



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R06-OAR-2025-0012; FRL-11140-02-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 November 22, 2024. The SIP revisions being finalized address amendments to Subchapter 13, Open Burning.

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. R06-OAR-2025-0012. All documents in the docket are listed on the <https://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. Publicly available docket materials are available electronically through <https://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT: Mr. Emad Shahin, EPA Region 6 Office, Infrastructure and Ozone Section, 214-665-6717, shahin.emad@epa.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 July 7, 2025, proposal (90 FR 29818)¹. In that document we proposed to approve a portion of the revisions to the Oklahoma SIP submitted on November 22, 2024. Our July 2025 proposal addressed only the portion of the submittal that referred to the Oklahoma Administrative Code (OAC) Title 252, Chapter 100 (denoted OAC 252:100), Subchapter 13.

The revisions addressed in our July 2025 proposal concerned the removal of the requirement for using an Air Curtain Incinerator (ACI) for certain open burning operations in the Oklahoma City and Tulsa Metropolitan Statistical Areas (MSAs), to limit the use of an ACI to Oklahoma and Tulsa counties. The revisions also make administrative type changes to add clarity and consistency to the Oklahoma SIP. The revisions do not relax the current SIP rules and are consistent with Federal regulations at 40 CFR part 60, 40 CFR part 61, 40 CFR part 63. 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 details on these revisions are provided in the docket for this action.

Our July 2025 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 July 2025 proposal closed on August 6, 2025. We received one anonymous public comment. The entirety of the public comment may be found in the docket to this action. We offered consultation on our proposed

¹ Henceforth referred to as our “July 2025” proposal.

rulemaking to tribal governments that may be affected by this action². We did not receive any requests for tribal consultation. Below is a summary of the anonymous comment received and our response to the comment.

II. Response to Comments

Comment: The EPA's review does not adequately address the potential for increased carbon dioxide (CO₂) and other greenhouse gas (GHG) emissions, the Oklahoma analysis provided does not appear to include an evaluation of the potential GHG impacts, particularly from the change in ACI requirements, and an overall environmental impact must also consider the economic costs associated with increased CO₂ emissions.

Response: EPA acknowledges receipt of the anonymous comment. While we have reviewed and appreciate the commenter's comment, EPA is required to review the state's SIP revision for compliance with National Ambient Air Quality Standards (the NAAQS) and as explained in the proposal, the state is currently attaining those NAAQS. CO₂ is not an air quality standard covered, therefore the comments pertaining to CO₂ are outside the scope of the rulemaking.

III. Impact 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

² See invitation for consultation, dated June 26, 2025, in the docket for this action.

that such approval is 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, the 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 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 approving revisions to the State Implementation Plan (SIP) for Oklahoma, submitted to the EPA by the State of Oklahoma designee (“the State”) on November 22, 2024. The SIP revisions being approved address amendments to

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.

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 FR 20178, 20180 (April 10, 2020). Such prior expressed limitations are superseded by the EPA’s approval of Oklahoma’s SAFETEA request.

Subchapter 13, Open Burning, which will apply statewide in Oklahoma. 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 over which there has been no demonstration of tribal authority.

IV. Final Action

We are approving portions of a SIP revision submitted to the EPA by the State of Oklahoma on November 22, 2024. Specifically, we are approving the revisions to OAC 252:100, Subchapters 13 (Open Burning). These revisions were made to clarify the State's open burning rules and comply with Oklahoma Senate Bill 246 (2021) which revised the rules and requirements for the use of ACI for open burn operations. We find that the revisions do not change the types of activities that are allowed under the State's current open burning rules and only revise certain provisions pertaining to when an ACI can be required for land clearing operations and the burning of clean wood waste and yard brush. We are approving these revisions in accordance with section 110 of the Act.

V. 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 described in Section IV of this preamble, Final Action. 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 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.

VI. 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);
- Is not subject to Executive Order 14192 (90 FR 9065, February 6, 2025) because SIP 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 (Pub. L. 104-4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);

- Is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997) because it approves a state program;
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001); and
- 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.

This approval of revisions to the Oklahoma SIP that require using an Air Curtain Incinerator (ACI) for certain open burning operations in counties or areas within a county that are or have been designated as non-attainment or where an ambient air quality monitor has documented a violation of the NAAQS, or those counties with a population of greater than 500,000 for land clearing operations or the burning of clean wood waste or yard brush will apply to certain areas of Indian country throughout Oklahoma as discussed in the preamble, and therefore has tribal implications as specified in EO 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 and Coordination with Indian Tribes (December 7, 2023), the EPA offered consultation to tribal governments that may be affected by this action in a letter dated June 26, 2025. The EPA did not receive any requests for consultation.

This action is subject to the Congressional Review Act, and the 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, Particulate matter.

Dated: January 14, 2026.

Walter Mason,
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, in the table in paragraph (c) titled “EPA Approved Oklahoma Regulations”, revise the entries for “252:100-13-7” and “252:100-13-8” under “Subchapter 13” to 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				
* * * * *				
252:100-13-7	Allowed open burning	9/15/2022	[INSERT DATE OF PUBLICATION IN THE <i>FEDERAL REGISTER</i>], 90 FR [INSERT <i>FEDERAL REGISTER</i> PAGE WHERE THE DOCUMENT BEGINS]	

252:100-13-8	Use of air curtain incinerators	9/15/2022	[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER], 90 FR [INSERT FEDERAL REGISTER PAGE WHERE THE DOCUMENT BEGINS]	
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