial direct costs on Tribal governments or preempt Tribal law.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

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

Dated: May 24, 2012.

James B. Martin,

Regional Administrator, Region 8.

Part 52, Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

[3] The area violated the 1997 8-hour ozone standard based on monitored data for 2005–2007. Thus, we have previously suggested that Utah may want to withdraw and revise its maintenance plan for the 1997 8-hour ozone standard.

[4] All section and table references are to sections and tables in the 1-hour ozone maintenance plan for Salt Lake and Davis Counties.

PART 52—[AMENDED]

■ 1. The authority citation for part 52 continues to read as follows:

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

Subpart TT—Utah

■ 2. Amend § 52.2320 by adding paragraph (c)(70) to read as follows:

§ 52.2320 Identification of plan.

* * * * *

(c) * * *

(70) On February 22, 1999, the Governor submitted revisions to the Ozone Maintenance Provisions for Salt Lake and Davis Counties, Section IX, Part D.2 of the Utah State Implementation Plan (SIP). EPA is approving the revisions except for the following: the revisions to Section IX.D.2.h(2) of the SIP, ''Determination of Contingency Action Level,'' which EPA is disapproving; the revisions to the remainder of Section IX.D.2.h, which were superseded by revisions to the SIP that EPA approved at § 52.2320(c)(56); and the revisions to Sections IX.D.2.b, IX.D.2.d(1)(a), IX.D.2.e(1), IX.D.2.f(1)(a), IX.D.2.i, and IX.D.2.j, which were superseded by revisions to the SIP that EPA approved at § 52.2320(c)(56).

(i) [Reserved]

(ii) Additional material.

(A) Ozone Maintenance Provisions for Salt Lake and Davis Counties, Section IX, Part D.2 that was adopted by the Air Quality Board on June 3, 1998 and submitted by the Governor on February 22, 1999.

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

42 CFR Part 71

[Docket No. CDC–2012–0003]

RIN 0920–AA47

Establishment of User Fees for Filovirus Testing of Nonhuman Primate Liver Samples

AGENCY: Centers for Disease Control and Prevention (HHS/CDC), Department of Health and Human Services (HHS).

ACTION: Correcting amendment.

SUMMARY: On February 10, 2012, the Centers for Disease Control and Prevention (CDC), within the Department of Health and Human Services (HHS) published a Direct Final Rule (DFR) that solicited public comment on the establishment of user fees for filovirus testing of all nonhuman primates that die during the HHS/CDC-required 31-day quarantine period for any reason other than trauma. That document incorrectly listed the effective date as March 12, 2012. On February 10, 2012, HHS/CDC also published in the **Federal Register** a companion Notice of Proposed Rulemaking (NPRM) (77 FR 7109) that proposed identical filovirus testing and user fee requirements. In both the DFR and NPRM, HHS/CDC indicated that if it did not receive any significant adverse comments by April 10, 2012, it would publish a document in the **Federal Register** withdrawing the NPRM and confirming the effective date of the DFR within 30 days after the end of the comment period.

Because of the error in effective date the DFR took effect prior to the expiration of the comment period. Because of this error and due to receiving significant adverse public comments, HHS/CDC is amending 42 CFR 71.53 by removing paragraph (j) which will have the same effect as the withdrawal of the DFR. HHS/CDC will carefully review the comments received on the notice of proposed rulemaking published on February 10, 2012.

DATES: This action is effective June 15, 2012.

FOR FURTHER INFORMATION CONTACT: For questions concerning this document: Ashley A. Marrone, JD, Centers for Disease Control and Prevention, 1600 Clifton Road NE., Mailstop E–03, Atlanta, Georgia 30333; telephone 404–498–1600. For information concerning program operations: Dr. Robert Mullan, Centers for Disease Control and Prevention, 1600 Clifton Road NE., Mailstop E–03, Atlanta, Georgia 30333; telephone 404–498–1600.

SUPPLEMENTARY INFORMATION: On February 10, 2012 HHS/CDC published a Direct Final Rule (DFR) (77 FR 6971) amending 42 CFR 71.53 by adding a new paragraph (j) to establish a user fee for filovirus testing of nonhuman primates. HHS/CDC took this action because (1) testing is no longer being offered by the only private, commercial laboratory that previously performed these tests and (2) we believed that these requirements were non-controversial and unlikely to generate significant adverse comment. The DFR incorrectly listed the effective date as March 12, 2012. On February 10, 2012, HHS/CDC also published a companion Notice of Proposed Rulemaking (NPRM) (77 FR 7109) that proposed identical filovirus testing and user fee requirements in the **Federal Register**. In both the DFR and NPRM, HHS/CDC indicated that if it did not receive any significant adverse comments by April 10, 2012, it would publish a document in the **Federal Register** withdrawing the notice of proposed rulemaking and confirming the effective date of the direct final rule within 30 days after the end of the comment period. Because of the error in effective date the DFR took effect prior to the expiration of the comment period.

HHS/CDC is now amending 42 CFR 71.53 by removing paragraph (j) which will have the same effect as if HHS/CDC had withdrawn the DFR. HHS/CDC is taking this action because of the error in effective date and due to having received significant adverse public comments. HHS/CDC will carefully review the comments received on the notice of proposed rulemaking published on February 10, 2012.

List of Subjects in 42 CFR Part 71

Communicable diseases, Public health, Quarantine, Reporting and recordkeeping requirements, Testing, User fees.

Accordingly, 42 CFR part 71 is corrected by making the following correcting amendment:

PART 71—FOREIGN QUARANTINE

■ 1. The authority citation for part 71 continues to read as follows:

Authority: Secs. 215 and 311 of the Public Health Service (PHS) Act, as amended (42 U.S.C. 216, 243); section 361–369, PHS Act, as amended (42 U.S.C. 264–272); 31 U.S.C. 9701.

§ 71.53 [Amended]

■ 2. Effective June 15, 2012, amend § 71.53 by removing paragraph (j).

Dated: June 6, 2012.

Kathleen Sebelius,

Secretary.

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