



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R06-OAR-2021-0214; FRL-9407-02-R6]

Air Plan Approval; Oklahoma; Revisions to Air Pollution Control Rules

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: Pursuant to the Federal Clean Air Act (CAA or the Act), the Environmental Protection Agency (EPA) is approving revisions to the State Implementation Plan (SIP) for Oklahoma, submitted to the EPA by the State of Oklahoma designee (“the State”) on February 9, 2021. The SIP revisions being approved address Open Burning, Control of Emission of Volatile Organic Compounds (VOC), and Specialty Coatings VOC Content Limits.

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 EPA-R06-OAR-2021-0214. All documents in the docket are listed on the <https://www.regulations.gov> website. 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. Publicly available docket materials are available electronically through <https://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT: For information on the revisions addressing open burning, please contact Ms. Carrie Paige, Region 6 Office, Infrastructure and Ozone Section, 214-665-6521, paige.carrie@epa.gov. For information on the revisions addressing emissions of VOC, please contact Mr. Emad Shahin, EPA Region 6

Office, Infrastructure and Ozone Section, 214-665-6717, shahin.emad@epa.gov. Out of an abundance of caution for members of the public and staff, the EPA Region 6 office may be closed to the public to reduce the risk of transmitting COVID-19. The EPA encourages the public to submit comments via <https://www.regulations.gov>. Please call or e-mail the contact listed above if you need alternative access to material indexed but not provided in the docket.

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

I. Background

The background for this action is discussed in detail in our February 3, 2023, proposal (88 FR 7384).¹ In that document, we proposed to approve a portion of the revisions to the Oklahoma SIP submitted on February 9, 2021. Our February 2023 proposal addressed only the portion of the submittal that referred to the Oklahoma Administrative Code (OAC) Title 252, Chapter 100 (denoted OAC 252:100), Subchapters 13, 37, and 39, and Appendix N. The remainder of the submitted revisions were addressed in a separate rulemaking action.²

The revisions to Subchapter 13, which addresses Open Burning (denoted 252:100-13), include but are not limited to, requiring inspection and removal of materials containing asbestos, asphalt, and lead in structures prior to fire training; requiring use of air curtain incinerators (ACIs) in specified areas; and add a provision for open burning of certain medical marijuana plant refuse.

The revisions to Subchapter 37 (252:100-37), which addresses Control of Emission of Volatile Organic Compounds (VOC), add a new section to control VOC emissions from aerospace industries coatings operations, for new and existing aerospace

¹ Henceforth referred to as our “February 2023” proposal. Our February 2023 proposal includes technical support documents, which are posted in the docket for this action.

² See 87 FR 50263 (August 16, 2022).

vehicle and component coating operations. The revisions to Subchapter 39 (252:100-39), which address Emission of Volatile Organic Compounds (VOCs) in Nonattainment Areas and Former Nonattainment Areas, include but are not limited to incorporating the Aerospace national emission standards for hazardous air pollutants (NESHAP) (40 CFR part 63, subpart GG). The revisions also added Appendix N (Specialty Coatings VOC Content Limits) to the SIP.

The revisions addressed in our February 2023 proposal add clarity, consistency, and stringency to the Oklahoma SIP. The revisions do not relax the current SIP rules and are consistent with Federal regulations at 40 CFR parts 60 and 61 and 40 CFR part 63, subparts GG and WWW. Therefore, and consistent with CAA section 110(l), we do not expect these revisions to interfere with any applicable requirement concerning attainment and reasonable further progress or any other applicable requirement of the Act. More detail on these revisions is provided in the docket for this action.

Our February 2023 proposal provided a detailed description of the revisions and the rationale for the EPA's proposed actions, together with a discussion of the opportunity to comment. The public comment period for our February 2023 proposal closed on March 6, 2023. We received one supporting comment from an anonymous source. No adverse comment was received. Therefore, we are finalizing this action as proposed.

II. Final Action

We are approving portions of a SIP revision submitted to the EPA by the State of Oklahoma on February 9, 2021. Specifically, we are approving the revisions to OAC 252:100, Subchapters 13 (Open Burning), 37 (Control of Emission of Volatile Organic Compounds (VOCs)), 39 (Emission of Volatile Organic Compounds (VOCs) in Nonattainment Areas and Former Nonattainment Areas), and Appendix N (Specialty

Coatings VOC Content Limits). We are approving these revisions in accordance with section 110 of the Act.

III. Environmental Justice Considerations

As stated in our February 2023 proposal and posted in the docket for this action, EPA reviewed demographic data, which provides an assessment of individual demographic groups of the populations living within the state of Oklahoma. EPA then compared the data to the national average for each of the demographic groups. The results of this analysis are being provided for informational and transparency purposes. The results of the demographic analysis indicate that, for populations within the state of Oklahoma, the percent people of color (persons who reported their race as a category other than White alone (not Hispanic or Latino)) is less than the national average (38.5 percent versus 43.1 percent). Within people of color, the percent of the population that is Black or African American alone is less than the national average (7.8 percent versus 13.6 percent) and the percent of the population that is American Indian/Alaska Native is greater than the national average (9.7 percent versus 1.3 percent). The percent of the population that is two or more races is greater than the national average (6.6 percent versus 2.9 percent). The percent of people living in poverty in Oklahoma is greater than the national average (15.6 percent versus 11.6 percent).

The Oklahoma Department of Environmental Quality (ODEQ) did not evaluate environmental justice considerations as part of their SIP submittal; the CAA and applicable implementing regulations neither prohibit nor require such an evaluation. EPA performed an environmental justice analysis, as is described above. The analysis was done for the purpose of providing additional context and information about this rulemaking to the public, not as a basis of the action.

This final action approves new rules into the Oklahoma SIP that are anticipated to control emissions from open burning and certain activities whose emissions include

VOC. Open burning may emit particle pollution and VOC is a precursor to ozone formation. Information on particle pollution and ozone, and the associated negative health impacts of these pollutants can be found at <https://www.epa.gov/pm-pollution> and <https://www.epa.gov/ground-level-ozone-pollution>.³ We expect that this action and the resulting emissions reductions will generally be neutral or contribute to reduced environmental and health impacts on all populations in Oklahoma, including indigenous people, people of color, and low-income populations. There is no information in the record indicating that this action is expected to have disproportionately high or adverse human health or environmental effects on a particular group of people. EPA offered consultation on our proposed rulemaking to tribal governments that may be affected by this action.⁴ We received one request for tribal consultation from the Muscogee Nation and provided such on February 14, 2023.

IV. Incorporation by Reference

In this rule, 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 the revisions to the Oklahoma regulations, as identified in Section II of this preamble, Final Action. The revised regulations address open burning, VOC emissions, and specialty coatings VOC content limits. The EPA has made, and will continue to make, these materials generally available through www.regulations.gov (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 CAA sections 110 and 113 as

³ See, also, 78 FR 3086 (January 15, 2013) and 80 FR 65292 (October 26, 2015).

⁴ See invitation for consultation, dated February 1, 2023, in the docket for this action.

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 Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- 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, described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 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 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). Consistent with the EPA Policy on Consultation and Coordination with Indian Tribes (May 4, 2011), the EPA offered consultation (by letter dated February 1, 2023) on our proposed rulemaking to tribal governments that may be affected by this action. We received a request for formal tribal consultation from the Muscogee Nation and provided consultation on February 14, 2023.

Executive Order 12898 (Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, 59 FR 7629, Feb. 16, 1994) directs Federal agencies to identify and address “disproportionately high and adverse human health or environmental effects” of their actions on minority populations and low-income populations to the greatest extent practicable and permitted by law. EPA defines environmental justice (EJ) as “the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies.” EPA further defines the term fair treatment to mean that “no group of people

should bear a disproportionate burden of environmental harms and risks, including those resulting from the negative environmental consequences of industrial, governmental, and commercial operations or programs and policies.”

The Oklahoma Department of Environmental Quality did not evaluate EJ considerations as part of its SIP submittal; the CAA and applicable implementing regulations neither prohibit nor require such an evaluation. EPA performed an EJ analysis, as is described earlier in the section titled “Environmental Justice Considerations.” The analysis was done for the purpose of providing additional context and information about this rulemaking to the public, not as a basis of the action. Due to the nature of the action being taken here, this action is expected to have a neutral to positive impact on the air quality of the affected area. In addition, there is no information in the record upon which this decision is based inconsistent with the stated goal of EO 12898 of achieving EJ for people of color, low-income populations, and Indigenous peoples.

This action is subject to the Congressional Review Act, and EPA will submit a rule report to each House of the Congress and to the Comptroller General of the United States. 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 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,
Ozone, Volatile organic compounds.

Dated: April 17, 2023.

Earthea Nance,
Regional Administrator, Region 6.

For the reasons stated in the preamble, the Environmental Protection Agency amends 40 CFR part 52 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) titled “EPA Approved Oklahoma Regulations” is amended by:

a. Under Subchapter 13:

i. Revising the entries for 252:100-13-2, 252:100-13-5, 252:100-13-7, 252:100-13-8;

ii. Adding an entry for 252:100-13-8.1 in numerical order; and

iii. Revising the entry for 252:100-13-9;

b. Revising the heading for Subchapter 37 and adding an entry for 252:100-37-27 in numerical order under Subchapter 37;

c. Revising the heading for Subchapter 39 and the entry for 252:100-39-47 and removing the entry for 252:100-39-49 under Subchapter 39; and

d. Adding in alphanumerical order an entry for 252:100, Appendix N under Appendices for OAC 252: Chapter 100.

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

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CHAPTER 100 (OAC 252:100). AIR POLLUTION CONTROL				
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Subchapter 13. Open Burning				
* * * * *				
252:100-13-2	Definitions	9/15/2020	[Insert date of <i>Federal Register</i> publication] [Insert <i>Federal Register</i> citation]	
252:100-13-5	Open burning prohibited	9/15/2020	[Insert date of <i>Federal Register</i> publication] [Insert <i>Federal Register</i> citation]	
252:100-13-7	Allowed open burning	9/15/2020	[Insert date of <i>Federal Register</i> publication] [Insert <i>Federal Register</i> citation]	
252:100-13-8	Use of air curtain incinerators	9/15/2020	[Insert date of <i>Federal Register</i> publication] [Insert <i>Federal Register</i> citation]	
252:100-13-8.1	Transported material	9/15/2020	[Insert date of <i>Federal Register</i> publication] [Insert <i>Federal Register</i> citation]	
252:100-13-9	General conditions and requirements for allowed open burning	9/15/2020	[Insert date of <i>Federal Register</i> publication] [Insert <i>Federal Register</i> citation]	
* * * * *				
Subchapter 37. Control of Emission of Volatile Organic Compounds (VOC)				
* * * * *				
PART 5. Control of VOCs in Coating Operations				
* * * * *				
252:100-37-27	Control of emission of VOCs from aerospace industries coatings operations	9/15/2020	[Insert date of <i>Federal Register</i> publication] [Insert <i>Federal Register</i> citation]	
* * * * *				
Subchapter 39. Emission of Volatile Organic Compounds (VOCs) in Nonattainment Areas and Former Nonattainment Areas				
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PART 7. Specific Operations				
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252:100-39-47	Control of VOC emissions from aerospace industries coatings operations	9/15/2020	[Insert date of <i>Federal Register</i> publication] [Insert <i>Federal Register</i> citation]	
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Appendices for OAC 252: Chapter 100				
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252:100, Appendix N	Specialty Coatings VOC Content Limits	9/15/2020	[Insert date of <i>Federal Register</i> publication] [Insert <i>Federal Register</i> citation]	
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[FR Doc. 2023-08438 Filed: 4/24/2023 8:45 am; Publication Date: 4/25/2023]