



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R08-OAR-2021-0056; FRL-10021-25-Region 8]

Approval and Promulgation of Implementation Plans; Utah; Source Category Exemptions

Revisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve the State of Utah's Source Category Exemptions Revisions as submitted on November 5, 2019. The EPA is taking this action pursuant to 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-2021-0056, 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. 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 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. 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: Kevin Leone, Air and Radiation Division, EPA, Region 8, Mailcode 8ARD-IO, 1595 Wynkoop Street, Denver, Colorado, 80202-1129, (303) 312-6227, leone.kevin@epa.gov.

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

I. Background

The State of Utah’s regulation R307-401-10 was originally submitted on September 20, 1999 and was titled “Low Oxides of Nitrogen Burner Technology.” The Utah permitting regulations were reorganized and renumbered in Utah’s September 15, 2006 submittal, The “Low Oxides of Nitrogen Burner Technology” was deleted and moved to R307-328 “Ozone Nonattainment and Maintenance Areas in Utah and Weber Counties Gasoline Transfer and Storage”; R307-401-10 was then replaced with the title: “Source Category Exemptions.” These revisions were acted on in EPA’s rulemaking “Approval and Promulgation of Air Quality Implementation Plans; Utah; Revisions to Utah Administrative Code – Permit: New and Modified Sources” which was published on February 2, 2014 (79 FR 7072). The 2006 submittal did not include R307-401-10(6), which was submitted on November 5, 2019 and we are proposing to act on today. Source categories within R307-401-10 are exempt from going through the approval order process, as outlined in R307-401. The revision we are proposing to act on

today adds gasoline dispensing facilities as an exempt source category by adding the following language to the State of Utah's SIP:

“A gasoline dispensing facility as defined in 40 CFR 63.11132 that is not a major source as defined in R307-101-2. These sources shall comply with the applicable requirements of R307-328 [Gasoline Transfer and Storage] and 40 CFR 63 Subpart CCCCCC:

National Emission Standards for Hazardous Air Pollutants for Source Category: Gasoline Dispensing Facilities.”

Sources receiving an exemption under R307-401-10 are still subject to the requirements located in: 1) R307-401(2)(a), which prevents exempt sources from circumventing major New Source Review (NSR) requirements; 2) R307-401-4, which contains the general permitting requirements; 3) R307-201 through 207, which contains the State permitting area source regulations; and 4) R307 section 300, which contains the State permitting nonattainment and maintenance area regulations. In addition, gasoline dispensing sources under R307-401-10(6) would also have to comply with the requirements of 40 CFR part 63, subpart CCCCCC: National Emissions Standards for Hazardous Air Pollutants for gasoline dispensing facilities and R307-328, which establishes Reasonably Available Control Technology (RACT) for control of gasoline vapors during the filling of gasoline cargo tank and storage tanks in Utah. The rule is based on federal control technique guidance documents. This requirement is commonly referred to as stage I vapor recovery. The exemption thresholds are the thresholds defining a major source and major modification as detailed in R307-101-2 (General Requirements. Definitions.). These thresholds and the additional regulatory safeguards ensure protection of all National Ambient Air Quality Standards (NAAQS) and thus meet the requirements of CAA section 110(a)(2)(C), 40 CFR 51.160, and CAA section 110(l).

R307-401-10(6), as described in Utah's November 5, 2019 submittal, became State effective on June 6, 2019.

II. The EPA's Evaluation

EPA's regulations at 40 CFR 51.160 do not require the issuance of a permit for the construction or modification of minor sources, but only that the SIP include a procedure to prevent the construction of a source or modification that would violate the SIP control strategy or interfere with attainment or maintenance of the NAAQS.

EPA recognizes that, under the applicable federal regulations, states have broad discretion to determine the scope of their minor NSR programs as needed to attain and maintain the NAAQS. A state may tailor its minor NSR requirements as long as they are consistent with the requirements of CAA 110(a)(2)(C) and 40 CFR 51.160 – 164. States may also provide a rationale for why the rules are at least as stringent as the 40 CFR part 51 requirements where the revisions are different from those in 40 CFR part 51.

The State of Utah's permitting regulations located in R307 provide appropriate safeguards to ensure attainment and maintenance of the NAAQS; as noted above. In particular the general provisions in Utah's permitting rule, R307-401-4 which applies to all new and modified sources, even those under the threshold for being required to obtain an approval order. These general provisions require all control apparatuses to be properly maintained. In addition, the director has authority under R307-401-4(2) to require an approval order for a small source if it is creating an adverse impact on the environment, human health or welfare.

III. Proposed Action

Based on the above discussion, EPA finds that the addition of R307-401-10(6) would not interfere with attainment or maintenance of any of the NAAQS in the State of Utah and would not interfere with any other applicable requirement of the CAA and thus is approvable under CAA 110(a)(2)(C), 40 CFR 51.160 – 164 and CAA section 110(l). Therefore, we are proposing to approve the revisions to "Source Category Exemptions Revisions" as submitted by the State of Utah on November 5, 2019.

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 requirements of 1 CFR 51.5, the EPA is proposing to incorporate by reference the amendments described in section III. The EPA has made, and will continue to make, these materials generally available through 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: __ March 8, 2021.

Debra H. Thomas,
Acting Regional Administrator,
Region 8.

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