standard by the June 15, 2010 attainment date. As explained above, Connecticut's control strategy meets applicable EPA requirements, Connecticut's photochemical grid modeling demonstrated that it would attain the standard by the attainment date, and, based on monitored ozone data the New York City area attained the standard by the attainment date.

With respect to post-attainment date air quality data, EPA has a continuing obligation to review the air quality data each year, to determine whether areas are meeting the NAAQS, and EPA will continue to conduct such review in the future after the data are complete, quality-assured, certified and submitted to EPA.

D. EPA's Evaluation

In summary, the photochemical grid modeling used by Connecticut in its February 1, 2008 SIP submittal meets EPA's guidelines and is acceptable to EPA. Air quality data through 2011 supports the conclusion that the New York City and Greater Connecticut areas did demonstrate attainment of the 8-hour ozone standard by their attainment date. The purpose of the attainment demonstration is to demonstrate how, through enforceable and approvable emission reductions, an area will meet the standard by the attainment date. All necessary ozone control measures have already been adopted, submitted, approved [8] and implemented. Based on (1) The state following EPA's modeling guidance, (2) the air quality data through 2011, (3) the areas attaining the standard by the attainment date, and (4) the implemented SIP-approved control measures, EPA is proposing to approve the Connecticut ozone attainment demonstrations, including the RACM analyses for the Greater Connecticut area and for the Connecticut portion of the New York City area. For similar information about the New Jersey and New York portions of the New York City area, the reader is referred to EPA's approval of the New Jersey and New York ozone attainment demonstrations published on February 11, 2013 (78 FR 9596).

EPA is soliciting public comments on the issues discussed in this notice or on other relevant matters. These comments will be considered before taking final action. Interested parties may participate in the Federal rulemaking procedure by submitting written comments to the EPA New England Regional Office listed in the **ADDRESSES** section of this **Federal Register**.

[8] As noted above, all necessary measures have been approved with the exception of RCSA sections 22a–174–40 and 22a–174–44. EPA will take final action on these two regulations prior to finalizing today's proposal.

V. Proposed Actions

EPA is proposing to approve the Connecticut ozone attainment demonstrations, including the RACM analyses, for both the Connecticut portion of the New York City moderate ozone nonattainment area and for the Greater Connecticut moderate ozone nonattainment area. EPA has evaluated Connecticut's submittal for consistency with the Act, EPA regulations, and EPA policy, and has considered all other information it deems relevant to attainment of the 1997 8-hour ozone standard, i.e., clean data determinations, determinations that the areas attained the standard by the applicable attainment date, statewide RACT, reasonable further progress plan approvals (including all applicable control strategy regulations), continued attainment of the 1997 8-hour ozone standard based on quality assured and certified monitoring data through 2011, and the implementation of the more stringent 2008 8-hour ozone standard.

VI. Statutory and Executive Order Reviews

Under the Clean Air Act, 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 Clean Air Act. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, these actions:

- Are not ''significant regulatory actions'' subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Do not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.);
- Are 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.);
- Do 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);
- Do not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Are not economically significant regulatory actions based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Are not significant regulatory actions subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Are 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
- Do 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, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

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

Dated: April 29, 2013.

H. Curtis Spalding,

Regional Administrator, EPA New England.

[FR Doc. 2013–10929 Filed 5–8–13; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R08–OAR–2012–0746; FRL–9810–9]

Approval and Promulgation of Implementation Plans; Utah; Revisions to Utah Rule R307–107; General Requirements; Breakdowns

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve changes to Utah's rule R307–107, which pertains to source emissions during breakdowns. On April 18, 2011, EPA finalized a rulemaking which found that the Utah State Implementation Plan

(SIP) was substantially inadequate to attain or maintain the national ambient air quality standards (NAAQS) or to otherwise comply with the requirements of the Clean Air Act (CAA) because it included rule R307–107. Concurrent with this finding, EPA issued a SIP call that required the State to revise its SIP by either removing R307–107 or correcting its deficiencies, and to submit the revised SIP to EPA by November 18, 2012. On August 16, 2012, the State submitted to EPA revisions to R307–107. EPA is proposing that these revisions correct the rule's deficiencies and, therefore, satisfy EPA's April 18, 2011 SIP call. If EPA finalizes its proposed approval, all sanctions clocks and the clock for EPA to promulgate a federal implementation plan (FIP) will end.

DATES: Comments must be received on or before June 10, 2013.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R08–OAR–2012–0746, by one of the following methods:

- *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *Email: clark.adam@epa.gov.*
- *Fax:* (303) 312–6064 (please alert the individual listed in the **FOR FURTHER INFORMATION CONTACT** if you are faxing comments).
- *Mail:* Carl Daly, Director, Air Program, U.S. Environmental Protection Agency (EPA), Region 8, Mailcode 8P–AR, 1595 Wynkoop Street, Denver, Colorado 80202–1129.
- *Hand Delivery:* Carl Daly, Director, Air Program, U.S. Environmental Protection Agency (EPA), Region 8, Mailcode 8P–AR, 1595 Wynkoop Street, 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–2012–0746. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *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 *www.regulations.gov* or email. The *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 email comment directly to EPA, without going through *www.regulations.gov,* your email 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 *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 *www.regulations.gov* or in hard copy at the Air Program, U.S. Environmental Protection Agency (EPA), Region 8, 1595 Wynkoop Street, Denver, Colorado 80202–1129. EPA requests that if at all possible, you contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section to view the hard copy of the docket. You may view the hard copy of the docket Monday through Friday, 8:00 a.m. to 4:00 p.m., excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Adam Clark, U.S. Environmental Protection Agency (EPA), Region 8, Mailcode 8P–AR, 1595 Wynkoop Street, Denver, Colorado 80202–1129, (303) 312–7104, *clark.adam@epa.gov.*

SUPPLEMENTARY INFORMATION:

Table of Contents

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 *FIP* mean or refer to federal implementation plan.

iv. The initials *NAAQS* mean or refer to National Ambient Air Quality Standards.

v. The initials *NESHAPS* mean or refer to National Emission Standards for Hazardous Air Pollutants.

vi. The initials *NSPS* mean or refer to New Source Performance Standards.

vii. The initials *SIP* mean or refer to state implementation plan.

viii. The initials *SSM* mean or refer to startup, shutdown, and malfunction.

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

x. The initials *UAQB* mean or refer to the Utah Air Quality Board.

xi. The initials *UDAQ* mean or refer to the Utah Division of Air Quality, Utah Department of Environmental Quality.

xii. The words *1999 Policy* mean or refer to the September 20, 1999 EPA Memorandum signed by Steven A. Herman, Assistant Administrator for Enforcement and Compliance Assurance, and Robert Perciasepe, Assistant Administrator for Air and Radiation, titled ''State Implementation Plans: Policy Regarding Excess Emissions During Malfunctions, Startup, and Shutdown.''

I. General Information

What should I consider as I prepare my comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through *www.regulations.gov* or email. 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

On April 18, 2011, EPA published a final rulemaking in the **Federal Register** (76 FR 21639) that found that the Utah SIP was substantially inadequate to attain or maintain the NAAQS or to otherwise comply with the requirements of the CAA because it included rule R307–107. In particular, we explained that R307–107: (1) Did not treat all exceedances of SIP and permit limits as violations; (2) could have been interpreted to grant the Utah executive secretary exclusive authority to decide whether excess emissions constituted a violation; and (3) improperly applied to Federal technology-based standards such as New Source Performance Standards (NSPS) and National Emission Standards for Hazardous Air Pollutants (NESHAPS). We concluded that R307–107 undermined EPA's, Utah's, and citizens' ability to enforce emission limitations that have been relied on in the SIP to ensure attainment and maintenance of the NAAQS or meet other CAA requirements. 76 FR 21640.

Accordingly, we issued a SIP call which required the State to revise its SIP by either removing R307–107 or correcting its deficiencies, and to submit the revised SIP to us by November 18, 2012. Id. We also explained that if the State failed to submit a complete SIP revision by November 18, 2012, or if we disapproved a submitted SIP revision, clocks would be triggered for mandatory sanctions and for EPA to promulgate a FIP. Id. at 21640–41.

On June 17, 2011, U.S. Magnesium challenged our SIP call in the United States Court of Appeals for the 10th Circuit. On August 6, 2012, the 10th Circuit upheld EPA's SIP call.

On August 16, 2012, the State submitted to EPA revisions to R307–107 for the purpose of correcting the deficiencies described in the SIP call.

III. Revised Utah Rule R307–107 and EPA Analysis

A. The Revised Rule

The State substantially revised and simplified R307–107 in response to our SIP call. The rule now contains three sections—R307–107–1, ''Applicability and Timing,'' R307–107–2, ''Reporting,'' and R307–107–3, ''Enforcement Discretion.''

R307–107–1 requires the owner or operator of a source to report breakdowns to the director within 24 hours of the incident (R307–107–1(1)), to be followed by a detailed written description of the incident and corrective program within 14 days of the start of the incident (R307–107–1(2)). Alternative reporting deadlines apply where emissions are monitored by continuous monitoring systems under R307–170, but even where these alternative deadlines apply, the reports must still contain the information required by R307–107–1(2) and R307–107–2.

R307–107–2 requires breakdown incident reports to include the cause and nature of the event, estimated quantity of emissions, time of emissions, and other relevant evidence, including evidence that:

1. There was an equipment malfunction beyond the reasonable control of the owner or operator;

2. The excess emissions could not have been avoided by better operation, maintenance or improved design of the malfunctioning component;

3. To the maximum extent practicable, the source maintained and operated the air pollution control equipment and process equipment in a manner consistent with good practice for minimizing emissions, including minimizing any bypass emissions;

4. Any necessary repairs were made as quickly as practicable, using off-shift labor and overtime as needed and as possible;

5. All practicable steps were taken to minimize the potential impact of the excess emissions on ambient air quality; and

6. The excess emissions are not part of a recurring pattern that may have been caused by inadequate operation or maintenance, or inadequate design of the malfunctioning component.

R307–107–2 also states that the owner or operator has the burden of proof to demonstrate the above elements.

R307–107–3 states that the director will evaluate, on a case-by-case basis, the information the owner or operator submits pursuant to R307–107–1 and 2 ''to determine whether to pursue enforcement action.''

The version of R307–107 that was the subject of our SIP call stated that ''emissions resulting from unavoidable breakdown will not be deemed a violation of these regulations.'' This exemption, which was part of the reason for our SIP call, has been eliminated in the revised rule. The revised rule does not exempt exceedances of emissions limits caused by breakdowns.

The version of R307–107 that was the subject of our SIP call required the source to submit information regarding an unavoidable breakdown to the executive secretary of Utah's Air Quality Board and indicated that the information would be used by the executive secretary to determine ''whether a violation has occurred . . .'' This provision was another reason for our SIP call because it appeared to give the executive secretary exclusive authority to determine whether excess emissions constituted a violation and thus to preclude independent enforcement action by EPA and citizens when the executive secretary made a non-violation determination. This problematic language, indicating that the State would determine whether a violation had occurred, has been eliminated in the revised rule. Instead, as expressed in R307–107–3, the director will use the submitted information to determine whether to pursue an enforcement action. The director's decision not to pursue an enforcement action does not impact EPA's or citizens' ability to independently pursue an enforcement action in response to a given violation.

B. EPA's Analysis

EPA's interpretation is that the CAA requires that all periods of excess emissions, regardless of cause, be treated as violations and that automatic exemptions from emissions limits are not appropriate. This interpretation has been expressed in several documents. Most relevant to this action are the following: memorandum dated September 28, 1982, from Kathleen M. Bennett, Assistant Administrator for Air, Noise, and Radiation, entitled, ''Policy on Excess Emissions During Startup, Shutdown, Maintenance, and Malfunctions'' (the 1982 Memorandum); a clarification to that memorandum from Kathleen M. Bennett issued on February 15, 1983 (the 1983 Memorandum); and a memorandum dated September 20, 1999 entitled, ''State Implementation Plans: Policy Regarding Excess Emissions During

Malfunctions, Startup, and Shutdown,'' from Steven A. Herman, Assistant Administrator for Enforcement and Compliance Assurance, and Robert Perciasepe, Assistant Administrator for Air and Radiation (the 1999 Memorandum).

As explained in these memoranda, because excess emissions might aggravate air quality so as to prevent attainment and maintenance of the NAAQS and compliance with other CAA requirements, EPA views all periods of excess emissions as violations of the applicable emission limitation. Therefore, EPA will disapprove SIP revisions that automatically exempt from enforcement excess emissions claimed to result from an equipment malfunction. In addition, as made explicit in the 1999 Memorandum, EPA will disapprove SIP revisions that give discretion to a state director to determine whether an instance of excess emissions is a violation of an emission limitation, because such a determination could bar EPA and citizens from enforcing applicable requirements.

Under EPA's interpretations of the CAA as set forth in the 1982, 1983, and 1999 Memoranda, if a state chooses to address in its SIP violations that occur as a result of claimed malfunctions, the state may take two approaches. The first, the ''enforcement discretion'' approach, allows a state director to refrain from taking an enforcement action for a violation if certain criteria are met. The second, the ''affirmative defense'' approach, allows a source to avoid civil penalties if it can prove that certain conditions are met. Utah's revised R307–107 follows the enforcement discretion approach.

We have evaluated Utah's enforcement discretion provisions in revised R307–107 and find that they are consistent with EPA's interpretations of the CAA as described in the memoranda above. In particular, the revised rule contains no automatic exemption from emission limits, and the criteria specified in R307–107–2 that the State will consider in deciding whether to pursue an enforcement action generally parallel the criteria outlined in the 1982 and 1983 Memoranda. In addition, revised R307–107 only addresses the State's exercise of its enforcement discretion and contains no language that suggests that a State decision not to pursue an enforcement action for a particular violation bars EPA or citizens from taking an enforcement action. Therefore, EPA interprets the rule, consistent with EPA's interpretations of the CAA, as not barring EPA and citizen enforcement of violations of applicable requirements when the State declines enforcement.

IV. EPA's Proposed Action

We are proposing to approve the revisions to rule R307–107 of the Utah SIP that the State submitted to us on August 16, 2012. We are proposing that these revisions correct the deficiencies outlined in our April 18, 2011 SIP call. If we finalize this proposed approval, the mandatory sanctions clocks described in our SIP call and the clock for EPA to promulgate a FIP will end.

V. Statutory and Executive Order Reviews

Under the Clean Air Act, 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 Clean Air Act. Accordingly, this proposed action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed 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 Clean Air Act; 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, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

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

Dated: April 23, 2013.

Judith Wong,

Acting Regional Administrator, EPA Region 8.

[FR Doc. 2013–10934 Filed 5–8–13; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[Docket EPA–R10–OAR–2009–0340; FRL–9794–1]

Approval and Promulgation of Air Quality Implementation Plans; Alaska: Mendenhall Valley PM_{10} Nonattainment Area Limited Maintenance Plan and Redesignation Request

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA is proposing to approve the Limited Maintenance Plan (LMP) for particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers (PM_{10}) submitted by the State of Alaska on May 8, 2009 for the Mendenhall Valley nonattainment area (Mendenhall Valley NAA), and the State's request to redesignate the area to attainment for the National Ambient Air Quality Standards (NAAQS).

DATES: Comments must be received on or before June 10, 2013.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R10–