



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R07-OAR-2019-0658; FRL-10003-16-Region 7]

Air Plan Approval; Missouri; Revisions to the General Conformity Rules

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing approval of a Missouri State Implementation Plan (SIP) revision submitted on February 15, 2019. The submission revises the State's general conformity rule. Specifically, the proposed action revises the rule to add definitions specific to the rule, remove references to a rule that is being rescinded, remove the unnecessary use of restrictive words and make other clarifying changes. The revision does not have an adverse effect on air quality. The EPA's proposed approval of this rule revision 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: You may send comments, identified by Docket ID No. EPA-R07-OAR-2019-0658 to <https://www.regulations.gov>. Follow the online instructions for submitting comments.

Instructions: All submissions received must include the Docket ID No. for this rulemaking. Comments received will be posted without change to <https://www.regulations.gov/>, including any personal information provided. For detailed instructions on sending comments and additional information on the rulemaking process, see the "Written Comments" heading of the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Jed Wolkins, Environmental Protection Agency, Region 7 Office, Air Quality Planning Branch, 11201 Renner Boulevard, Lenexa, Kansas 66219; telephone number (913) 551-7588; email address wolkins.jed@epa.gov.

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

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I. Written Comments

Submit your comments, identified by Docket ID No. EPA-R07-OAR-2019-0658, at <https://www.regulations.gov>. 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 <https://www.epa.gov/dockets/commenting-epa-dockets>.

II. What is Being Addressed in this Document?

The EPA is proposing to approve a revision to Missouri's rule 10-6.300 "Conformity of General Federal Actions to State Implementation Plans." There are several proposed revisions to the rule. The proposed revisions modify text that Missouri has determined make the rule more understandable while retaining the intent of the rule. The following changes to the rule have been made:

10-6.300(1) the title changed from "General" to "Applicability";

10-6.300(1) (B) insertion of "de minimis";

10-6.300(1) (C) change from "shall" to "do";

10-6.300(1)(C)2. and 2.V. insertion "below the" and "levels identified in subsection (1)(B) of this rule";

10-6.300(1)(C)2.H. and I. change from "required" to "necessary";

10-6.300(1)(C)2.J. removal of "Actions";

10-6.300(1)(K) removal of "shall";

10-6.300(2) removal of existing incorporation by reference and insertion of rule specific definitions (A) thru (JJ);

10-6.300(3)(A)1. change from "shall" to "may";

10-6.300(3)(E)3. change from "may" to "will";

10-6.300(3)(E)4. and (3)(F)1., 2., 3., and 4. change from "required" to "conducted";

10-6.300(3)(F)2.A.(II) change from "shall apply" to "applies";

10-6.300(3)(I)2. change from "shall" to "may";

10-6.300(3)(J)2.B. change from "must not" to "cannot";

10-6.300(3)(J)3. change from "they are not required" to "they are under no obligation";

10-6.300(3)(L)2.E. change from "the time frame for the reductions must be specified" to "have a specific time frame for the reductions";

10-6.300(3)(L)3. correction of the spelling of "credits";

10-6.300(3)(L)3.A. and B. change from "as required in" to "under";

10-6.300(4)(C) change from "shall be" to "is".

The full text of these changes can be found in the State's submission which is in the docket for this action.

The EPA has analyzed these wording changes, specifically focusing on the language changes that might alter the stringency or intent such as using "de minimus" or changes from "shall" to "may". Although the EPA takes no position regarding whether the altered text is clearer to the reader, the EPA finds the full rule language does not alter the intent of the rule. For example, 10-6.300(3)(A)1. now reads, "No department, agency, or instrumentality may engage in" rather than "shall engage in". The EPA believes that the change from "shall" to "may" does not alter the intent of the language to prohibit an action from occurring. Another example is the insertion of "de minimus", which refers to a table being used to establish a threshold floor, or de minimus level in this context. The EPA believes the use of de minimus is appropriate in this context and that this language does not alter the intent. Therefore, the EPA does not believe that these specific examples and other language changes represent a relaxation of the rule.

Then, Missouri revised its rule to incorporate general conformity rule-specific definitions into the rule itself. These added rule definitions come from 10-6.020 which is already approved into the SIP. The EPA provided one specific comment

during the public comment period regarding the definition of precursors to fine particulate matter (PM_{2.5}).¹ The EPA asked Missouri to update the State general conformity rule to match updates to the Federal general conformity rule, 40 CFR part 93. These updates include changes to the applicability tables clarifying that volatile organic compounds (VOCs) and ammonia (NH₃) are presumed precursors of PM_{2.5}. Missouri did not change the rule in response to this comment. While Missouri did not update the rule to reflect changes to the Federal general conformity rule, the EPA believes the SIP revision is approvable. The changes to the Federal general conformity rule stem from the January 4, 2013, D.C. Circuit Court ruling that we erred when not considering the particulate matter-specific provisions of subpart 4 of part D of title I of the CAA.² In response, on March 23, 2015, we proposed the Fine Particulate Matter National Ambient Air Quality Standards: State Implementation Plan Requirements (80 FR 15340, March 23, 2015). In that action, we defined PM_{2.5} precursors as "sulfur dioxide (SO₂), oxides of nitrogen (NO_x), volatile organic compounds (VOC), and ammonia (NH₃)." The EPA finalized this rule on August 24, 2016 (81 FR 58010).

¹ The EPA also provided a general comment on several Missouri rulemakings around the same time.

² Natural Resources Defense Council (NRDC) v. EPA, Nos. 08-1250, 09-1102, 11-1430 (D.C. Circuit 2013).

10-6.300(2)(DD)(3)(C) states VOC and NH₃ are PM_{2.5} precursors "only in PM_{2.5} nonattainment or maintenance areas where either the State or the EPA determines that they are significant precursors." The EPA has now determined that VOC and NH₃ are PM_{2.5} precursors presumptively subject to regulation, therefore any General Transportation Conformity review in a PM_{2.5} nonattainment or maintenance area in Missouri would need to consider VOC and NH₃ as PM_{2.5} precursors. This determination that VOC and NH₃ are precursors to PM_{2.5} subject to regulation applies in any current and future PM_{2.5} nonattainment or maintenance area in the State of Missouri until such time that Missouri adequately demonstrates, and the EPA agrees, that these pollutants do not need to be regulated in a particular plan despite the fact that they are PM_{2.5} precursors.

Finally, at 10-6.300(1)A. and (E)1.E.(II), Missouri revised its rule to remove a reference to 10-2.390, which has been rescinded. The EPA approved rescission of this rule from the Missouri SIP in a separate action.³

The EPA has evaluated the changes made by Missouri and is proposing to approve these changes in the SIP. The EPA believes that these changes will not have an adverse impact on air quality.

³ See 84 FR 54035, October 9, 2019.

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

The State's 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. The State provided public notice on this SIP revision from May 2, 2018 to August 2, 2018 and received two public comments, both from the EPA.⁴ Missouri's response to our general comment is sufficient. As discussed above, while Missouri did not update the rule for the definition of precursors of PM_{2.5}, the revision is still approvable. We highly encourage Missouri to make such update in the future. The revision meets the substantive SIP requirements of the CAA, including section 110 and implementing regulations.

IV. What Action is the EPA Taking?

The EPA is proposing to approve Missouri's revisions to 10-6.300. 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.

⁴ Missouri DNR staff also made a comment.

V. Incorporation by Reference

In this document, the EPA is proposing to include regulatory text in an EPA final rule that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is proposing to incorporate by reference the Missouri Regulations described in the proposed amendments to 40 CFR part 52 set forth below. The EPA has made, and will continue to make, these materials generally available through www.regulations.gov and at the EPA Region 7 Office (please contact the person identified in the "FOR FURTHER INFORMATION CONTACT" section of this preamble for more information).

VI. 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, the 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 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, Sulfur oxides, Volatile organic compounds.

Dated: December 19, 2019.

James Gulliford,
Regional Administrator,
Region 7.

For the reasons stated in the preamble, the 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 §52.1230, the table in paragraph (c) is amended by revising the entry "10-6.300" to read as follows:

§52.1320 Identification of plan.

* * * * *

(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				
* * * * *				
10-6.300	Conformity of General Federal Actions to State Implementation Plans	2/28/2019	[Date of publication of the final rule in the Federal Register], [Federal Register citation of the final rule]	
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