



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[EPA-R06-OAR-2010-0580; FRL-12826-01-R6]

New Source Performance Standards; Delegation of Authority to Oklahoma

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; notice of delegation.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to update federal regulations to reflect Oklahoma's current New Source Performance Standards (NSPS) delegation status and the mailing address for the Oklahoma Department of Environmental Quality (ODEQ). The ODEQ has submitted updated regulations for the delegation of EPA authority for implementation and enforcement of certain NSPS. The updated State regulations incorporate by reference certain NSPS promulgated by EPA, as they existed through June 30, 2023. The delegation of authority for implementation and enforcement applies to sources subject to the delegated NSPS, including those located in certain areas of Indian country as discussed herein.

DATES: Written comments on this proposed rule 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-R06-OAR-2010-0580, at <https://www.regulations.gov> or via email to steib.clovis@epa.gov. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from 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, please contact Clovis Steib, (214) 665-7566; email: steib.clovis@epa.gov. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <https://www.epa.gov/dockets/commenting-epa-dockets>.

Docket: The index to the docket for this action is available electronically at www.regulations.gov. While all documents in the docket are listed in the index, some information may not be publicly available due to docket file size restrictions or content (e.g., CBI).

FOR FURTHER INFORMATION CONTACT: Clovis Steib, EPA Region 6 Office, Infrastructure and Ozone Section, 214-665-7566, steib.clovis@epa.gov. We encourage 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 whenever “we,” “us,” or “our” is used, we mean the EPA.

I. Background

Section 111(c)(1) of the Clean Air Act (CAA), 42 U.S.C. § 7411(c)(1), authorizes EPA to delegate to a state the authority to implement and enforce NSPS promulgated by EPA under CAA section 111(b) and codified at part 60 of title 40 of the Code of Federal Regulations (CFR). CAA section 111(c)(2) states that EPA retains the authority to enforce any applicable NSPS delegated to a state. On March 25, 1982, EPA approved the delegation of authority to implement and enforce NSPS to Oklahoma (1982 NSPS

Delegation). See 47 FR 1785 (April 22, 1982). On October 8, 1999, EPA updated Oklahoma’s NSPS delegation, including specific provisions setting forth the terms and conditions of the delegation of authority for NSPS responsibility to the ODEQ (1999 NSPS Delegation). See 64 FR 57392 (October 25, 1999). Copies of the initial 1982 NSPS Delegation and the 1999 NSPS Delegation update are included in the docket for this action, both of which contain provisions specifying conditions and limitations applicable to the EPA’s delegation of authority to implement and enforce the NSPS in Oklahoma.

Under the terms and conditions of the 1999 NSPS Delegation, “[f]uture provisions of 40 CFR Part 60 shall be delegated to ODEQ pursuant to this agreement provided that (1) ODEQ requests delegation and provides copies of the proposed or adopted rules, (2) ODEQ adopts the federal standard without change (e.g., incorporation by reference) and (3) EPA does not object to the delegation within thirty (30) days of ODEQ’s request.” See Specific Provision 1 of the 1999 NSPS Delegation.

II. ODEQ’s October 28, 2024 NSPS Delegation Update

By letter dated October 28, 2024, the ODEQ requested an update to its NSPS delegation. ODEQ reaffirmed that it retains all required authorities set forth in 40 CFR 60.4 for delegation of a CAA section 111(c) program and all authority identified in the 1982 and 1999 NSPS Delegations. ODEQ provided copies of the duly adopted state regulations which incorporate specifically identified NSPS found at 40 CFR part 60 into the Oklahoma Administrative Code (OAC) 252:100-2 and OAC 252:100 Appendix Q, as published in the *Oklahoma Register* on August 15, 2024 (41 Okla. Reg. 2006) with an effective date of September 16, 2024.¹ These ODEQ regulations are, therefore, at least as

¹ The ODEQ previously submitted requests to EPA for updates to the Oklahoma NSPS delegation, by letters dated August 23, 2012, March 17, 2015, November 2, 2016, June 6, 2018 (revised with a subsequent June 29, 2018 letter), December 23, 2019, March 23, 2021 (revised with a subsequent September 14, 2021

stringent as the EPA's rules. See 40 CFR 60.10(a). ODEQ's October 28, 2024, request included the following NSPS in 40 CFR part 60, as they existed through June 30, 2023: 40 CFR part 60, subparts A (except sections 60.4, 60.9, 60.10, and 60.16), D, Da, Db, Dc, E, Ea, Eb, Ec, F, G, Ga, H, I, J, Ja, K, Ka, Kb, L, M, N, Na, O, P, Q, R, S, T, U, V, W, X, Y, Z, AA, AAa, BB, BBa, CC, DD, EE, GG, HH, KK, KKa, LL, MM, MMa, NN, PP, QQ, RR, SS, TT, UU, VV, VVa, WW, XX, BBB, DDD, FFF, GGG, GGGa, HHH, III, JJJ, KKK, LLL, NNN, OOO, PPP, QQQ, RRR, SSS, TTT, TTTa, UUU, VVV, WWW, XXX, AAAA, CCCC, EEEE, IIII, JJJJ, KKKK, LLLL, OOOO, OOOOa, TTTT, and Appendices A and B to 40 CFR part 60.² In accordance with the authority provided by CAA section 111(c)(1) and consistent with the provisions of the 1982 NSPS Delegation and the 1999 NSPS Delegation, EPA has determined that the ODEQ has met the conditions required for approval of the ODEQ's requested update to its NSPS delegation, as described above. All authorities not affirmatively and expressly requested by the ODEQ are not delegated. In addition, the provisions and conditions contained in the 1982 and 1999 NSPS Delegations remain in effect, with the exception of Specific Provision 7 of the 1999 NSPS Delegation. As more fully discussed in Section III of this document, the delegation to ODEQ to implement and enforce certain NSPS extends to sources or activities located in certain areas of Indian country, as defined in 18 U.S.C. 1151.

Furthermore, no authorities are delegated that require rulemaking in the *Federal Register* to implement, or where Federal oversight is the only way to ensure national consistency in the application of the standards. All inquiries and requests concerning implementation and enforcement of the excluded standards in the State of Oklahoma

email), December 2, 2021 (revised with a subsequent October 17, 2022 letter), October 17, 2022, and November 30, 2023. EPA has determined that such requests meet the requirements of the CAA and the 1982 and 1999 NSPS Delegations concerning the approval of EPA's delegation of authority for the enforcement and implementation of the NSPS in Oklahoma. EPA previously proposed an action on ODEQ's request to update its NSPS delegation (85 FR 31423, May 26, 2020); that proposed action is subsumed and incorporated into this proposed action.

² See EPA Docket No. EPA-R06-OAR-2010-0580 in www.regulations.gov.

should be directed to the EPA Region 6 Office of Enforcement and Compliance Assurance. Furthermore, the EPA retains any authority in an individual NSPS that may not be delegated according to provisions of the standard. Finally, EPA retains the authorities stated in the 1982 and 1999 NSPS Delegations.

III. Impacts on Areas of Indian Country

Following the U.S. Supreme Court decision in *McGirt v Oklahoma*, 140 S. Ct. 2452 (2020), the Governor of the State of Oklahoma requested approval under Section 10211(a) of the Safe, Accountable, Flexible, Efficient Transportation Equity Act of 2005: A Legacy for Users, Pub. L. 109-59, 119 Stat. 1144, 1937 (August 10, 2005) (“SAFETEA”), to administer in certain areas of Indian country (as defined at 18 U.S.C. 1151) the State's environmental regulatory programs that were previously approved by the EPA outside of Indian country. The State's request excluded certain areas of Indian country further described below. In addition, the State only sought approval to the extent that such approval was necessary for the State to administer a program in light of *Oklahoma Dept. of Environmental Quality v. EPA*, 740 F.3d 185 (D.C. Cir. 2014).³

The EPA has approved Oklahoma's SAFETEA request to administer all of the State's EPA-approved environmental regulatory programs in the requested areas of Indian country. As requested by Oklahoma, EPA's approval under SAFETEA does not include Indian country lands, including rights-of-way running through the same, that: (1) qualify as Indian allotments, the Indian titles to which have not been extinguished, under 18 U.S.C. 1151(c); (2) are held in trust by the United States on behalf of an individual Indian or Tribe; or (3) are owned in fee by a Tribe, if the Tribe (a) acquired that fee title to such land, or an

³ In *ODEQ v. EPA*, the D.C. Circuit held that under the CAA, states have the authority to implement a SIP in non-reservation areas of Indian country in the state, unless there has been a demonstration of tribal jurisdiction. Under the D.C. Circuit's decision, the CAA does not provide authority to states to implement SIPs in Indian reservations.

area that included such land, in accordance with a treaty with the United States to which such Tribe was a party, and (b) never allotted the land to a member or citizen of the Tribe (collectively “excluded Indian country lands”).

The EPA’s approval under SAFETEA expressly provided that to the extent the EPA’s prior approvals of Oklahoma’s environmental programs excluded Indian country, any such exclusions are superseded for the geographic areas of Indian country covered by the EPA’s approval of Oklahoma’s SAFETEA request.⁴ The approval also provided that future revisions or amendments to Oklahoma’s approved environmental regulatory programs would extend to the covered areas of Indian country (without any further need for additional requests under SAFETEA).

As explained above, the EPA is proposing to amend 40 CFR part 60, to reflect the current status of EPA’s delegation of authority to ODEQ for the implementation and enforcement of the NSPS and to update ODEQ’s mailing address. Consistent with the D.C. Circuit’s decision in *ODEQ v. EPA* and with the EPA’s SAFETEA approval, these SIP revisions will apply to areas of Indian country as follows: 1) pursuant to the SAFETEA approval, the SIP revisions will apply to all Indian country in the State of Oklahoma other than the excluded Indian country lands as described above; and 2) pursuant to the D.C. Circuit’s decision in *ODEQ v. EPA*, the SIP revisions will also apply to any Indian allotments or dependent Indian communities that are located outside of any Indian reservation and over which there has been no demonstration of tribal authority.

IV. Proposed Action

⁴ The EPA’s prior approvals relating to Oklahoma’s SIP frequently noted that the SIP was not approved to apply in areas of Indian country (except as explained in the D.C. Circuit’s decision in *ODEQ v. EPA*) located in the State. *See, e.g.*, 85 Fed. Reg. 20178, 20180 (April 10, 2020). Such prior expressed limitations are superseded by the EPA’s approval of Oklahoma’s SAFETEA request.

Apart from the notification of the updated NSPS delegation to the ODEQ as discussed above, EPA is proposing to amend 40 CFR part 60 to include a table of the specific NSPS provisions delegated to the ODEQ and update the mailing address for the ODEQ. If finalized as proposed, 40 CFR 60.4(b)(38) will be amended to read: State of Oklahoma: State of Oklahoma, Department of Environmental Quality, Air Quality Division, P.O. Box 1677, Oklahoma City, OK 73101-1677, and a table will be added to 40 CFR 60.4(e) reflecting the NSPS subparts currently delegated to ODEQ.

V. Statutory and Executive Order Reviews

Under the CAA, EPA previously delegated to the ODEQ the authority to implement and enforce certain NSPS for sources located in Oklahoma, as provided for under 42 U.S.C. 7411(c)(1); see also 40 CFR 60.4(b). Pursuant the terms and conditions of that delegation, this action informs the public that EPA has found the ODEQ's October 28, 2024, request to update the delegation status for NSPS meets Federal requirements and does not impose additional requirements beyond those imposed by state law. Through this action, EPA is proposing to add a table to 40 CFR part 60 listing the specific NSPS currently delegated to the ODEQ and update the ODEQ's address for submittal of documents required under the delegated NSPS provisions. For these reasons, 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);
- Is not subject to Executive Order 14192 (90 FR 9065, February 6, 2025) because NSPS actions are exempt from review 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 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.

A. Executive Order 13175: Consultation and Coordination with Indian Tribal Governments

This amended proposed action will apply, if finalized as proposed, to certain areas of Indian country throughout Oklahoma as discussed in the preamble, and therefore has tribal implications as specified in E.O. 13175 (65 FR 67249, November 9, 2000).

However, this action will neither impose substantial direct compliance costs on federally recognized tribal governments, nor preempt tribal law. This action will not impose substantial direct compliance costs on federally recognized tribal governments because no actions will be required of tribal governments. This action will also not preempt tribal law as no Oklahoma tribe implements a regulatory program under the CAA, and thus does not have applicable or related tribal laws. Consistent with the EPA Policy on Consultation with Indian Tribes (December 7, 2023), the EPA has offered

consultation to tribal governments that may be affected by this action and provided information about this action.

List of Subjects in 40 CFR Part 60

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Reporting and recordkeeping requirements.

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

Dated: June 26, 2025.

James McDonald,
Director, Air & Radiation Division, Region 6.

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