



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R04-OAR-2019-0270; FRL-10002-45-Region 4]

Air Plan Approval; Tennessee: Open Burning and Definitions Revisions for Chattanooga

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve a revision to the Chattanooga portion of the Tennessee State Implementation Plan (SIP), provided by the State of Tennessee, through the Tennessee Department of Environment and Conservation (TDEC) from the Chattanooga/Hamilton County Air Pollution Control Bureau through a letter dated September 12, 2018. The submission revises the open burning regulations in the Chattanooga portion of the Tennessee SIP. EPA is proposing to approve the changes because they are consistent with the Clean Air Act (CAA or Act) and is also proposing to clarify its prior proposal related to the Bureau's definition of "volatile organic compounds."

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-R04-OAR-2019-0270 at <http://www.regulations.gov>. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from Regulations.gov. 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. 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: Sean Lakeman, Air Regulatory Management Section, Air and Radiation Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960. Mr. Lakeman can be reached by telephone at (404) 562-9043 or via electronic mail at lakeman.sean@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

Through a letter dated September 12, 2018, TDEC submitted a SIP revision on behalf of the Bureau containing changes to certain air quality rules in the Chattanooga portion of the Tennessee SIP.¹ In this proposed action, EPA is proposing to approve changes from the September 12, 2018, submittal relating to open burning at Chattanooga Ordinance Part II, Chapter 4, Article II, Section 4-41, Rule 6 - “Prohibition of Open Burning.”^{2,3}

¹ The Bureau is comprised of Hamilton County and the municipalities of Chattanooga, Collegedale, East Ridge, Lakesite, Lookout Mountain, Red Bank, Ridgeside, Signal Mountain, Soddy Daisy, and Walden. The Bureau recommends regulatory revisions, which are subsequently adopted by the eleven jurisdictions. The Bureau then implements and enforces the regulations, as necessary, in each jurisdiction.

² In this proposed action, EPA is also proposing to approve substantively identical changes in the following sections of the Air Pollution Control Regulations/Ordinances for the remaining jurisdictions within the Bureau, which were locally effective as of the relevant dates below: Hamilton County – Section 41, Rule 6 (9/6/17); City of Collegedale – Section 14-341, Rule 6 (10/16/17); City of East Ridge – Section 8-41, Rule 6 (10/12/17); City of Lakesite –

The EPA is also providing clarification in this proposed action on its May 20, 2019 (84 FR 22786), proposed approval of part of the September 12, 2018, submittal relating to the SIP-approved definition of “volatile organic compounds” at Chattanooga Air Pollution Control Ordinance Part II, Chapter 4, Article II, Section 4-2.⁴ Specifically, in this proposal, the EPA is clarifying that its proposed approval of Chattanooga’s revised definition of “volatile organic compounds” also includes substantively identical revisions to the regulations/ordinances of the other ten jurisdictions within the Bureau.⁵ For more information on EPA’s rationale for that proposed action, see EPA’s May 20, 2019, proposed rule.

II. Analysis of Tennessee’s Submittal

EPA evaluated the changes to Chattanooga’s open burning rules under the CAA. As discussed below, the September 12, 2018, SIP submission makes a number of clarifying edits, minor changes and updates to fees and dates throughout Part II, Chapter 4, Article II, Section 4-41, Rule 6 - “Prohibition of Open Burning.”

A. Rule 6.3. Open Burning

Tennessee submitted the following revisions to Rule 6.3:

Section 14-42, Rule 6 (11/2/17); City of Red Bank – Section 20-41, Rule 6 (11/21/17); City of Soddy-Daisy – Section 8-41, Rule 6 (10/5/17); City of Lookout Mountain – Section 41, Rule 6 (11/14/17); City of Ridgeside Section 41, Rule 6 (1/16/18); City of Signal Mountain Section 41, Rule 6 (10/20/17); and City of Walden Section 41, Rule 6 (10/16/17).

³ Because the air pollution control regulations/ordinances adopted by the jurisdictions within the Bureau are substantively identical, EPA refers solely to Chattanooga and the Chattanooga rules throughout the notice as representative of the other ten jurisdictions for brevity and simplicity.

⁴ EPA finalized its approval of a separate portion of the September 12, 2018 SIP submittal through a July 31, 2019 (84 FR 37099) rulemaking. EPA will act on the remaining portions of the September 12, 2018 submittal in a separate action.

⁵ Thus, EPA’s May 20, 2019 action, if finalized, would also approve the following ten Air Pollution Control Regulations/Ordinances, which were locally effective as of the relevant dates below: Hamilton County – Section 2 (9/6/17); City of Collegedale – Section 14-302 (10/16/17); City of East Ridge – Section 8-2 (10/12/17); City of Lakesite – Section 14-2 (11/2/17); City of Red Bank – Section 20-2 (11/21/17); City of Soddy-Daisy – Section 8-2 (10/5/17); City of Lookout Mountain – Section 2 (11/14/17); City of Ridgeside – Section 2 (1/16/17); City of Signal Mountain – Section 2 (10/20/17); and, City of Walden – Section 2 (10/16/17).

- At Rule 6.3(4), Tennessee adds language prohibiting open burning within 100 feet of a structure not owned by the permittee, as well as prohibiting burning of brush over 12 inches in diameter and tree stumps. EPA believes these revisions are SIP strengthening because they further restrict open burning.
- At Rule 6.3(7), Tennessee specifies time periods during which open burning can occur and provides that burning activities must be extinguished by the specified time. In its submittal, Tennessee amends dates during which burning can occur during the specified time periods, and also adds a provision providing that “Burning will not be deemed extinguished if smoke or smoldering is present or if dirt is used to cover a burn pile.” EPA believes these changes will be SIP strengthening because they require burning to be fully extinguished prior to expiration of the allowable time period for such activities. In addition, EPA believes the changes to dates and times of allowable burning are administrative in nature.
- At Rule 6.3(8), Tennessee adds language requiring open burning activities to be conducted “by a person 16 years or older who shall have adequate means of extinguishing the fire available and is capable of doing so.” EPA believes this amendment is SIP strengthening because it improves the management and control of open burning.
- At Rule 6.3(14), Tennessee adds language limiting the types of materials that may be burned to “materials removed or generated from the burn site address.” Tennessee also provides that “[b]urning of waste generated as a result of a commercial operation is prohibited.” Additionally, Tennessee adds a new Rule 6.3(15), which prohibits open

burning “where an obvious nuisance or safety hazard is present.” EPA believes these changes are SIP strengthening because they further restrict open burning activities.

- Tennessee also makes administrative/clarifying edits to the rule, such as amending the amount of required fees for an open burning permit.

EPA has reviewed the revisions to Rule 6.3 and preliminarily finds them consistent with Sections 110(a) and 110(l) of the Act. EPA therefore proposes to incorporate them into the Tennessee SIP.

B. Rule 6.4. Open Burning Exemptions

Tennessee submitted the following revisions to the Rule 6.4:

- At Rule 6.4(1), Tennessee adds language limiting exempted fires used only for cooking of food, ceremonial, or recreational purposes to 3 feet in diameter, and also requires that they burn only “clean fuel,” which it defines as “clean wood, gas, charcoal, wood pellets, or fire logs.” Tennessee also adds language providing that “[s]moke or ash from ceremonial or recreational fires shall not create a nuisance beyond the boundary of the property owner where the burning is occurring.” EPA believes these changes are SIP strengthening because they further restrict open burning activities.
- At Rule 6.4(3), Tennessee adds clarifying language providing that safety flares and smokeless flares must comply with Section 4.8 “and any other applicable requirement.”

EPA has reviewed the revisions to Rule 6.4 and preliminarily finds them consistent with Sections 110(a) and 110(l) of the Act. EPA therefore proposes to incorporate them into the Tennessee SIP.

C. Rule 6.5. Open Burning Exceptions

Tennessee revises Rule 6.5 at Paragraph 1 to require that fires allowed without a permit for the purpose of training of fire-fighting personnel must be conducted in accordance with standards set by the National Fire Protection Association. The change adds clarity to the level of training standards required for fire fighters, and therefore, EPA is proposing approval.

D. Rule 6.6. Controlled Burning

Tennessee submitted the following revisions to Rule 6.6:

- At Rule 6.6(12), Tennessee specifies time periods during which controlled burning can occur and provides that burning activities must be extinguished by the specified time. In its submittal, Tennessee amends the dates during which burning can occur during the specified time periods, and also adds a provision providing that “Burning will not be deemed extinguished if smoke or smoldering is present or if dirt is used to cover a burn pile.” EPA believes these changes will be SIP strengthening because they require the burning to be fully extinguished prior to expiration of the allowable time period for such activities. In addition, EPA believes the changes to dates and times of allowable burning are administrative in nature.
- Tennessee also makes administrative/clarifying edits to the rule, such as amending the amount of required fees for an open burning permit.

EPA has reviewed the revisions to Rule 6.4 and preliminarily finds them consistent with Sections 110(a) and 110(l) of the Act. EPA therefore proposes to incorporate them into the Tennessee SIP.

III. Incorporation by Reference

In this document, 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 Chattanooga Air Pollution Control Ordinance Part II, Chapter 4, Article II, Section 4-41, Rule 6 - “Prohibition of Open Burning,” and Part II, Chapter 4, Article II, Section 4-2, both locally effective on January 23, 2017.⁶ EPA has made, and will continue to make, these materials generally available through www.regulations.gov and at the EPA Region 4 office (please contact the person identified in the “For Further Information Contact” section of this preamble for more information).

IV. Proposed Action

EPA is proposing to approve the aforementioned changes to the Chattanooga portion of the Tennessee SIP because the changes are consistent with section 110 of the CAA. The SIP revision adds, clarifies, and updates Rule 6 consistent with applicable requirements.

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. *See* 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. This action merely proposes to approve state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

⁶ EPA’s approval also includes regulations/ordinances submitted for the other ten jurisdictions within the Bureau. *See* footnote 2 and 4, *supra*.

- 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 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 as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it 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, Lead, Nitrogen dioxide, Ozone, Particulate matter, Sulfur oxides, Volatile organic compounds.

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

Dated: November 13, 2019.

Mary S. Walker,
Regional Administrator,
Region 4.

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