



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R04-OAR-2019-0270; FRL-10006-33-Region 4]

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

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving 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 approving the changes because they are consistent with the Clean Air Act (CAA or Act).

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

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA-R04-OAR-2019-0270. All documents in the docket are listed on the www.regulations.gov web site. Although listed in the index, some information may not be publicly available, i.e., Confidential Business Information 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 either

electronically through www.regulations.gov or in hard copy at the Air Regulatory Management Section, Air Planning and Implementation Branch, Air and Radiation Division (formerly the Air, Pesticides and Toxics Management Division), U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office’s official hours of business are Monday through Friday 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Andres Febres, Air Regulatory Management Section, Air Planning and Implementation Branch, Air and Radiation Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960. The telephone number is (404) 562-8966. Mr. Febres can also be reached via electronic mail at febres-martinez.andres@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

EPA is taking final action to approve changes to the Chattanooga-Hamilton County portion of the Tennessee SIP that were provided to EPA through a letter dated September 12, 2018.¹ EPA is finalizing approval of the portions of this SIP revision that make changes 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 EPA received the SIP revision on September 18, 2018.

² In this final action, EPA is also approving 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 – Section

In a notice of proposed rulemaking (NPRM) published on November 25, 2019 (84 FR 64806), EPA proposed to approve changes to open burning at Chattanooga Ordinance Part II, Chapter 4, Article II, Section 4-41, Rule 6 – “Prohibition of Open Burning” in the Chattanooga–Hamilton County portion of the Tennessee SIP.⁴ The NPRM provides additional details regarding EPA’s action. Comments on the NPRM were due on or before December 26, 2019.

II. Response to Comments

EPA received one adverse comment and one comment in favor of the proposed action. The comments are provided in the docket for this final rule, and EPA’s response to the adverse comment is below.

Comment: The Commenter expresses concerns about the environmental and health impacts of open burning and states that opening burning should be banned in Chattanooga. The Commenter also mentions that people who decide to open burn should be punished and that more education is needed on the consequences of open burning in Chattanooga.

Response: EPA lacks the authority in this CAA section 110 SIP revision approval action to require Chattanooga to take the measures requested by the Commenter. Section 110 functions

14-41, 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 Town 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 In a November 25, 2019, NPRM, EPA provided clarification 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 I, Section 4-2 - “Definitions.” Specifically, in the November 25, 2019, NPRM, EPA clarified 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. EPA is finalizing its proposals related to the definition of volatile organic compounds for Chattanooga in a separate rulemaking.

within a cooperative federalism system in which states propose implementation plans to attain and maintain the national ambient air quality standards (NAAQS), and EPA determines whether their specific plans comply with the CAA's requirements. In determining which emissions limits and other control measures to incorporate into SIPs, section 110(a)(2)(A) provides states with broad discretion to develop and implement the specific controls that "may be necessary and appropriate" to meet the Act's requirements. EPA's role is to determine whether a SIP revision meets the minimum criteria of the CAA; where it does, EPA must approve the revision. CAA section 110(k)(3).

Chattanooga developed its SIP — including the submitted revisions to its open burning regulations — within this context. There is no universal prohibition on open burning in section 110. Moreover, the Commenter has not pointed to, and EPA is not aware of, any CAA provision that would require EPA to reconsider its proposed approval of changes included in Tennessee's SIP revision or to require Chattanooga to adopt the requested measures. Because the SIP revision meets the requirements of the CAA, EPA must approve it.

EPA has evaluated the potential air quality impacts from the September 12, 2018 SIP revision and has made the final determination that the revision will not interfere with attainment or maintenance of the NAAQS, reasonable progress or any other applicable requirements of the CAA. As explained in the NPRM, the changes either create additional restrictions on open burning and thus improve air quality or are ministerial in nature. EPA notes that the Chattanooga area is in attainment of all NAAQS, with design values for the 2012 fine particulate

matter and 2015 8-hour ozone NAAQS well below the standards.⁵

III. Incorporation by Reference

In this document, EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is finalizing the incorporation by reference of Chattanooga Air Pollution Control Ordinance Part II, Chapter 4, Article II, Section 4-41, Rule 6 - “Prohibition of Open Burning,” locally effective on October 3, 2017.^{6,7} 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). 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 in the next update to the SIP compilation.⁸

IV. Final Action

EPA is approving changes to Section 4-41, Rule 6 - “Prohibition of Open Burning” into 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.

⁵ The 2018 design value is 8.8 micrograms per cubic meter ($\mu\text{g}/\text{m}^3$) for the 2012 fine particulate matter NAAQS (set at $12 \mu\text{g}/\text{m}^3$), and the 2018 design value is 0.66 parts per million (ppm) for the 2015 8-hour ozone NAAQS (set at 0.70 ppm).

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

⁷ In the November 25, 2019, NPRM (84 FR 64806), EPA inadvertently misidentified the locally effective date for Chattanooga’s Section 4-41, Rule 6, as January 23, 2017. The correct date is October 3, 2017.

⁸ See 62 FR 27968 (May 22, 1997).

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 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 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.

The Congressional Review Act, 5 U.S.C. 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 FROM DATE OF PUBLICATION OF THIS DOCUMENT 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, Incorporation by reference, Lead, Nitrogen dioxide, Ozone, Particulate matter, Sulfur oxides, Volatile organic compounds.

Dated: February 27, 2020.

Mary S. Walker,
Regional Administrator,
Region 4.

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 RR–Tennessee

2. In § 52.2220. in paragraph (c), amend Table 4 by revising the entry for “Section 4-41, Rule 6” under the heading “Article II. Section 4-41 Rules, Regulations, Criteria, Standards” to read as follows:

§ 52.2220 Identification of plan.

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(c) * * *

TABLE 4 – EPA APPROVED CHATTANOOGA REGULATIONS

State section	Title/subject	Adoption date	EPA approval date	Explanation
**	**	*	*	*
Article II. Section 4-41 Rules, Regulations, Criteria, Standards				
**	**	*	*	*

Section 4-41 Rule 6	Prohibition of Open Burning	10/3/17	[Insert date of publication in <u>Federal Register</u>], [Insert citation of publication]	EPA’s approval includes the corresponding sections of the Air Pollution Control Regulations/Ordinances for the remaining jurisdictions within the Chattanooga-Hamilton County Air Pollution Control 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 – Section 14-41, 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 Town of Walden Section 41, Rule 6 (10/16/17).
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