



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R06-OAR-2017-0145; FRL-9996-93-Region 6]

Approval and Promulgation of Implementation Plans; Oklahoma

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving revisions to the State Implementation Plan (SIP) for Oklahoma as proposed on March 22, 2018, and October 5, 2018. The revisions submitted by Oklahoma were contained in annual SIP updates for 2013, 2014, 2015, and 2016, and incorporate the latest changes to the EPA regulations. The overall intended outcome of this rulemaking is to make the approved Oklahoma SIP consistent with current Federal and State requirements. We are taking this action in accordance with the federal Clean Air Act (CAA, the Act).

DATES: This 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-R06-OAR-2017-0145. All documents in the docket are listed on the www.regulations.gov web site. Although listed in the index, some information is not publicly available, e.g., 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 <https://www.regulations.gov> or in hard copy at the EPA Region 6 Office, 1201 Elm Street, Dallas, Texas 75270.

FOR FURTHER INFORMATION CONTACT: Mr. Alan Shar, EPA Region 6 Office, SO₂ and Regional Haze Section (6ARSH), 1201 Elm Street, Dallas, TX 75270, 214-665-6691, shar.alan@epa.gov. To inspect the hard copy materials, please schedule an appointment with Mr. Alan Shar or Mr. Bill Deese at 214-665-7253.

SUPPLEMENTARY INFORMATION: Throughout this document “we,” “us,” and “our” mean the EPA.

Acronyms and Abbreviations. A number of acronyms and abbreviations are used in this preamble. While this may not be an exhaustive list, to ease the reading of this preamble and for reference purposes, the following terms and acronyms are defined:

ACI Air Curtain Incinerator

AQAC Air Quality Advisory Committee

BACT Best Available Control Technology

CAA Clean Air Act

CFR Code of Federal Regulations

CRA Congressional Review Act

EPA U.S. Environmental Protection Agency

FR Federal Register

NAAQS National Ambient Air Quality Standards

OAC Oklahoma Administrative Code

ODEQ Oklahoma Department of Environmental Quality

PSD Prevention of Significant Deterioration

SIP State Implementation Plan

SNPR Supplemental Notice of Proposed Rulemaking

TSD Technical Support Document

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I. Background

The background for this action is discussed in detail in the March 22, 2018 (83 FR 12514) Proposal.¹ After the close of the comment period, the Oklahoma Department of Environmental Quality (ODEQ) submitted additional information by letter dated July 31, 2018 (hereinafter “ODEQ’s July 31, 2018 Letter”),² concerning the SIP rule revisions addressed in the March 22, 2018 Proposal. The information submitted by ODEQ was intended to clarify the rule revisions and their applicability as well as to further demonstrate how the revisions improve the Oklahoma SIP. On October 5, 2018, we published a Supplemental Notice of Proposed Rulemaking (SNPR)³ at 83 FR 50312. The October 5, 2018 SNPR reopened the comment period based on the information submitted by Oklahoma and our analysis of it. We also withdrew the proposed action concerning Commercial and Industrial Solid Waste Incineration Units because

¹ See the Proposal, document ID No. EPA-R06-OAR-2017-0145-0001 at Regulations.gov.

² ODEQ letter dated July 31, 2018 to EPA concerning March 22, 2018 (83 FR 12514) Proposal, document ID No. EPA-R06-OAR-2017-0145-0026 at Regulations.gov

³ See the SNPR, document ID No. EPA-R06-OAR-2017-0145-0023 at Regulations.gov.

the State did not submit it for approval as a SIP revision. The Proposal, the SNPR, the Technical Support Document (TSD),⁴ and Supplement 3 to the TSD⁵ provide a detailed description and rationale for EPA's proposal to approve into the Oklahoma SIP certain revisions to Oklahoma Administrative Code (OAC) Title 252 Department of Environmental Quality (ODEQ), Chapter 100 Air Pollution Control (OAC:252:100) that Oklahoma submitted to the EPA on February 14, 2017. Specifically, the Proposal and the SNPR concern revisions to OAC:252:100 Subchapters 13 Open Burning, 17 Incinerators, 25 Visible Emissions and Particulates, 31 Control of Emission of Sulfur Compounds, Appendix E Primary Ambient Air Quality Standards, and Appendix F Secondary Ambient Air Quality Standards. The criteria used to evaluate these SIP revisions are found primarily in section 110 of the Act.

II. Public Comments

We received 19 comments on the March 22, 2018 (83 FR 12514) Proposal during the comment period that closed on April 23, 2018, and all comments are available in docket for this action. Eighteen of the 19 comments were submitted anonymously and did not provide information relevant or specific to the provisions proposed for approval into the Oklahoma SIP. Upon review, the EPA determined that the 18 anonymous comments merit no further response or discussion.⁶ The remaining comment, submitted by the Sierra Club and the Center for Biological Diversity (commenters), included relevant comments on the March 22, 2018 (83 FR 12514) Proposal.⁷ Primarily, the commenters assert that sections 110(l) and 193 of the Act have not been satisfied, and that revisions to OAC:252:100 Subchapters 13, 17, 25, and 31 of the Oklahoma SIP should not be approved. A summary of those comments and our responses are found below.

⁴ See the TSD, document ID No. EPA-R06-OAR-2017-0145-0002 at Regulations.gov.

⁵ See Supplement 3 to the TSD, document ID No. EPA-R06-OAR-2017-0145-0024 at Regulations.gov.

⁶ See the EPA Response to Comments, Memorandum document ID No. EPA-R06-OAR-2017-0145-0025 at Regulations.gov.

⁷ See document ID No. EPA-R06-OAR-2017-0145-0022 at Regulations.gov.

We did not receive comments on the October 5, 2018 (83 FR 50312) SNPR during the additional comment period that closed on November 5, 2018.

Comment 1: OAC 252:100, Subchapter 13 - Open Burning. The commenters note that the revisions would exempt hydrocarbon waste flaring and the use of air curtain incinerators from the open burning time limitations in OAC 252:100:13-9(4) of the existing SIP. Commenters claim that these revisions allow flaring operations and air curtain incinerators to operate an average of 18 more hours per day than allowed under the existing SIP and thus allow dramatically increased emissions of particulate matter, hydrocarbons, carbon monoxide, nitrogen oxides, and possibly sulfur compounds, including sulfur dioxide. Commenters maintain that the revision constitutes a SIP relaxation requiring a CAA section 110(l) analysis (subject to public notice and opportunity for public comment) of the impacts of the revision on the NAAQS and PSD increments, and a determination that the SIP relaxation will not interfere with the attainment or maintenance of the NAAQS and PSD increments. Finally, commenters note that the EPA must ensure that the requirements in CAA section 193 (relating to equivalent emission reductions) are being met.

Response: The February 14, 2017 submittal included revisions to OAC 252:100-9(4) that exempt open burning allowed under OAC 252:100-13-7(6)(B) (concerning hydrocarbon waste flaring) and OAC 252:100-13-8 (concerning air curtain incinerators) from the time restrictions otherwise applicable to open burning. As noted in ODEQ's July 31, 2018 Letter, the rule only requires that *initial* burning begin in the time frame of 3 hours after sunrise to 3 hours before sunset. Open burning is allowed outside of this timeframe so long as no additional fuel is added.

The revisions to OAC 252:100-9(4) exempt hydrocarbon waste flaring under OAC 252:100-13-7(6)(B) from the time restrictions associated with open burning. Pages 1-2 of ODEQ's July 31, 2018 Letter read:

“As discussed in the Air Quality Advisory Council (AQAC) transcripts included in the SIP submittal, DEQ recognized the need to correct the omission of the exemption for hydrocarbon flaring, and a new version of Subchapter 13 with the exemption was taken to the AQAC in 2003 and 2004, and approved by the Environmental Quality Board (EQB) in 2004. There are many continuous processes that use flares as a control device, and for those processes that cannot be turned off, the flare must be used continuously. If the flare is turned off, it could cause an air quality issue or a safety hazard. Many of these flares are also included in facility permits with the requirement to be operated continuously to reduce emissions. Many of these same flares are also subject to regulation under federal New Source Performance Standards (NSPSs) or National Emission Standards for Hazardous Air Pollutants (NESHAPs), which require them to operate continuously. DEQ never intended hydrocarbon flaring to be subject to the operational time limitations in Subchapter 13, and enforcement of such limitations would conflict with the state and federal requirements discussed above. In addition, the proposed revision to Subchapter 13 would not result in any increase in emissions and would not interfere with any NAAQS or PSD increment.”

We agree with ODEQ's conclusion that time limits on the operation of hydrocarbon flares are inappropriate and, if actually implemented, could cause a life or safety hazard and result in an increase in emissions of hydrocarbons while the flare is not in use. As such, the removal of the operating time restriction would reduce emissions of VOCs, if one assumes the restrictions had been enforced. However, as ODEQ notes, the restriction on hydrocarbon flaring could not have been practically enforced without introducing life or safety hazards. As such, the time limits on the operation of hydrocarbon flares could not have been implemented and, in fact, have never been implemented because they are inconsistent with several state and federal requirements, as noted above. Removing the time restriction is not expected to result in any actual change in emissions, and, therefore, its removal will not increase emissions or interfere with attainment or PSD increments.

The other exemption from the open burning time restriction included in the proposed SIP revision of OAC 252:100-13-9(4) concerns the use of air curtain incinerators (ACIs) under OAC 252:100-13-8. As noted in ODEQ's July 31, 2018 Letter, the use of ACIs under OAC 252:100-13-8 is limited to "combustible material or refuse that is *allowed* to be burned under this Chapter (emphasis added)." In addition, ODEQ's July 31, 2018 Letter at page 2 notes:

"DEQ exempted open burning using an ACI from the time limitation because an ACI is a control device that reduces the pollution created by open burning. ACIs are also a safer means of reducing waste by lowering the risk of escaped fires and embers. As compared to open burning without ACIs, an ACI reduces air pollution by about 90%, and specifically particulate matter by 97%, greatly reducing the probability of creating an air quality hazard or nuisance. One of the reasons DEQ eliminated the time restriction on the use of an ACI was to remove a barrier for anyone who could, to use an ACI. Please note the use of an ACI for any day where an Ozone or PM watch has been declared in a Metropolitan Statistical Area (MSA) or county is prohibited in OAC 252:100-13-9(5). It is also very important to note that the volume of materials being burned would not change based on this rule revision. However, the use of an ACI to burn that same volume, regardless of the time of day, would result in fewer emissions released to the environment. As such, the proposed revision to Subchapter 13 promotes a better pollution control measure which would neither result in any increase in emissions nor interfere with any NAAQS or PSD increment."

The EPA finds ODEQ's conclusion that the volume of material being burned would not change based on this rule revision is reasonable. In considering the allowed open burning activities listed in OAC 252:100-13-7, there is no reason to believe that removal of barriers to air curtain incinerators will result in more material being burned. For example, the EPA sees no reason, and the commenter provided no reason to expect, that more land would need clearing – an activity for which open burning is allowed under OAC 252:100-13-7(4) – due to the lifting of the time restrictions otherwise applicable to open burning for this activity. Instead, it is expected that if more air curtain incinerators are used relative to open burning, the air curtains would provide more efficient combustion and, as a result, less pollution. We also note that open burning of refuse and other combustible material may occur only if the burning is conducted so that the

contaminants do not adversely affect the ambient air quality of a city or town. See OAC 252:100-13-9 (3). Open burning of refuse and other combustible material may occur only if no public nuisance is or will be created, and the burning is controlled so that a visibility hazard is not created on any roadway, rail track or air field as a result of the air contaminants being emitted. See OAC 252:100-13-9(1) and (2), respectively. Also, use of an ACI is prohibited for any day where an Ozone or PM watch has been declared by ODEQ in a Metropolitan Statistical Area (MSA) or county. See OAC 252:100-13-9(5). Furthermore, persons who conduct open burning in accordance with the provisions of Subchapter 13 are not exempt or excused from the consequences, damages, or injuries that may result from such conduct, nor are they exempt or excused from complying with all applicable laws, ordinances, rules, and orders. See OAC 252:100-13-11.

Finally, we note that the requirements of CAA section 193 are inapplicable to the proposed revision to the Oklahoma SIP discussed above. In confirmation of the statement in ODEQ's July 31, 2018 Letter that "Oklahoma has never relied upon Subchapter 13 as a control measure for any nonattainment plans adopted before November 15, 1990," we searched the EPA's Greenbook site for the Designated Area Design Values for NAAQS of 1987 PM₁₀, 1971 SO₂, 1978 Pb, 1971 CO, and 1971 NO₂, and did not find information concerning any pre-November 15, 1990 nonattainment plan in place for these criteria pollutants in Oklahoma. See the chart⁸ on page 5 of Supplement 3 to TSD. We believe that the additional information provided in ODEQ's July 31, 2018 Letter and presented above supports approval of the revisions to OAC 252:100-13-9(4) and that such revisions would not interfere with any applicable requirement concerning attainment or any other applicable requirement of the Clean Air Act.

⁸ <https://www3.epa.gov/airquality/greenbook/ndtc.html> (URL dated May 15, 2018).

With respect to commenters' concern regarding the opportunity for public comment on our analysis, we note that ODEQ's July 31, 2018 Letter was made available to the public as part of the October 5, 2018 SNPR. See document ID Nos. EPA-R06-OAR-2017-0145-0026 and EPA-R06-OAR-2017-0145-0023, respectively, at www.regulations.gov. The public was provided an opportunity to comment on the contents of ODEQ's letter and our analysis of it. Additionally, our Supplement 3 to TSD, prepared in conjunction with our publication of the supplemental notice, was also made available in the docket on October 5, 2018. See document ID. No. EPA-R06-OAR-2017-0145-0024. In the SNPR, the EPA notes that it is "reopening the comment period based on information submitted by Oklahoma in a letter dated July 31, 2018, and our analysis of it." (83 FR 50312, October 5, 2018). Thus, through the supplemental notice, the EPA provided a fulsome opportunity for public comment on the additional information relevant to EPA's CAA section 110(l) analysis. The EPA did not receive comments on its October 5, 2018 supplemental notice action. For the reasons explained above, no changes have been made to the proposed approval of this rule revision as a result of this comment.

Comment 2: OAC 252:100-17 - Incinerators. Commenters note that the revisions would exclude New Source Performance Standard (NSPS) subpart AAAA⁹ and subpart CCCC¹⁰ sources from the incinerator requirements in OAC 252:100-17 (Subchapter 17) of the existing SIP. Commenters assert that neither the EPA nor Oklahoma provided any analysis to show that the NSPS requirements are as stringent as the Oklahoma Subchapter 17 requirements. Commenters note that Subchapter 17 imposes particulate matter limits that do not include any exemptions for startup and shutdown, while the emission limits in NSPS subpart AAAA do not

⁹ 40 CFR part 60, subpart AAAA - Standards of Performance for Small Municipal Waste Combustion Units for Which Construction is Commenced After August 30, 1999 or for Which Modification or Reconstruction is Commenced After June 6, 2001.

¹⁰ 40 CFR part 60, subpart CCCC - Standards of Performance for Commercial and Industrial Solid Waste Incineration Units.

apply during startup, shutdown or malfunction (40 CFR 60.1220). Commenters claim this SIP revision requires a CAA section 110(l) analysis to ensure any emission increases resulting from the revision would not adversely impact compliance with the NAAQS or PSD increments. The commenter also asserts that the EPA has not compared the emission limits in NSPS subparts AAAA and CCCC to Subchapter 17 to ensure that the SIP revision will not result in relaxing emission limits that apply to these sources under the current SIP, including the particulate matter requirements for fuel-burning units pursuant to OAC 252:100-17-1.3 and 252:100-19 of the existing SIP that apply to incinerators that also generate useful heat energy.

Response: As the commenters correctly note, the February 14, 2017 submittal includes a revision to OAC 252:100-17-2 which adds NSPS subpart AAAA and NSPS subpart CCCC to the list of sources exempt from the requirements applicable to general purpose incinerators. As stated on page 2 of ODEQ's July 31, 2018 Letter,

“It has always been DEQ's intention that Part 3 of Subchapter 17 apply to general purpose incinerators that are not otherwise covered by a more specific and applicable state or federal regulation. The addition of NSPS Subpart AAAA and CCCC to the list of exemptions is intended to ensure that small municipal waste combustion units and commercial and industrial solid waste incinerators are appropriately required to follow the NSPS specific to that type of unit, rather than the generic opacity and particulate matter regulations in OAC 252:100-17-3 and 100-17-4.”

As an initial matter, the EPA believes it is reasonable for Oklahoma make efforts to remove requirements that overlap with Federal requirements when consistent with the Act. Further, as noted on page 3 of ODEQ's July 31, 2018 Letter,

“Oklahoma currently has no incinerators subject to the small municipal waste combustion rule of NSPS Subpart AAAA. The facilities subject to NSPS Subpart CCCC in Oklahoma are subject due to the presence of an ACI and are required to have a Title V permit. Emission inventories are required annually per OAC 252:100-5 and include state rule OAC 252:100-9 emission reporting. There is no regulatory or emissions reporting gap created by exempting these units from Subchapter 17.”

So, with regard to incinerators subject to NSPS subpart AAAAA, there will be no increase in emissions due to exempting sources subject to this standard, as there are no known sources currently subject to NSPS subpart AAAAA in Oklahoma. In addition, and as discussed below, any increase in emissions due to exempting subpart CCCC sources will be de minimus.

An inquiry for sources subject to NSPS subpart CCCC requirements in Oklahoma reveals that such sources have an estimated or reported total annual PM₁₀ emissions of 2.337 tons (based on 2017 emission inventory data and permitted rate). To the extent that revisions to OAC 252:100-17 might have resulted in any increased emissions from this source category when compared to the total state-wide national emission inventory of 10,693.06 tons of PM₁₀, the resulting ratio is so small ($2.337/10,693.06 = 0.000219$, or less than three-one hundredth of one percent) that it is reasonable to conclude that such a de minimus amount would not interfere with the attainment or maintenance of the NAAQS, PSD increment, or any other applicable requirement of the Act relating to SIPs.¹¹ The commenter also specifically noted that emissions during startup and shutdown are exempt under NSPS subpart AAAAA, but since there are no NSPS subpart AAAAA sources in Oklahoma, this is not a concern with respect to CAA section 110(l).

NSPS subpart AAAAA and CCCC sources previously subject to the General Purpose requirements of OAC 252:100-17, Part 3 would be subject to the emission requirements in the applicable federal NSPS rather than the particulate matter emission limits provided by OAC 252:100, Appendix A.¹² Comparatively, the type of pollutants and the control requirements in 40 CFR part 60, subparts AAAAA and CCCC are more robust and provide for better air quality

¹¹ All air quality control regions in Oklahoma are currently designated as unclassifiable/attainment for PM_{2.5}. See 40 CFR 81.337.

¹² Appendix A in the Oklahoma SIP is part of an arcane Regulation 5 which uses a process weight formula to calculate a corresponding particulate emission rate based on its capacity.

protection than the out of date empirical formula found in Appendix A of the 1972 Oklahoma SIP. We believe it is reasonable for Oklahoma to remove old and duplicative requirements. Finally, according to the 2016 State's Air Data Report, Oklahoma has better ambient air quality than required under the PM_{2.5} NAAQS, for both the primary and secondary, and the PM₁₀ NAAQS. See the charts on page 5 of Supplement 3 to TSD.¹³

We note that under the Oklahoma SIP, should a source become subject to NSPS subpart AAAA or subpart CCCC in the future, new source review (NSR) permitting requirements would be triggered which require emission limitations for all periods of normal operation, including periods of startup and shutdown. In addition, 40 CFR 60.2145(a)(1) of NSPS subpart CCCC states that the emission standards and operating requirements set forth in this subpart apply *at all times*. Furthermore, affected sources subject to NSPS subparts AAAA or CCCC in the future would trigger Oklahoma NSR SIP and Title V requirements that ensure emissions from such sources do not interfere with attainment or any other applicable requirement of the CAA. Stationary sources subject to NSPS subparts AAAA or CCCC must obtain an air permit that includes operational conditions and limitations necessary to assure compliance with all applicable requirements, including the NAAQS. See OAC 252:100-8-3 and OAC 252:100-8-6(a) of the Oklahoma SIP. See also OAC 252:100-4 of the Oklahoma SIP. The federal NSPS requirements in combination with the NSR SIP requirements will ensure that any emission increases due to exempting NSPS subpart AAAA and CCCC sources from the requirements of OAC 252:100-17, Part 3 will be de minimus and will not interfere with any applicable requirement concerning attainment or any other applicable requirement of the Act.

¹³ See <http://www.deq.state.ok.us/AODnew/airreport2016/PM25.html> (URL dated May 1, 2018) and <http://www.deq.state.ok.us/AODnew/airreport2016/PM10.html> (URL dated May 1, 2018).

In addition, we are only approving into the SIP, the revision to OAC 252-100-17-2 discussed above. We have not proposed action related to the provisions of OAC 252:100-17, Part 9 Commercial and Industrial Solid Waste Incineration Units – specifically OAC 252:100-17-60 thru 17-76 – as discussed in the March 22, 2018 (83 FR 12515) notice and the SNPR. These provisions were not submitted to the EPA for SIP approval as part of the February 14, 2017 SIP submittal and include provisions that pertain to CAA sections 111(d) and 129, instead, which will be acted upon separately in the future.¹⁴ Therefore, no changes have been made to the proposed approval of the rule revision as a result of this comment.

Comment 3: OAC 252:100- 25 - Visible Emissions and Particulates. The commenters state that the EPA is proposing to remove the requirement for the EPA and ODEQ to jointly approve alternative monitoring requirements and instead allow only ODEQ to make such determinations on a case-by-case basis, thereby essentially allowing changes to the opacity monitoring requirements of the SIP without going through the SIP revision process. The commenters claim that the provision in the currently existing SIP, requiring both EPA and ODEQ approval, ensures that EPA would evaluate the alternative opacity monitoring requirements to make certain that the alternative monitoring does not represent a relaxation of the SIP limits. Citing to 40 CFR 51.212(c), the commenters note that the SIP requirements for source testing provide that a state may use test methods in Appendix M of 40 CFR part 51 or Appendix A of 40 CFR part 60; or the state may use an alternative opacity monitoring method that is not identified in those two Appendices following review and approval of that method by

¹⁴ OAC 252:100-17-60 thru 17-76 are not directly related to CAA section 110 (State implementation Plans for NAAQS) and pertain to CAA sections 111(d) (Standards of performance for existing sources; remaining useful life of source) and 129 (Solid waste combustion) standards. These Subchapter 17 revisions were submitted by the Oklahoma Department of Environmental Quality to EPA, by letter dated September 15, 2017, as an update to Oklahoma's Air Quality State Plan for Commercial and Industrial Solid Waste Incinerators (CISWI) units, under CAA sections 111(d) and 129. Pursuant to those statutory provisions and EPA's implementing regulations related thereto, EPA will be evaluating and acting upon the September 15, 2017 Submittal in a separate action.

the EPA. Commenters conclude that to the extent ODEQ uses an alternative monitoring method not identified in the above-referenced Appendices, it must obtain EPA's approval.

Response: OAC 252:100-25-5 imposes continuous opacity monitoring requirements on sources subject to 40 CFR part 51, appendix P and is, therefore, governed by the requirements in appendix P. The February 14, 2017 submittal includes a revision to OAC 252:100-25-5(c) which eliminates the words "and EPA" from the rule's requirement concerning the case-by-case approval of alternative monitoring requirements different from the provisions of parts 1 through 5 of 40 CFR part 60, appendix P if continuous monitoring cannot be implemented by a source due to physical plant limitations or extreme economic reasons. Thus, OAC 252:100-25-5(c) concerns the installation and operation of *emission monitoring systems* as required by 40 CFR 51.214 and not the requirements related to enforceable *test methods or alternative test methods* as provided in 40 CFR 51.212 and cited to by the commenters. More specifically, 40 CFR 51.214(c) requires that the type of sources set forth in 40 CFR part 51, appendix P meet the applicable requirements therein. In turn, appendix P states that SIPs may include provisions that provide for approval, on a case-by-case basis, of alternative monitoring requirements if the installation of a continuous monitoring system cannot be implemented by a source due to physical limitations or extreme economic reasons. See 40 CFR part 51, appendix P, part 6.0, *Special Consideration*. Importantly, there is no requirement that the state obtain EPA's approval when making such determinations. The state rulemaking record for the changes to OAC 252:100-25-5(c) support ODEQ's position that the provisions therein are based on the special consideration language of part 6 of 40 CFR part 51, appendix P, which describes the powers and duties of the state and alternatives to monitoring for sources with certain conditions. See pages 16-17 of the Transcript of Proceedings of the Air Quality Council Meeting, dated November 14,

2014, included in the February 14, 2017 submittal.¹⁵ Based upon Oklahoma's statements as well as the discussion above, no changes are made to the proposed approval of this rule revision as a result of this comment, and we are approving the submitted revision to OAC 252:100-25 into the Oklahoma SIP.

Comment 4: OAC 252:100-31 - Control of Emission of Sulfur Compounds. The commenter notes that the revisions would eliminate the SO₂ ambient standards (exposure limits) in the existing SIP at OAC 252:100-31-12 (renumbered OAC 252:100-31-7). The commenters claim that, contrary to ODEQ's assertion, the removed standards can still be considered protective of the current (2010) SO₂ NAAQS. More specifically, the commenters note that the averaging times and calculation methodologies underlying the existing SO₂ SIP ambient (exposure) standards are significantly different than the 2010 SO₂ NAAQS averaging times and methodologies. Due to the form of the SO₂ standards in the existing SIP being significantly different (5-minute) than the form of the 2010 (1-hour) SO₂ NAAQS and the its application to existing equipment, the commenters assert that OAC 252:100-31-12 in the existing SIP may provide protections in addition to those provided by the 2010 SO₂ NAAQS. The commenters questioned the CAA section 110(l) noninterference demonstration submitted by ODEQ as well as the EPA's proposed finding that the CAA section 110(l) requirements have been met. In addition, the commenters assert that removal of the SO₂ standards from the SIP could lead to increased emissions and relaxation of limits previously taken by some sources in order to meet these SIP requirements. The commenters note that such emission increases would need to be evaluated under CAA section 110(l) and determined not to adversely impact the NAAQS or PSD increments. In addition, they assert that the EPA must determine that other requirements in 40

¹⁵ See document ID No. EPA-R06-OAR-2017-0145-0003 at Regulations.gov.

CFR 51.166(a) and 40 U.S.C. 7410 and 7471 have been met. Finally, the commenters assert that record should include an analysis demonstrating that the requirements of CAA section 193 and 40 CFR 51.165(a)(2) have been met.

Response: As the commenters note, the February 14, 2017 submittal includes a revision to OAC 252:100-31 which removes SO₂ ambient standards (exposure limits) in the existing SIP at OAC 252:100-31-12 (renumbered OAC 252:100-31-7).¹⁶ Oklahoma's SIP submittal also includes a CAA section 110(l) Noninterference Demonstration. The purpose of a CAA section 110(l) demonstration is to ensure that the proposed SIP revision does not interfere with any applicable requirement concerning attainment of the NAAQS or any other applicable requirement of the CAA. See 42 U.S.C. 7410(l). The revision which must be evaluated under CAA section 110(l) (to determine if it interferes with attainment or maintenance of the NAAQS or any other CAA requirement) is the removal of the SO₂ state standards in the existing SIP at OAC 252:100-31-12 (renumbered OAC 252:100-31-7).

As noted on pages 3-4 of ODEQ's July 31, 2018 Letter:

“Because the state standards have been replaced with the national standards, provisions are in place to prevent Oklahoma sources' emissions from interfering with the 2010 1-hour NAAQS. . . . And, if one of the permits, due to the removal of these [state] standards, had resulted in significant increases in emissions from a major stationary source, the permit would have required a Prevention of Significant Deterioration (PSD) review. Additionally, the Data Requirements Rule (DRR) in 40 CFR Part 51 has resulted in additional SO₂ monitors and modeling in Oklahoma. This modeling shows the areas around the DRR sources to be in attainment of the 2010 SO₂ 1-hour NAAQS. Ambient air monitoring is ongoing, but data collected to date indicate that monitored areas are attaining the SO₂ NAAQS. These factors support DEQ's 110(1) demonstration that there has been no deterioration of air quality in Oklahoma due to the removal of these state standards.”

¹⁶ As noted in Supplement 3 to the TSD included in the docket for this action, the replaced SO₂ standards are state standards (i.e., not required by the EPA SIP regulations) that have been approved into the Oklahoma SIP. See document ID No. EPA-R06-OAR-2017-0145-0002 at Regulations.gov.

As stated above, Oklahoma opted to revise its state law to remove the outmoded SO₂ standards in OAC 252:100-31-12 (renumbered to OAC 252:100-31-7), in light of the EPA's 2010 SO₂ NAAQS and its incorporation into OAC 252:100, Appendix E. It now asks the EPA to approve this revision into the SIP. Since the removal of OAC 252:100-31-12 from the SIP cannot interfere with the attainment of the 2010 SO₂ NAAQS, the Oklahoma SIP contains provisions to ensure that SO₂ sources do not interfere with the current SO₂ NAAQS as discussed below.

In response to commenters concern that existing sources may seek modifications to remove or change SO₂ emission limits previously taken in air permits in order to meet the replaced state SO₂ standard, ODEQ notes provisions are in place to prevent Oklahoma sources from interfering with the 2010 SO₂ NAAQS. Such provisions are found in Oklahoma's major and minor NSR SIP programs. For example, under OAC 252:100-7 (permits for minor facilities), which has been approved into the Oklahoma SIP, construction and operating permits must contain provisions that prohibit exceedances of ambient air quality standards contained in OAC 252:100-3, including the 2010 SO₂ NAAQS. See OAC 252:100-7-15(d) and 7-18(f). In addition, as noted in ODEQ's July 13, 2018 Letter and under OAC 252:100-8 of the EPA-approved Oklahoma SIP, permits for Part 70 sources (including PSD sources) must include operational conditions and limitations necessary to assure compliance with all applicable requirements, including the 2010 SO₂ NAAQS and other SIP requirements. See OAC 252:100-8-6(a) and OAC 252:100-8-2 (definition of applicable requirement). Therefore, should a source submit a permit application to revise an emissions limitation previously taken to meet the state SO₂ standard, ODEQ would need to conduct an evaluation of the impacts associated with an increase of emissions on the NAAQS and PSD increments as well as ensure that the requirements of 40 CFR 51.166(a) and other applicable requirements of the CAA have been met, including those cited by

the commenter. See, e.g., OAC 252:100-8, Part 7 of the federally-approved Oklahoma SIP; see also 40 CFR part 52, subpart LL.

Finally, in confirmation of ODEQ's July 31, 2018 Letter which states that "Oklahoma has never relied upon Subchapter 31 as a control measure for any nonattainment plans adopted before November 15, 1990" in relation to CAA section 193, we searched EPA's Greenbook site for the Designated Area Design Values for NAAQS of 1987 PM₁₀, 1971 SO₂, 1978 Pb, 1971 CO, and 1971 NO₂ and did not find information concerning any pre-November 15, 1990 nonattainment plan in place for these criteria pollutants in Oklahoma. See the chart on page 14 of Supplement 3 to TSD.¹⁷ As such, the requirements of CAA section 193 are not applicable to this rulemaking action. Therefore, based upon Oklahoma's statements as well as the analysis presented in the record and discussed above, the proposed revision would not interfere with any applicable requirement concerning attainment or any other applicable requirement of the Act. Therefore, no changes have been made to the proposed approval of this rule revision as a result of this comment.

In addition, from a historical perspective of SO₂ NAAQS review, we note the Clean Air Scientific Advisory Committee stated that the Risk and Exposure Assessment (REA) had presented a "convincing rationale" for a one-hour standard, and that "a 1-hour standard is the preferred averaging time" and has been "in agreement with having a short-term standard and finds that the REA supports a one-hour standard as protective of public health." (74 FR 64833, December 8, 2009).¹⁸ For example, the existing OAC 252:100-31-12(a), in part, sets forth an

¹⁷ See <https://www3.epa.gov/airquality/greenbook/ndtc.html> (URL dated May 15, 2018).

¹⁸ The Clean Air Scientific Advisory Committee is designed to provide independent advice to the EPA Administrator on the technical bases for EPA's NAAQS, and the Risk and Exposure Assessment is a planning document EPA develops when establishing NAAQS for criteria pollutants.

ambient air concentration of sulfur dioxide at 1300 µg/m³ (0.50 ppm) in a five (5) minute period.

In developing the SO₂ NAAQS, EPA wrote,

“When evaluating alternative forms in conjunction with specific levels, the REA considered the adequacy of the public health protection provided by the combination of level and form to be the foremost consideration. In addition, the REA recognized that it is important that the standard have a form that is reasonably stable. As just explained in the context of a five-minute averaging time, a standard set with a high degree of instability could have the effect of reducing public health protection because shifting in and out of attainment could disrupt an area’s ongoing implementation plans and associated control programs (74 FR 64833, December 8, 2009).”

In addition, as a part of final FR SO₂ NAAQS in the 1996 rulemaking¹⁹ regarding a 5-minute standard CASAC wrote:

“3. It was the consensus of CASAC that any regulatory strategy to ameliorate such exposures be risk-based-targeted on the most likely sources of short-term sulfur dioxide spikes rather than imposing short term standards on all sources. All of the nine CASAC Panel members recommended that Option 1, the establishment of a new 5-minutes standard, not be adopted. Reasons cited for this recommendation included: the clinical experiences of many ozone experts which suggest that the effects are short-term, readily reversible, and typical of response seen with other stimuli. Further, the committee viewed such exposures as rare events which will even become rarer as sulfur dioxide emissions are further reduced as the 1990 amendments are implemented. In addition, the committee pointed out that enforcement of a short-term NAAQS would require substantial technical resources. Furthermore, the committee did not think that such a standard would be enforceable. 4. CASAC questioned the enforceability of a 5-minute NAAQS or “target level.” Although the Agency has not proposed an air monitoring strategy, to ensure that such a standard or “target level” would not be exceeded, we infer that potential sources would have to be surrounded by concentric circles of monitors. The operation and maintenance of such monitoring networks would be extremely resource intensive. Furthermore, current instrumentation used to routinely monitor sulfur dioxide does not respond quickly enough to accurately characterize 5-minute spikes.”

Upon inquiry we were informed that the State did not collect 5-minute (short term) SO₂ monitoring data and such information does not exist for us to evaluate or compare the State-only standard with the 2010 1-Hour SO₂ NAAQS for CAA section 110(l) purposes.

To the extent sources were subject to the 5-minute standard, it would have arisen during the permitting process if a modeling demonstration had indicated more stringent permit limits

¹⁹ <https://www.govinfo.gov/content/pkg/FR-1996-05-22/pdf/96-12863.pdf>, Page 25579.

would be necessary to protect the five minute average. As noted by ODEQ above, any attempt to remove those limitations would trigger PSD requirements (e.g., BACT analysis) had there been a significant SO₂ emissions increase.

No comments pertaining to February 14, 2017 revisions to OAC 252:100 Appendix E - Primary Ambient Air Quality Standards, and OAC 252:100 Appendix F - Secondary Ambient Air Quality Standards were received. Therefore, approval of these two Appendices as a revision to the Oklahoma SIP will be finalized as proposed.

This concludes our response to relevant comments received. No changes to the Proposal and the SNPR have been made as a result of the comments received; therefore, we are finalizing proposed revisions noted in the Proposal and the corresponding SNPR into the Oklahoma SIP, as submitted on February 14, 2017.

III. Final Action

We are approving rule revisions to OAC:252:100 Subchapters 13 Open Burning, 17 Incinerators, 25 Visible Emissions and Particulates, 31 Control of Emission of Sulfur Compounds, Appendix E Primary Ambient Air Quality Standards, and Appendix F Secondary Ambient Air Quality Standards as submitted on February 14, 2017. Our approval will incorporate these changes into the SIP for Oklahoma.

IV. Incorporation by Reference

In this rule, the EPA is finalizing regulatory text that includes incorporation by reference. In accordance with the requirements of 1 CFR 51.4, the EPA is finalizing the incorporation by reference of the revisions to the Oklahoma regulations as described in the Final Action section above. The EPA has made, and will continue to make, these documents generally available electronically through www.regulation.gov, Docket ID. No. EPA-R06-OAR-2017-0145 and at

the EPA Region 6 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 SIP, 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.

V. Statutory and Executive Order Reviews

Under the Clean Air Act, 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 Clean Air Act. 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 Order 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 Clean Air Act;
- 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 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, 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 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, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: July 25, 2019.

David Gray,
Acting Regional Administrator, Region 6.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

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 LL – Oklahoma

2. In § 52.1920, the table in paragraph (c), under the heading entitled “Chapter 100

(OAC:252:100). Air Pollution Control,” is amended:

- a. Under Subchapter 13 by:
 - i. Revising the entries for “252:100-13-2” and “252:100-13-7”, under Subchapter 13;
 - ii. Adding an entry for “252:100-13-8”; and
 - iii. Revising the entry for “252:100-13-9”;
- b. Under Subchapter 17 by:
 - i. Revising the heading for Part 3; and
 - ii. Revising the entry for “252:100-17-2”;
- c. Under Subchapter 25 by revising the entry for “252:100-25-5”;
- d. Under Subchapter 31 by:
 - i. Revising the entries for “252:100-31-1” and “252:100-31-2”;
 - ii. Removing the entry for “252:100-31-3”;
 - iii. Adding a heading entitled “Part 2. Ambient Air Concentration Limits or Impacts for New and existing Equipment, Sources, or Facilities” immediately after the entry for 252:100:31-2;
 - iv. Adding an entry for “252:100-31-7” under added Part 2;
 - v. Removing the entries for “252:100-31-12” and “252:100-31-14” under Part 3;

- vi. Revising the entries for “252:100-31-13” and “252:100-31-15” under Part 3;
- vii. Adding an entry for “252:100-31-16” under Part 3;
- viii. Revising the entries for “252:100-31-25” and “252:100-31-26” under Part 5; and
- f. Under Appendices for OAC 252: Chapter 110 by revising the entries for “252:100, Appendix E” and “252:100, Appendix F”.

The revisions and additions read as follows:

§ 52.1920 Identification of plan.

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(c) * * *

EPA APPROVED OKLAHOMA REGULATIONS

State citation	Title/subject	State effective date	EPA approval date	Explanation
* * * * *				
Chapter 100 (OAC:252-100). Air Pollution Control				
* * * * *				
Subchapter 13. Open Burning				
* * * * *				
252:100-13-2	Purpose	07/01/2013	[Insert date of publication in the Federal Register] [Insert Federal Register citation].	
* * * * *				
252:100-13-7	Allowed open burning	07/01/2013	[Insert date of publication in the Federal Register] [Insert Federal Register citation].	

State citation	Title/subject	State effective date	EPA approval date	Explanation
252:100-13-8	Use of air curtain incinerators	07/01/2013	[Insert date of publication in the Federal Register] [Insert Federal Register citation].	
252:100-13-9	General conditions and requirements for allowed open burning	07/01/2013	[Insert date of publication in the Federal Register] [Insert Federal Register citation].	
* * * * *				
Subchapter 17. Incinerators				
* * * * *				
Part 3. General Purpose Incinerators				
* * * * *				
252:100-17-2	Applicability	09/12/2014	[Insert date of publication in the Federal Register] [Insert Federal Register citation].	
* * * * *				
Subchapter 25. Visible Emissions and Particulates				
* * * * *				
252:100-25-5	Continuous emission monitoring for opacity	07/01/2013	[Insert date of publication in the Federal Register] [Insert Federal Register citation].	
* * * * *				
Subchapter 31. Control of Emission of Sulfur Compounds				
Part 1. General Provisions				

State citation	Title/subject	State effective date	EPA approval date	Explanation
252:100-31-1	Purpose	07/01/2012	[Insert date of publication in the Federal Register] [Insert Federal Register citation].	
252:100-31-2	Definitions	07/01/2012	[Insert date of publication in the Federal Register] [Insert Federal Register citation].	
Part 2. Ambient Air Concentration Limits or Impacts for New and existing Equipment, Sources, or Facilities				
252:100-31-7	Allowable hydrogen sulfide (H ₂ S) ambient air concentrations for new and existing sources	07/01/2012	[Insert date of publication in the Federal Register] [Insert Federal Register citation].	
Part 3. Existing Equipment Standards				
* * * * *				
252:100-31-13	Requirements for existing sulfuric acid plants	07/01/2012	[Insert date of publication in the Federal Register] [Insert Federal Register citation].	
252:100-31-15	Requirements for existing kraft pulp mills	07/01/2012	[Insert date of publication in the Federal Register] [Insert Federal Register citation].	
252:100-31-16	Requirements for existing fossil fuel-fired steam generators	07/01/2012	[Insert date of publication in the Federal Register] [Insert Federal Register citation].	
Part 5. New Equipment Standards				

State citation	Title/subject	State effective date	EPA approval date	Explanation
252:100-31-25	Requirements for new fuel-burning equipment	07/01/2013	[Insert date of publication in the Federal Register] [Insert Federal Register citation].	
252:100-31-26	Requirements for new petroleum and natural gas processes	07/01/2012	[Insert date of publication in the Federal Register] [Insert Federal Register citation].	
* * * * *				
Appendices for OAC 252: Chapter 100				
* * * * *				
252:100, Appendix E	Primary Ambient Air Quality Standards	09/15/2016	[Insert date of publication in the Federal Register] [Insert Federal Register citation].	
252:100, Appendix F	Secondary Ambient Air Quality Standards	09/15/2016	[Insert date of publication in the Federal Register] [Insert Federal Register citation].	
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[FR Doc. 2019-16229 Filed: 7/31/2019 8:45 am; Publication Date: 8/1/2019]