



**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

**[EPA-R07-OAR-2019-0400; FRL-10007-36-Region 7]**

**Air Plan Approval; Missouri; Removal of Control of Emissions  
from Bakery Ovens**

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

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing approval of a State Implementation Plan (SIP) revision submitted by the State of Missouri on December 3, 2018, and supplemented by letter on May 22, 2019. Missouri requests that the EPA remove from its SIP a rule related to control of emissions from bakery ovens in the Kansas City, Missouri area. This rescission does not have an adverse effect on air quality. The EPA's proposed approval of this rule revision is 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-2019-0400 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:** William Stone, Environmental Protection Agency, Region 7 Office, Air Quality Planning Branch, 11201 Renner Boulevard, Lenexa, Kansas 66219; telephone number (913) 551-7714; email address [stone.william@epa.gov](mailto:stone.william@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-2019-0400 at [https://www.regulations.gov](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 the removal of 10 Code of State Regulation (CSR) 10-2.360, *Control of Emissions from Bakery Ovens*, from the Missouri SIP.

According to the May 22, 2019, letter from the Missouri Department of Natural Resources, available in the docket for this proposed action, Missouri rescinded 10 CSR 10-2.360, *Control of Emissions from Bakery Ovens* because the only source subject

to the rule ceased operations in 2001. The state asserts in their submission to the Agency that this rule is no longer necessary for attainment and maintenance of the 1979, 1997, or 2008 National Ambient Air Quality Standards (NAAQS) for Ozone.

### **III. Background**

The EPA established a 1-hour ozone NAAQS in 1971. 36 FR 8186 (April 30, 1971). On March 3, 1978, the EPA designated Clay, Platte and Jackson counties (hereinafter referred to in this document as the "Kansas City Area") in nonattainment of the 1971 1-hour ozone NAAQS<sup>1</sup>, as required by the CAA Amendments of 1977. 43 FR 8962 (March 3, 1978). On February 8, 1979, the EPA revised the 1-hour ozone NAAQS, referred to as the 1979 ozone NAAQS. 44 FR 8202 (February 8, 1979). On February 20, 1985, the EPA notified Missouri that the SIP was substantially inadequate (hereinafter referred to as the "SIP Call") to attain the 1-hour ozone NAAQS in the Kansas City Area. See 50 FR 26198 (July 25, 1985).

To address the SIP Call, Missouri submitted an attainment demonstration on May 21, 1986, and volatile organic compound (VOC) control regulations on December 18, 1987. See 54 FR 10322 (March 13, 1989) and 54 FR 46232 (November 2, 1989). The EPA

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<sup>1</sup> Missouri's May 22, 2019 letter incorrectly states that the Kansas City area was designated as a nonattainment area for the 1979 ozone NAAQS in 1978.

subsequently approved the revised control strategy for the Kansas City Area. *Id.* The EPA redesignated the Kansas City Area to attainment of the 1979 1-hour ozone standard on July 23, 1992. 57 FR 27939 (June 23, 1992). Pursuant to section 175A of the CAA, the first 10-year maintenance period for the 1-hour ozone standard began on July 23, 1992, the effective date of the redesignation approval.

Following the 1992 redesignation, a large uncontrolled commercial bakery located in Kansas City was identified by the state of Missouri. Since bakery operations emit significant amounts of ethanol, which is a VOC, Missouri developed a regulation based on EPA's Alternative Control Technology (ACT)<sup>2</sup> document which is designed to provide states with background information to assist them in developing RACT rules for this source category. Unlike a control technique guideline (CTG) document, however, the Bakery Oven ACT does not identify a presumptive norm for RACT. An achievable control level is identified, and states are given the flexibility to select control strategies. 10 Code of State Regulation (CSR) 10-2.360, *Control of Emissions from Bakery Ovens* was proposed June 6,

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<sup>2</sup> [https://www3.epa.gov/airquality/ctg\\_act/199212\\_voc\\_epa453\\_r-92-017\\_bakery\\_ovens.pdf](https://www3.epa.gov/airquality/ctg_act/199212_voc_epa453_r-92-017_bakery_ovens.pdf)

1995, and became effective in Missouri on November 30, 1995. The State submitted the rule as a SIP revision March 6, 1996. The

EPA proposed to approve the SIP revision. 61 FR 40591 (August 5, 1996). As required by CAA section 172 (b) (2), the rule was approved into the Missouri SIP. 63 FR 38755 (July 20, 1998).

As noted, 10 CSR 10-2.360, *Control of Emissions from Bakery Ovens*, was approved into the Missouri SIP as a RACT rule on July 20, 1998. 63 FR 38755 (July 20, 1998). At the time that the rule was approved into the SIP, 10 CSR 10-2.360 applied to new or modified or existing commercial bakeries whose potential emissions of VOCs are greater than one hundred (100) tons per year (tpy) in Clay, Jackson and Platte Counties in Missouri.

By letter dated December 3, 2018, Missouri requested that the EPA remove 10 CSR 10-2.360 from the SIP. Section 110(1) of the CAA prohibits EPA from approving a SIP revision that interferes with any applicable requirement concerning attainment and reasonable further progress (RFP), or any other applicable requirement of the CAA. On May 22, 2019, the state supplemented its SIP revision with a letter in order to address the requirements of section 110(1) of the CAA.

#### **IV. What is the EPA's Analysis of Missouri's SIP Revision Request?**

In its May 22, 2019 letter, Missouri states that it intended its RACT rules, such as 10 CSR 10-2.360, to solely

apply to existing sources in accordance with section 172(c)(1) of the CAA<sup>3</sup>. Missouri clarified that although the applicability section of 10 CSR 10-2.360 states that the rule applies to new and existing installations (located within the Clay, Jackson and Platte Counties), the rule applied to a single existing source, the Wonder Bread factory in Kansas City, Missouri. This assertion is confirmed in the State Implementation Plan record in which the EPA approved this rule into the SIP in 1998<sup>4</sup>.

Missouri, in its May 22, 2019 letter, indicates that the Wonder Bread factory in Kansas City, Missouri ceased operations in 2001 and the emitting equipment was subsequently decommissioned. The EPA has confirmed that the facility was completely dismantled and is no longer operating.

As stated above, Missouri clarified that 10 CSR 10-2.360 may be removed from the SIP because section 172(c)(1) of the CAA requires RACT for existing sources, and because 10 CSR 10-2.360 was applicable to a single source that has permanently ceased operations and therefore the rule no longer reduces VOC emissions. Because the Wonder Bread factory in Kansas City, Missouri was the only source that was subject to the rule, and

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<sup>3</sup> The EPA agrees with Missouri's interpretation of CAA Section 172(c)(1) in regards to whether RACT is required for existing sources, but also notes that the State regulation establishing RACT may apply to new sources as well, dependent upon the State regulation's language.

<sup>4</sup> <https://www.govinfo.gov/content/pkg/FR-1998-07-20/html/98-19134.htm>

because the facility has been shut-down and dismantled and since 2001 no new bakery oven facilities have commenced operation in the area since Missouri developed this rule, the EPA is proposing to find that the rule no longer provides an emission reduction benefit to the Kansas City Area and is proposing to remove it from the SIP.

Missouri's May 22, 2019 letter states that any new sources or major modifications of existing sources are subject to new source review (NSR) permitting. Under NSR, a new major source or major modification of an existing source with a (potential to emit) PTE of 250 tons per year (tpy) or more of any NAAQS pollutant is required to obtain a Prevention of Significant Deterioration (PSD) permit when the area is in attainment or unclassifiable, which requires an analysis of Best Available Control Technology (BACT) in addition to an air quality analysis and an additional impacts analysis. Sources with a PTE greater than 100 tpy, but less than 250 tpy, are required to obtain a minor permit in accordance with Missouri's New Source Review permitting program, which is approved into the SIP<sup>5</sup>. The EPA agrees with this analysis.

Missouri's May 22, 2019, letter also includes information

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<sup>5</sup> EPA's latest approval of Missouri's NSR permitting program rule was published in the Federal Register on October 11, 2016. 81 FR 70025.

concerning ozone air quality in the Kansas City area from 1996 through 2018 that indicates a downward trend in monitored ozone design values. Missouri states that despite promulgation of more stringent ozone NAAQS in 1997, 2008 and 2015, the Kansas City area continues to monitor attainment. The EPA has confirmed that certified ambient air quality data for Kansas City Area as monitored at the Rocky Creek, Clay County State and local air monitoring station is compliant with the most recent ozone standard- the 2015 ozone NAAQS<sup>6</sup>. The 2016-2018 design value for that monitor is 70 parts per million<sup>7</sup>.

Because Missouri has demonstrated that removal of 10 CSR 10-2.360 will not interfere with attainment of the NAAQS, Reasonable Further Progress (RFP)<sup>8</sup> or any other applicable requirement of the CAA because the single source subject to the rule has permanently ceased operations and removal of the rule will not cause VOC emissions to increase, and any new source would be required to go through the appropriate permitting process that is protective of the NAAQS, the EPA proposes to approve removal of 10 CSR 10-2.360 from the SIP.

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<sup>6</sup> In accordance 40 CFR part 50.19(b), the 2015 8-hour primary O<sub>3</sub> NAAQS is met at an ambient air quality monitoring site when 3-year average of the annual fourth-highest daily maximum 8-hour average O<sub>3</sub> concentration is less than or equal to 0.070 ppm, as determined in accordance with appendix U to 40 CFR part 50.

<sup>7</sup> The monitoring data was reported, quality assured, and certified in accordance with the requirements set forth in 40 CFR part 58.

<sup>8</sup> RFP is not applicable to the Kansas City Area because the area is in attainment of all applicable ozone standards.

**V. 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 submission also satisfied the completeness criteria of 40 CFR part 51, appendix V. The State provided public notice on this SIP revision from February 28, 2018, to April 5, 2018 and held a public hearing on March 29, 2018. Missouri received five comments from the EPA that related to Missouri's lack of an adequate demonstration that the rule could be removed from the SIP in accordance with section 110(1) of the CAA. Missouri's May 22, 2019 letter addressed the EPA's comments. In addition, the revision meets the substantive SIP requirements of the CAA, including section 110 and implementing regulations.

**VI. What Action is the EPA Taking?**

The EPA is proposing to approve Missouri's request to rescind 10 CSR 2.360 from the SIP because the rule applied to a single source that has permanently ceased operations. Any new sources or major modifications of existing sources in the Kansas City Area are subject to NSR permitting. Additionally, the maintenance period for the 1979 ozone NAAQS for the Kansas City Area ended in 2014 and the area continues to monitor attainment of the 2015 Ozone NAAQS. 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.

#### **VII. Incorporation by Reference**

In this document, the EPA is proposing to amend regulatory text that includes incorporation by reference. As described in the proposed amendments to 40 CFR part 52 set forth below, the EPA is proposing to remove provisions of the EPA-Approved Missouri Regulations from the Missouri State Implementation Plan, which is incorporated by reference in accordance with the requirements of 1 CFR part 51.

#### **VIII. 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 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 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,  
Incorporation by reference, Reporting and recordkeeping  
requirements, Volatile organic compounds.

Dated: April 3, 2020.

**Edward Chu,**

*Acting 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**

**§52.1320 [Amended]**

2. In §52.1320, the table in paragraph (c) is amended by removing the entry "10-2.360" under the heading "Chapter 2-Air Quality Standards and Air Pollution Control Regulations for the Kansas City Metropolitan Area".

[FR Doc. 2020-07474 Filed: 4/21/2020 8:45 am; Publication Date: 4/22/2020]