



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R07-OAR-2020-0014; FRL-10012-93-Region 7]

**Air Plan Approval; Missouri; Control of Emissions from
Production of Pesticides and Herbicides**

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking final action to approve a revision to the State Implementation Plan (SIP) for its rule related to control of emissions from production of pesticides and herbicides in the Kansas City area. This final action will amend the SIP to remove certain provisions from the rule, consolidate requirements, include incorporations by reference and revise restrictive language. The EPA's approval of these rule revisions 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-2020-0014. 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: Will 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

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

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I. What is Being Addressed in this Document?

The EPA is approving revisions to 10 Code of State Regulation (CSR) 10-2.320, *Control of Emissions from Production of Pesticides and Herbicides* in the Missouri SIP. Missouri made several revisions to the rule. These revisions are described in

detail in the technical support document (TSD) included in the docket for this action. The EPA is finalizing this action because the revisions to these rules meet the applicable requirements of the Clean Air Act.

II. 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 August 1, 2018 to September 30, 2018 and received fourteen comments on the two rules. Missouri responded to all comments. As stated in the TSD for this action, the revision meets the substantive SIP requirements of the CAA, including section 110 and implementing regulations.

III. The EPA's Response to Comments

The public comment period on the EPA's proposed rule was open from February 4, 2020 through March 5, 2020. During this period, EPA received several comments from two commenters.

Comments from Center for Biological Diversity and Center for Environmental Health

Comment: The Center for Biological Diversity and Center for Environmental Health made several comments in their comment letter related to language that had been previously approved into the SIP when it was approved in 1989. See 54 FR 10322

(March 13, 1989) and 54 FR 46232 (November 2, 1989). The commenters raise the following issues: (1) the sources covered by the rule; (2) the sufficiency of the monitoring and recordkeeping provisions; and (3) the legal sufficiency of language related to the director's review of records kept by subject sources.

Response: EPA appreciates the comments on the proposal, but they are not germane to the SIP revision at issue in this action. As described in detail in the TSD to this rulemaking, the revisions to this rule are administrative in nature and do not change the purpose or substance of the preexisting state rule in the SIP. The TSD, included in the docket for this rulemaking, detail the revisions the state made to the prior version of the rule using strikeout, bold and red lettering. These minor changes include, for example, moving previously approved language into a new section (revisions to section (3) and (4)); renumbering paragraphs (revisions to sections (4) and (5)); and other minor wording changes (revisions to section (1)). EPA's TSD analysis focused only on these wording changes and did not evaluate the unchanged portions of the preexisting state rule. The state made no substantive changes e.g., applicability, emission limit changes, etc., to the rule already approved in the state's SIP.

The EPA did not intend to solicit comments on the portions of the rule that the state did not change in this rulemaking.

The NPRM did not request comment on the portions of the rule that were unchanged. Further, EPA's comments during the state's rulemaking process that led to this SIP revision focused only on the administrative and minor changes made to the rule, not on the substantive requirements previously approved into the SIP. See EPA-R07-OAR-2020-0014, State Submittal, p. 19.¹ Thus, the agency's comments on the state's draft SIP submission reflect that the agency was not evaluating the state rule for any purposes other than the minor revisions the state intended to make.

As demonstrated by the language in both the TSD and the notice of proposed rulemaking, the agency was not evaluating, and did not intend to evaluate, this SIP revision for substantive purposes. This action merely approves the state's editorial and renumbering changes to the existing, approved SIP provision.

The agency first approved the provision into the Missouri SIP in 1989. 54 FR 10322 (March 13, 1989). The state subsequently amended the rule, which EPA approved. 59 FR 43480 (Aug. 24, 1994) (correction document 60 FR 16806 April 3, 1995).

¹ Although EPA's comments on the rulemaking included a comment related to MDNR's requirement to comply with the requirements of CAA sections 110 and 193, 42 U.S.C. 7410 and 7515; as demonstrated by the EPA's comment letter, those comments applied generally to all SIP revisions made by MDNR. Further, because this rule did not have substantive changes to the requirements previously SIP-approved in 1989, MDNR was not required to make a demonstration under section 110 or 193 because there would be no emissions increases related to the changes in the rulemaking.

Courts have indicated that actions, such as the action taken on this rule, do not reopen issues on which the agency was not seeking comment. *Sierra Club v. EPA*, 551 F.3d 1019, 1024 (D.C. Cir. 2008) (citing *Am. Iron & Steel Inst. v. EPA*, 886 F.2d 390, 397 (D.C. Cir. 1989)) (“Under the reopening doctrine, the time for seeking review starts anew where the agency reopens an issue by holding out the unchanged section as a proposed regulation, offering an explanation for its language, soliciting comments on its substance, and responding to the comments in promulgating the regulation in its final form.”); *Appalachian Power v. EPA*, 251 F.3d 1026 (D.C.Cir. 2004).² The issues raised by the commenter address the wording and substance of the state rule approved by the agency in 1989. Accordingly, any challenge to the 1989 approval would be governed the timing requirements in Clean Air Act section 301, 42 U.S.C. 7601.

Further, EPA notes that the rule now covers only one source, that existed when 10 CSR 10-2.320 was first approved, in an area that is currently attaining all of the NAAQS, including ozone. This rule will continue to apply to this source and any

² *ARTBA v. EPA*, 588 F.3d 1109 at 1114 (rewriting a rule in plain language does not reopen); *Kennecott Utah Copper Corp. v. U.S. Dept. of the Interior*, 88 F.3d 1191 at 1220 (no reopener where agency “merely re-worded the provision” with “no meaningful difference”); *Columbia Falls Aluminum Co. v. EPA*, 139 F.3d 914, 920 (D.C. Cir. 1998) (dictum) (no reopener where agency action “merely republished an existing rule”); cf. also *Pub. Citizen v. Nuclear Regulatory Com.*, 901 F.2d 147, 150 (D.C. Cir. 1990) (“where an agency's actions show that it has not merely republished an existing rule in order to propose minor changes to it, but has reconsidered the rule and decided to keep it in effect, challenges to the rule are in order”).

new sources will be subject to the appropriate permitting requirements of the Clean Air Act and the Missouri State Implementation Plan.

The commenters focus entirely on portions of the rule that were not changed by this rulemaking, but instead were approved into the SIP by the agency in 1989 and 1995. As discussed above, the agency did not reopen these provisions for comment. Therefore, EPA is finalizing this SIP revision.

Anonymous Commenter

Comment: The commenter stated that EPA should not approve this SIP revision unless Missouri addresses all the comments and makes all the changes EPA requested in its comments on the rule.

Response: During Missouri's public comment process, EPA submitted comments on the state's proposed revisions to a number of existing SIP provisions. EPA submitted some general comments applicable to the state's revisions to all of the state rules at issue, not all of which were applicable to the revisions to 10 CSR 10-2.320 at issue in this action. EPA submitted three comments to the state that were specific to the rule revisions addressed in this action. These specific comments by EPA were related to clarity and references in the rulemaking and Missouri made those revisions. EPA has determined that the state's submission has met the requirements of the Clean Air Act.

IV. What Action is the EPA Taking?

The EPA is taking final action to amend 10 CSR 10-2.320 Control of Emissions from Production of Pesticides and Herbicides, which applies in the Kansas City area.

V. Incorporation by Reference

In this document, the EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is finalizing the incorporation by reference of the Missouri Regulations described in the 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).

Therefore, these materials have been approved by the 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 the EPA's approval, and will be incorporated by reference in the next update to the SIP compilation.³

VI. Statutory and Executive Order Reviews

³ 62 FR 27968 (May 22, 1997).

Under the Clean Air Act 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. 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 Clean Air Act 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,
Incorporation by reference, Intergovernmental relations, Ozone,
Reporting and recordkeeping requirements, Volatile organic
compounds.

Dated: July 24, 2020.

James Gulliford,
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

2. In §52.1320, the table in paragraph (c) is amended by revising the entry "10-2.320" 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 2--Air Quality Standards and Air Pollution Control Regulations for the Kansas City Metropolitan Area				
* * * * *				
10-2.320	Control of Emissions from Production of Pesticides and Herbicides	1/30/19	[insert date of publication in the Federal Register], [insert Federal Register citation]	
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