



## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R08-OAR-2020-0541; FRL-10019-42-Region 8]

#### Approval and Promulgation of Implementation Plans; Utah; R307-204 Emission

#### Standards: Smoke Management

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

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to approve a State Implementation Plan (SIP) revision package submitted by the State of Utah on November 5, 2019. The November 5, 2019 revision amends R307-204 to meet the requirements set forth in Utah's 2019 House Bill (H.B.) 155. This action is being taken under section 110 of the Clean Air Act (CAA).

**DATES:** Written 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-R08-OAR-2020-0541, to the Federal Rulemaking Portal: <https://www.regulations.gov>. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from [www.regulations.gov](https://www.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

<http://www2.epa.gov/dockets/commenting-epa-dockets>.

*Docket:* All documents in the docket are listed in the [www.regulations.gov](http://www.regulations.gov) index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available electronically in [www.regulations.gov](http://www.regulations.gov). To reduce the risk of COVID-19 transmission, for this action we do not plan to offer hard copy review of the docket. Please email or call the person listed in the **FOR FURTHER INFORMATION CONTACT** section if you need to make alternative arrangements for access to the docket.

**FOR FURTHER INFORMATION CONTACT:** Amrita Singh, Air and Radiation Division, EPA, Region 8, Mailcode 8ARD-IO, 1595 Wynkoop Street, Denver, Colorado, 80202-1129, (303) 312-6103, [singh.amrita@epa.gov](mailto:singh.amrita@epa.gov)

**SUPPLEMENTARY INFORMATION:** Specifically, EPA is proposing to approve revisions to sections: R307-204-1. Purpose and Goals; R307-204-2. Applicability; R307-204-3. Definitions; R307-204-4. General Requirements; R307-204-5. Burn Schedule; R307-204-6. Small Prescribed Fires (de minimis); R307-204-7. Small Prescribed Fires (de minimis); R307-204-8. Large Prescribed Fires; R307-204-9. Large Prescribed Pile Fires; and R307-204-10. Requirements for Wildland Fire Use Events.

Throughout this document wherever “we,” “us,” or “our” is used, we mean the EPA.

## **I. Background**

The EPA’s Interim Air Quality Policy on Wildland and Prescribed Fires<sup>1</sup> was designed to integrate two public policy goals, (1) to allow fire to function as nearly as possible, in its

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<sup>1</sup> See EPA’s “Interim Air Quality Policy on Wildland and Prescribed Fires” May 15, 1998.

natural role in maintaining healthy wildland ecosystems, and (2) to protect public health and welfare by mitigating the impacts of air pollutant emissions on air quality and visibility. The document expands on the responsibilities of wildland owners/managers and state/tribal air quality managers to coordinate fire activities, minimize air pollutant emissions, manage smoke from prescribed fires as well as wildland fires used for resource benefits, and establish emergency action programs to mitigate the unavoidable impacts on the public.

EPA does not directly regulate the use of fire within a state or in Indian country. The agency's authority is to enforce the requirements of the CAA, which requires states to attain and maintain the National Ambient Air Quality Standards (NAAQS) adopted to protect public health and welfare. The Air Quality Policy on Wildland and Prescribed Fires recommends that states/tribes implement Smoke Management Plans (SMPs) to mitigate the public health and welfare impacts of fires managed for resource benefits. The SMPs establish a basic framework of procedures and requirements for managing smoke from fires managed for resource benefits and are typically developed by states/tribes with cooperation and participation by wildland owners/managers. The goal of SMPs is to prevent deterioration of air quality and NAAQS violations; to address visibility impacts in mandatory Class 1 Federal areas; and to reduce the nuisance and public safety hazards posed by smoke intrusions into populated areas.

The SMP serves as the operational plan for the state administrative rule, R307-204, by providing the direction and operating procedures for all organizations involved in the use of prescribed fire, wildfire, and wildland fire use. The procedures that land managers are required to follow to mitigate the impact of smoke on public health and visibility in the State is established by the rule, R307-204. The Utah Enhanced Smoke Management Plan (ESMP)<sup>2</sup>, (Appendix B of the SMP), provides details on the visibility requirements of the Regional Haze Rule, 40 CFR 51.309(d)(6), and operating procedures to reduce visibility

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<sup>2</sup> See docket for Utah's Enhanced Smoke Management Plan August 1, 2003.

impacts from smoke in Class 1 Federal areas.<sup>3</sup> The SMP was approved by the EPA on Nov 8, 1999,<sup>4</sup> under the Interim Air Quality Policy on Wildland and Prescribed Fires. The requirements established in the SMP provide the framework for R307-204 Emission Standards: Smoke Management. Previously, EPA approved the September 29, 2011 R307-204 submittal which superseded and replaced the R307-204 portion of the December 12, 2003 submittal and all of the May 8, 2006 submittal.

## **II. The EPA's Evaluation**

Section 110(k) of the CAA addresses the EPA's rulemaking action on SIP submissions by states. The CAA requires states to observe certain procedural requirements in developing SIP revisions for submittal to the EPA. Section 110((a)(2) of the CAA requires that each SIP revision be adopted after reasonable notice and public hearing. This must occur prior to the revision being submitted by a state to EPA.

Pursuant to 40 CFR 51.309(d)(6), a state must show that its smoke management program and all federal or private programs for prescribed fire in the state have a mechanism in place for evaluating and addressing the degree of visibility impairment from smoke in their planning and application of burning. A state must also ensure that its prescribed fire smoke management programs have at least the following seven elements: action to minimize emissions; evaluation of smoke dispersion; alternatives to fire; public notification; air quality monitoring; surveillance and enforcement; and program evaluation.

On June 5, 2019 the State of Utah's Department of Environmental Quality, Air Quality Board approved proposed amendments to R307-204 to include requirements established by

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<sup>3</sup> Areas designated as mandatory Class I Federal areas consist of national parks exceeding 6000 acres, wilderness areas and national memorial parks exceeding 5000 acre, and all international parks that were in existence on August 7, 1977. 42 U.S.C. 7472(a). In accordance with section 169A of the CAA, EPA, in consultation with the Department of the Interior, promulgated a list of 156 areas where visibility is identified as an important value. 44 FR 69122 (November 30, 1979). The extent of a Mandatory Class I area includes subsequent changes in boundaries, such as park expansions. 42 U.S.C. 7472(a). Although states and tribes may designate as Class I additional areas which they consider having visibility as an important value, the requirements of the visibility program set forth in section 169A of the CAA apply only to "mandatory Class I Federal areas. Each mandatory Class I Federal area is the responsibility of a 'Federal Land Manager.'"

<sup>4</sup> See docket for Utah's Smoke Management Plan approved in 1992 and last revised on January 16, 2006.

the Utah State Legislature set forth in 2019 H.B.155.<sup>5</sup> A public comment period was held from July 1 to July 31, 2019. One non-substantive comment was received, and no public hearing was requested. The main purpose for amending R307-204 was to meet the requirements set forth in 2019 H.B. 155 which states:

“In the rules made by the board.....the board shall require the land manager to:

- (i) describe the use of state, county, or municipal resource in the large prescribed fire or large prescribed pile fire;
- (ii) provide the division the burn plan for a large prescribed fire or large prescribed pile fire by no later than one week before the day of the burn window; and
- (iii) notify the division of nonfull suppression event once a fire becomes a nonfull suppression event.”

The rule revisions include removing outdated terminology, such as, “wildland fire use,” “plan stage” and language regarding adjusting fire emission factors. Also, in EPA’s 1998 “Interim Air Quality Policy on Wildland and Prescribed Fires,” it is stated that federally prescribed fire projects would be considered to conform with the implementation plan if they are managed under a certified basic SMP. Since, Utah’s SMP meets that criteria, the State will be removing conformity from R307-204. Finally, Section R307-204-6. Small Prescribed Fires (de minimis), R307-204-7. Small Prescribed Pile Fires (de minimis), Section R307-204-8. Large Prescribed Fires and R302-20-9. Large Prescribed Pile Fires will be combined to reduce redundancies.

### **III. Proposed Action**

EPA is proposing to approve a SIP revision submitted by the State of Utah on November 5, 2019. The revisions meet the requirements set forth in Utah’s State Legislature’s H.B. 155 and reduce redundancies and outdated portions of the rule, while also streamlining it. EPA is proposing to approve revisions to sections: R307-204-1. Purpose and Goals; R307-204-2.

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<sup>5</sup> See docket for Utah’s State Legislature’s H.B. 155 from the 2019 General Session.

Applicability; R307-204-3. Definitions; R307-204-4. General Requirements; R307-204-5. Burn Schedule; R307-204-6. Small Prescribed Fires (de minimis); R307-204-7. Small Prescribed Fires (de minimis); R307-204-8. Large Prescribed Fires; R307-204-9. Large Prescribed Pile Fires; and R307-204-10. Requirements for Wildland Fire Use Events. The revision for R307-204 meets the applicable CAA requirements and contains smoke management requirements for land managers within the State of Utah as required by 40 CFR 51.309(d)(6).

#### **IV. 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 the requirements of 1 CFR 51.5, the EPA is proposing to incorporate by reference the Utah rules promulgated in the Division of Administrative Rule (DAR), R307-204-1, R307-204-2, R307-204-3, R307-204-4, R307-204-5, R307-204-6, R307-204-7, R307-204-8, R307-204-9 and R307-204-10, as discussed in section III of the preamble. The EPA has made, and will continue to make, these materials generally available through [www.regulations.gov](http://www.regulations.gov) and at the EPA Region 8 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

#### **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. 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 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 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).

In addition, 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 proposed 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, Greenhouse gases, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

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

Dated: February 11, 2021.

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Debra Thomas,  
Acting Regional Administrator,  
EPA Region 8.