



6560-50-P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R08-OAR-2015-0617-; FRL-9964-72-Region 8]

### Approval and Promulgation of Air Quality Implementation Plans; State of Utah; General Burning Rule Revisions

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing approval of State Implementation Plan (SIP) revisions submitted by Utah on January 28, 2013, and July 8, 2015. In the letter accompanying the rule revisions sent to the EPA on July 8, 2015, the Governor stated that no further action is necessary on the January 28, 2013 submittal since it has been superseded. Upon consultation with Utah Department of Air Quality (DAQ) staff, the EPA was informed that this is not accurate. A clarifying letter was sent by the Governor of Utah on June 6, 2017 requesting that the EPA act on both SIP revisions. The submittals request SIP revisions to the State's General Burning rule; a repeal and reenactment of the General Burning rule with changes to applicability, timing, and duration of burning windows, and an amendment to exempt Native American ceremonial burning during restricted burning days.

**DATES:** Written comments must be received on or before **[Insert date 30 days after publication in the FEDERAL REGISTER]**.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R08-OAR-2015-0617 at <http://www.regulations.gov>. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from [www.regulations.gov](http://www.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:** Chris Dresser, Air Program, U.S.

Environmental Protection Agency (EPA), Region 8, Mail Code 8P-AR, 1595 Wynkoop Street, Denver, Colorado 80202-1129, (303) 312-6385, [dresser.chris@epa.gov](mailto:dresser.chris@epa.gov).

**SUPPLEMENTARY INFORMATION:**

**I. General Information**

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

1. Submitting Confidential Business Information (CBI). Do not submit CBI to the EPA through <http://www.regulations.gov> or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information on a disk or CD ROM that you mail to the 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:

- Identify the rulemaking by docket number and other identifying information (subject heading, Federal Register volume, date, and page number);
- Follow directions and organize your comments;
- Explain why you agree or disagree;
- Suggest alternatives and substitute language for your requested changes;
- Describe any assumptions and provide any technical information and/or data that you used;
- If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced;
- Provide specific examples to illustrate your concerns, and suggest alternatives;
- Explain your views as clearly as possible, avoiding the use of profanity or personal threats; and,
- Make sure to submit your comments by the comment period deadline identified.

## **II. Analysis of the State Submittal**

On January 28, 2013, the State of Utah requested that the EPA approve a repeal and reenactment of R307-202, Emission Standards: General Burning. The rule was changed to add an “Applicability” section that clarifies that the rule only applies to incorporated communities under the authority of a county or municipal fire authority. Additionally, the 30-day burning windows allowing the burning of material covered under R307-202 were eliminated in the amendment because they were a source of localized air quality impairment. This request was made by several local fire chiefs with support from the Utah State Fire Marshal. Language was also added to the rule that states that no person shall burn under R307-202 when the director of the Division of Air Quality (DAQ) issues a public announcement of a mandatory no-burn period.

The changes made to R307-202 include the following five amendments:

- 1) Fire marshals were previously permitted to establish a spring 30-day burn window between March 1 and May 30. The rule amendment expanded the spring burning window for the entire period from March 1 to May 30 for Washington, Kane, San Juan, Iron, Garfield, Beaver, Piute, Wayne, Grand, and Emery counties. The burn window was expanded because fire marshals reported adverse localized air quality conditions within the 30-day burn window because the window was actually compressed to a few days where the Clearing Index was over 500. The Utah DAQ relies on a metric called the Clearing Index, an Air Quality/Smoke Dispersal Index, to determine when ventilation and dispersion are adequate for general burning and as an input for other air quality decisions throughout Utah. Clearing Index values below 500 are considered poor ventilation and open burning is restricted under these conditions. Expanding the burn period provides added days where the Clearing Index is above 500, thereby improving air quality during the spring burn period.
- 2) The spring 30-day burn window has been expanded to the entire burn window from March 30 to May 30 for the remaining portions of the state. The window expansion follows the same rationale as item 1 above, that serves to improve air quality during spring burning. The calendar difference between southern and northern counties (covered in items 1 and 2, respectively) is due to climatic differences across the state.
- 3) The fall burn window for counties that are in attainment of the national ambient air quality standards (NAAQS) for particulate matter ( $PM_{2.5}$  and/or  $PM_{10}$ ) were permitted to burn from September 15 to October 30. The burn window has been expanded from

September 15 to November 15 because the frost dates for those counties are later than October 30. This window is however subject to annual approval by the State Forester.

- 4) A new fall burn window has been established for counties that are in nonattainment for the NAAQS for particulate matter (PM<sub>2.5</sub> and/or PM<sub>10</sub>) from September 15 to October 30. This period is before the inversion season in northern counties. The burn window was requested by fire marshals in affected counties. This window is however subject to annual approval by the State Forester.
- 5) An applicability section was added clarifying that the rule applies to general burning within incorporated communities under the authority of a county or municipal fire authority. This new section was added to address comments received from the State Forester during the public comment period held by the State of Utah. The State Forester was concerned that the public would be confused regarding who has the authority to issue burn permits within different portions of the state. While statutory authority has not changed from when the rule was initially promulgated, this new section was only added for clarity purposes.

The proposed rule revisions capture Utah's restrictions and exemptions for open burning of pollutants to ensure compliance with the Clean Air Act (CAA) NAAQS for PM<sub>2.5</sub> and PM<sub>10</sub> consistent with 40 CFR part 50. As part of the most recent January 28, 2013 submittal, Utah DAQ provide a demonstration that the changes made to the General Burning rule would not result in adverse air quality conditions; consistent with the requirements under Section 110(l) of the CAA. The EPA agrees with the analysis completed by Utah and that the rule changes submitted on January 28, 2013, will not adversely impact air quality. The EPA conducted a further review of the effect of an expanded burn window on resulting air quality in

nonattainment areas and a copy of this analysis is included in the administrative record. The additional time periods available for burning include the full March 1 to May 30 period and an additional fall burn window of September 15 to October 30. Through a review of air quality and clearing index data from DAQ's website, the EPA finds that although elevated 24-hr  $PM_{2.5}$  and  $PM_{10}$  can occur during these periods, they do not typically occur on days where the clearing index is greater than 500. Elevated  $PM_{10}$  has been measured on days within the burn window with a clearing index above 500. However, these events are a result of high winds and resulting re-entrained dust impacting  $PM_{10}$  concentrations, conditions under which burn permits would not be issued due to safety concerns. Therefore, the EPA finds that it is unlikely burning would occur in the expanded burn window on days with elevated PM.

Additionally, on July 8, 2015, the State of Utah requested further revisions to R307-202 (Emission Standards: General Burning) that allows Native American tribes to conduct ceremonial burning during restricted burning days when conducted by a "Native American spiritual advisor" as defined by the rule. The Utah DAQ submitted a supplementary analysis to the EPA on May 9, 2017 demonstrating that the exemption allowing ceremonial burning during restricted burning days would not result in adverse air quality conditions consistent with the requirements under CAA Section 110(l). The analysis included a calculation of emissions associated with the expected frequency of ceremonial burning, volume of combustible material, and using the appropriate AP-42 emission factors. The emissions for  $PM_{2.5}$  and  $PM_{10}$  associated with ceremonial burning were estimated to be 0.012 tons per year. To give these values context, from the most recent NEI, emissions of total  $PM_{10}$  and  $PM_{2.5}$  for all sources in Salt Lake County in 2014 are 18,165 tons and 5,902 tons, respectively. The estimated impact of ceremonial

burning is therefore less than 0.0001% of the total PM inventory, and therefore the EPA finds that this exemption would not result in adverse air quality.

### **III. The EPA's Proposed Action**

The EPA is proposing to approve Utah's January 28, 2013 SIP submission, which repeals and reenacts the General Burning provisions in R307-202 with the amendments discussed in Section II. Additionally, the EPA is proposing approval of Utah's July 8, 2015 revisions, which exempts ceremonial burning conducted by a "Native American spiritual advisor" during restricted burn days.

### **IV. Statutory and Executive Orders Review**

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 USC 7410(k), 40 CFR 52.02(a)). Thus, in reviewing SIP submissions, the EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this proposed action merely approves state law as meeting federal requirements; this proposed action 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 Orders 12866 (58 FR 51735, Oct. 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 (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 Clean Air Act; and
- Does not provide the 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 the 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).

#### **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.

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

Dated: June 27, 2017.

Debra H. Thomas,  
Acting Regional Administrator,  
Region 8.

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