



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R07-OAR-2019-0328; FRL-9999-73-Region 7]

Air Plan Approval; Missouri; Rescission of Information on Sales of Fuels to be Provided and Maintained and Certain Coals to be Washed

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving two State Implementation Plan (SIP) revision submissions from the State of Missouri. In these submissions, the State requested that two rules relating to the sales of fuel and coal washing be rescinded from the Missouri SIP. The EPA received both submissions on December 4, 2018, and received supplemental information for both submissions on May 6, 2019. The EPA reviewed the submissions and supplemental information and determined that rescission of these rules from the SIP does not impact the stringency of the SIP or air quality. Approval of the submissions will ensure consistency between state and federally approved rules and is being done in accordance with the requirements of the Clean Air Act (CAA).

DATES: This final rule is effective on **[insert date 30 days after date of publication in the Federal Register]**.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA-R07-OAR-2019-0328. All documents in the docket are listed on the <https://www.regulations.gov> web site. Although listed in the index, some information is not publicly available, i.e., CBI 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 through <https://www.regulations.gov> or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional information.

FOR FURTHER INFORMATION CONTACT: Tracey Casburn, Environmental Protection Agency, Region 7 Office, Air Quality and Planning Branch, 11201 Renner Boulevard, Lenexa, Kansas 66219; telephone number (913) 551-7016; email address casburn.tracey@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document "we," "us," and "our" refer to EPA.

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I. Background

On July 2, 2019, the EPA proposed the rescission of two rules relating to the sales of fuel and coal washing be rescinded from the Missouri SIP in the **Federal Register**. See 84 FR 31541. The EPA solicited comments on the proposed SIP revisions and received one comment.

II. What is Being Addressed in this Document?

The EPA is approving two requests to revise the Missouri SIP, received on December 4, 2018. Supplemental information for both submissions was received on May 6, 2019. In the submissions, the State requested that two rules, found at Title 10, Division 10 of the code of state regulations (CSR)-10 CSR 10-5.120 *Information on Sales of Fuels to be Provided and Maintained* and 10 CSR 10-5.130 *Certain Coals to be Washed*- be rescinded from the Missouri SIP. A detailed discussion of the submissions was provided in the EPA's July 2, 2019, **Federal Register** document and in a technical support document (TSD) in the docket to this action. See 84 FR 31541.

III. 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 submissions also satisfied the completeness criteria of 40 CFR part 51, appendix V. The State provided public notice of the

revisions from June 15, 2018, to September 6, 2018, and held a public hearing on August 30, 2018. The State received and addressed one comment. The comment was from the EPA and was general in nature. No changes were made to the proposals to rescind the rules in response to the EPA's comment. As explained in more detail in the TSD, which is part of this docket, the SIP revision submissions met the substantive requirements of the CAA, including section 110 and implementing regulations.

IV. What is the EPA's Response to Comment Received?

The public comment period opened the date of the publication the EPA's proposed rule in the **Federal Register**, July 2, 2019, and closed on August 1, 2019. During this period, the EPA received one comment.

Comment: The commenter stated that the EPA must perform it's own search of residential sources and positively determine whether there are any residences that burn coal or residual fuel oil as a heating source, and, if the EPA were to find a residential source, it must evaluate any relaxations that could occur by allowing the State to remove the regulations from the SIP.

Response: The commenter is concerned that the EPA did not fully evaluate if rescinding the coal washing and fuel sale receipt rules would result in relaxations in air quality standards because there may or may not be residential consumers of coal and/or fuel oil. As noted in the TSD (provided in the docket to

this rulemaking), the EPA did not evaluate potential emissions from residential consumers because it and the state were not aware of any. The rules pre-dated the CAA and were promulgated to reduce impacts from smoke and soot in the St. Louis metropolitan area. When the rules were promulgated in the 1960's, inexpensive bituminous coal, high in sulfur content and ash, was in abundant supply in nearby southern Illinois. Almost all industrial and commercial facilities, as well apartment buildings and single-family homes, burned this coal contributing to the smoke problem in the city. The rules were intended to move consumers toward burning better quality coal and fuel oil in the metro area. 10 CSR 10-5.120 functioned purely to monitor the sale of fuel oil and coal and 10 CSR 10-5.130 required consumers of coal with more than 2 percent sulfur and/or 12 percent ash to wash the coal prior to burning it.

In order to address the commenter's concern regarding the EPA's consideration of impacts from residential users, the EPA reviewed historical household fuel use data provided by the U.S. Census Bureau.¹ As shown in Table 1, in 2000, there are were no residential users of coal and only 0.6 percent of households using fuel oil, in all of Missouri. A review of heating fuel use from 1940 to 2000 shows a significant decline in residential

¹ <https://www.census.gov/hhes/www/housing/census/historic/fuels.html>

fuel oil and coal usage and a significant increase in residential use of utility gas and electricity.

Table 1.

Missouri Historical Census-House Heating Fuel Use (fuel use provided in percent)									
Year	Occupied Units	Utility Gas	LP Gas	Electricity	Fuel Oil	Coal	Wood	Other	No Fuel
2000	2,194,594	57.5	13.4	24.5	0.6	0	3.5	0.2	0.2
1990	1,961,206	60.4	12	18.1	1.5	0	7.6	0.2	0.1
1980	1,793,399	65	14.3	11.7	3.5	0.1	5.2	0.2	0
1970	1,520,567	67.8	16.7	2.9	8.7	0.9	2.5	0.4	0.1
1960	1,359,973	51.3	9.9	0.4	17.1	12.2	8.8	0.2	0.1
1950	1,162,305	24.5	2	0.2	15.8	40.1	15.4	1.4	0.3
1940	1,049,033	4.7	NA	NA	3.5	61.7	29.9	0.1	0.1

Even if the EPA were to become aware of a residential consumer of coal or fuel oil in the St. Louis metropolitan area, neither rule regulated emissions of sulfur dioxide (SO₂) or particulate matter (PM), nor did the rules limit the amount of fuel oil or coal that could be burned. There would not be a relaxation in direct emissions from residential consumers attributed to the rules' rescission because, as mentioned, there was no existing limitation on those direct emissions. Additionally, the state did not rely on 10 CSR 10-5.120 or 10 CSR 10-5.130 for any quantifiable emission reductions in any plan to attain or maintain any National Ambient Air Quality Standard (NAAQS).

V. What Action is the EPA Taking?

The EPA is amending the Missouri SIP by rescinding 10 CSR 10-5.120 *Information on Sales of Fuels to be Provided and Maintained* and 10 CSR 10-5.130 *Certain Coals to be Washed*. Approval of these revisions will ensure consistency between State and federally-approved rules. These rescissions will not impact air quality since the rules do not effectively limit emissions or the amount of fuel that can be burned and do not function to achieve attainment or maintenance of the National Ambient Air Quality Standards (NAAQS).

VI. Incorporation by Reference

In this document, as described in the amendments to 40 CFR part 52 set forth below, the EPA is removing provisions of the EPA Approved Missouri Regulations and Statutes from the Missouri State Implementation Plan, which is incorporated by reference in accordance with the requirements of 1 CFR part 51.

VII. 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);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866.
- 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 the National Technology Transfer and Advancement Act (NTTA) because this rulemaking does not involve technical standards; 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, 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).

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 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 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 final rule does not affect the finality of this action 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, Certain coals to be washed, Incorporation by reference, Information on fuel sales, Particulate matter, Rescission, Sulfur dioxide.

Dated: September 11, 2019.

Mike Brincks,
Acting Regional Administrator,
Region 7.

For the reasons stated in the preamble, the EPA amends 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

§52.1320 [Amended]

2. In §52.1320, the table in paragraph (c) is amended by removing entries "10-5.120" and "10-5.130" under the heading "Chapter 5—Air Quality Standards and Air Pollution Control Regulations for the St. Louis Metropolitan Area".

[FR Doc. 2019-20321 Filed: 9/20/2019 8:45 am; Publication Date: 9/23/2019]