



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R07-OAR-2016-0470; FRL-9951-88-Region 7]

Approval of Missouri's Air Quality Implementation Plans; Open Burning Requirements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve revisions to the State Implementation Plan (SIP) for the State of Missouri related to open burning. On November 24, 2009, the Missouri Department of Natural Resources (MDNR) requested to amend the SIP to replace four area specific open burning rules into one rule that is area specific and applicable state-wide. These revisions to Missouri's SIP do not have an adverse effect on air quality as demonstrated in the technical support document (TSD) which is a part of this docket. EPA's proposed approval of these SIP revisions is being done in accordance with the requirements of the Clean Air Act (CAA).

DATES: Comments must be received on or before **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R07-OAR-2016-0470, to <http://www.regulations.gov>. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from Regulations.gov. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (i.e. on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <http://www2.epa.gov/dockets/commenting-epa-dockets>.

FOR FURTHER INFORMATION CONTACT: Steven Brown, Environmental Protection Agency, Air Planning and Development Branch, 11201 Renner Boulevard, Lenexa, Kansas 66219 at 913-551-7718, or by email at brown.steven@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document "we," "us," and "our" refer to EPA. This section provides additional information by addressing the following:

- I. What is Being Addressed in this Document?
- II. Have the Requirements for Approval of a SIP Revision Been Met?
- III. What Action is EPA Taking?

I. What is Being Addressed in this Document?

EPA is proposing to approve the SIP revision submitted by the state of Missouri that replaces four area specific open burning rules with a rule that is applicable state-wide. On November 24, 2009, the MDNR requested to amend the SIP that recinds Missouri Open Burning Restrictions 10 CSR 10-2.100, 10 CSR 10-3.030, 10 CSR 10-4.090, 10 CSR 10-5.070 and consolidates these four rules into a new rule, 10 CSR 10-6.045. The rule adds language that allows burning of "trade wastes" by permit in areas for situations where open burning is in the best interest of the general public or when it can be shown that open burning is the safest and most feasible method of disposal. The rule reserves the right for the staff director to deny, revoke or suspend an open burn permit. It changes the general provisions section by not limiting liability to an individual who is directly responsible for a violation and extends the regulatory liability to any person, such as a property owner who hires an

individual to start the fire. The rule also adds the definition of "untreated wood" for clarification to aid compliance purposes.

II. Have the Requirements for Approval of a SIP Revision Been Met?

The state submission has met the public notice requirements for SIP submissions in accordance with 40 CFR 51.102. The submission also satisfied the completeness criteria of 40 CFR part 51, appendix V. In addition, as explained above and in more detail, including a technical analysis in the technical support document which is part of this docket, the revision meets the substantive SIP requirements of the CAA, including section 110 and implementing regulations.

III. What Action is EPA Taking?

EPA is proposing approval of revisions to the Missouri SIP regarding an open burn regulation that replaces four area-specific open burning rules. EPA has conducted a full evaluation of the regulation, which is discussed in detail in the TSD, which is in the docket for this rulemaking.

As discussed in detail in the TSD, Missouri submitted emissions and monitoring analyses to make a demonstration that the rule does not violate the requirements of CAA section 110

(1), 42 U.S.C. 7411. In addition, EPA Region 7 performed an analysis of open burning emissions and utilized emissions inventory data from Missouri's Early Progress Plan to analyze over all emissions in the St. Louis area.

EPA believes that consolidating the four rules into one single rule creates less confusion and simplifies open burning restrictions for compliance and implementation. Simplifying the rule and permitting process increases clarity and removes uncertainty in the process of applying for an open burn permit. MDNR credits streamlining the permitting rule and process as the reason for the decrease in illegal open burning attempts in the state, especially in and around the St. Louis area.

The evidence provided in the TSD included in the docket for the rulemaking and Missouri's SIP submittal and rules show the rule change does not interfere with state's ability to attain or maintain an ambient air quality standard nor interfere with state's progress toward attainment. Specifically, MDNR's SIP revision will not compromise the State's efforts to meet and/or maintain the 1997 8-hour ozone, 2008 8-hour ozone, or Fine Particulate Matter (PM_{2.5}) National Ambient Air Quality Standards (NAAQS). Therefore, EPA supports approving these SIP revisions that add Missouri rule 10 CSR 10-6.045 to replace four rescinded

open burning rules: 10 CSR 10-2.100, 10 CSR 10-3.030, 10 CSR 10-4.090, 10 CSR 10-5.070.

We are processing this as a proposed action because we are soliciting comments on this proposed action. Final rulemaking will occur after consideration of any comments.

IV. Incorporation by Reference

In this rule, EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is proposing to incorporate by reference the proposed amendments to 40 CFR part 52 as set forth below. Therefore, these materials have been approved by EPA for inclusion in the State implementation plan, have been incorporated by reference by EPA into that plan, are fully Federally enforceable under sections 110 and 113 of the CAA as of the effective date of the final rulemaking of EPA's approval, and will be incorporated by reference by the Director of the Federal Register in the next update to the SIP compilation.¹ EPA has made, and will continue to make, these documents generally available electronically through www.regulations.gov and/or in hard copy at the appropriate EPA

¹ 62 FR 27968 (May 22, 1997).

office (see the ADDRESSES section of this preamble for more information).

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 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 action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- 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 (Public Law 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).

The SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

The Congressional Review Act, 5 U.S.C. section 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 proposed action 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 proposed action is not a "major rule" as defined by 5 U.S.C. 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 [**INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER**]. Filing a petition for reconsideration by the Administrator of this proposed rule does not affect the finality of this rulemaking 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 future rule or action. This proposed action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2)).

List of Subjects in 40 CFR Part 52

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

Dated: August 24, 2016.

Mark Hague,
Regional Administrator,
Region 7.

For the reasons stated in the preamble, EPA proposes to amend 40 CFR part 52 as set forth below:

PART 52-APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart AA-Missouri

2. In §52.1320, the table in paragraph (c) is amended by:

a. Removing the entries "10-2.100", "10-3.030", "10-4.090", and "10-5.070".

b. Adding the entry "10-6.045" in numerical order.

The addition reads as follows:

§52.1320 Identification of plan.

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(c) * * *

EPA-APPROVED MISSOURI REGULATIONS

Missouri citation	Title	State effective date	EPA approval date	Explanation
Missouri Department of Natural Resources				
* * * * *				
Chapter 6-Air Quality Standards, Definitions, Sampling and Reference Methods, and Air Pollution Control Regulations for the State of Missouri				
* * * * *				
10-6.045	Open Burning Requirements	9/30/09	[Date of publication of the final rule in the Federal Register] [Federal Register citation of the final rule]	
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[FR Doc. 2016-21467 Filed: 9/7/2016 8:45 am; Publication Date: 9/8/2016]