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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R06-OAR-2013-0227; FRL-9906-81-OAR]

Approval and Promulgation of Air Quality Implementation Plans; Oklahoma; Regional Haze and Interstate Transport Affecting Visibility State Implementation Plan Revisions; Withdrawal of Federal Implementation Plan for American Electric Power/Public Service Company of Oklahoma

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking final action to amend a Federal Implementation Plan (FIP) for Oklahoma that became effective on January 27, 2012, as it applies to Units 3 and 4 of the Northeastern Power Station in Rogers County, Oklahoma, which is operated by the American Electric Power/Public Service Company of Oklahoma (AEP/PSO). We are removing the FIP requirements for AEP/PSO because, in a separate action being published in today's *Federal Register*, we are taking final action to approve revisions to the Oklahoma State Implementation Plan (SIP), submitted by the Oklahoma Department of Environmental Quality (ODEQ) to EPA on June 20, 2013, which address revised Best Available Retrofit Technology (BART) requirements for sulfur dioxide (SO_2) and oxides of nitrogen (NO_x) for Units 3 and 4 of AEP/PSO's Northeastern Power Station in Rogers County, Oklahoma. The revisions (collectively, the "Oklahoma SIP revisions") also address the requirements of the Clean Air Act (CAA) concerning non-interference with programs to protect visibility in other states.

DATES: This final rule will be effective [insert date 30 days after publication in the *Federal Register*].

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA-R06-OAR-2013-0227. All documents in the docket are listed in the <http://www.regulations.gov> index. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information or other information the disclosure of which is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in <http://www.regulations.gov> or in hard copy at the Air Planning Section (6PD-L), Environmental Protection Agency, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202-2733. The file will be made available by appointment for public inspection in the Region 6 FOIA Review Room between the hours of 8:30 a.m. and 4:30 p.m. weekdays except for legal holidays. Contact the person listed in the **FOR FURTHER INFORMATION CONTACT** paragraph below or Mr. Bill Deese at 214-665-7253 to make an appointment. If possible, please make the appointment at least two working days in advance of your visit. A 15 cent per page fee will be charged for making photocopies of documents. On the day of the visit, please check in at the EPA Region 6 reception area on the seventh floor at 1445 Ross Avenue, Suite 700, Dallas, Texas 75202-2733.

FOR FURTHER INFORMATION CONTACT: Mr. Terry Johnson (6PD-L), Air Planning Section, Environmental Protection Agency, Region 6, 1445 Ross Avenue (6PD-L), Suite 1200,

Dallas, TX 75202-2733. The telephone number is (214) 665-2154. Mr. Johnson can also be reached via electronic mail at johnson.terry@epa.gov.

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

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I. What Is the Background for This Action?

The Oklahoma regional haze (RH) and interstate transport (IT) FIP being amended by this action was promulgated in order to address certain deficiencies in Oklahoma’s BART determinations concerning the appropriate level of control of SO₂ emissions for Units 3 and 4 of AEP/PSO’s Northeastern Power Station, as well as Units 4 and 5 of Oklahoma Gas and Electric’s (OG&E) Muscogee Plant and Units 1 and 2 of the OG&E’s Sooner Plant. On December 28, 2011, EPA disapproved the SO₂ BART determinations for all six units and simultaneously issued a FIP containing a more stringent SO₂ BART determination (76 FR 81728). In the same action, EPA approved the Oklahoma IT SIP, except to the extent that it relied on the disapproved SO₂ BART determinations for the six units mentioned above. The FIP containing the more stringent SO₂ BART determinations also satisfied EPA’s FIP obligation arising from the disapproval of the IT SIP.

The background for this final rule and the separate action also being published today that approves the Oklahoma SIP revisions is discussed in detail in our August 21, 2013 proposal (see

78 FR 51686). The comment period was open for 30 days, and we received 273 comments in response to our proposed action.

II. What Final Action is EPA Taking?

We are withdrawing the Oklahoma RH and IT FIP at 40 CFR 52.1923, as it applies to Units 3 and 4 of AEP/PSO's Northeastern Power Station. Therefore, as of the effective date of this final rule, the Oklahoma RH and IT FIP will no longer apply to AEP/PSO Northeastern Power Station. The Oklahoma RH and IT FIP provisions applicable to OG&E's Muscogee and Sooner plants are unaffected by this action and remain in place.

As explained in our August 21, 2013 proposal (see 78 FR 51686), this action is made possible because of our separate action being published in today's *Federal Register* to approve the Oklahoma SIP revisions, which update the Oklahoma RH and IT SIP to include a revised BART determination for Units 3 and 4 of AEP/PSO's Northeastern Power Station, as well as an enforceable commitment to address any shortfall that may occur with respect the emission reductions relied upon in the IT SIP. EPA has made the determination that the Oklahoma RH SIP revision is approvable because the plan's provisions meet all applicable requirements of the CAA and EPA implementing regulations.

EPA is finalizing this action under section 110 and part C of the Act.

III. Responses to Comments Received.

We received a total of 273 comments concerning our proposed action. The issues raised in those comment letters are summarized, along with our response to each, in the separate notice being published in today's *Federal Register* that approves the Oklahoma SIP revisions. Copies of the comments are available in the docket for this rulemaking. (Please see Docket No. EPA-R06-OAR-2013-0227 in the regulations.gov website).

IV. Statutory and Executive Order Reviews.

Withdrawal of the Oklahoma RH and IT FIP as it applies to AEP/PSO Northeastern Power Station means that the Federal plan no longer applies to this facility.

A. Executive Order 12866 – Regulatory Planning and Review and Executive Order 13563:

Improving Regulation and Regulatory Review

This FIP withdrawal action for AEP/PSO's Northeastern Power Station is not a "significant regulatory action" under the terms of Executive Order 12866 (58 FR 51735, October 4, 1993) and is therefore not subject to review under Executive Orders 12866 and 13563 (76 FR 3821, January 21, 2011).

B. Paperwork Reduction Act

This FIP withdrawal action for AEP/PSO Northeastern Power Station does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* because this FIP amendment under section 110 and part C of the Clean Air Act will not in-and-of itself create any new information collection burdens. Because this final action does not impose an information collection burden, the Paperwork Reduction Act does not apply.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

For purposes of assessing the impacts of today's rule on small entities, small entity is defined as: (1) A small business as defined by the Small Business Administration's (SBA)

regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

This rule withdraws the FIP for AEP/PSO's Northeastern Power Station, which is not a small entity, and does not create any new requirements. After considering the economic impact of this rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. This final rule will not impose any requirements on small entities.

D. Unfunded Mandates Reform Act

This FIP withdrawal action for AEP/PSO's Northeastern Power Station contains no Federal mandates under the provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1531—1538 for State, local, or tribal governments or the private sector. This action imposes no enforceable duty on any State, local or tribal governments or the private sector. Therefore, this action is not subject to the requirements of sections 202 or 205 of the UMRA.

This FIP withdrawal action for AEP/PSO's Northeastern Power Station is also not subject to the requirements of section 203 of UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments. This action removes a Federal plan for AEP/PSO's Northeastern Power Station. Small governments are not impacted.

E. Executive Order 13132 – Federalism

This FIP withdrawal action for AEP/PSO Northeastern Power Station does not have federalism implications. It will not have substantial direct effects on the States, on the

relationship between the national government and the State, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. The CAA establishes the scheme whereby states take the lead in developing SIPs including SIPs to attain the NAAQS and to meet other applicable CAA requirements including the Best Available Retrofit requirements in CAA section 169(b)(2)(A) and the Visibility Impairment requirements in CAA section 110(a)(2)(D)(i)(II). This action will not modify this relationship. Thus, Executive Order 13132 does not apply to this action.

F. Executive Order 13175 – Consultation and Coordination With Indian Tribal Governments

This FIP withdrawal action for AEP/PSO's Northeastern Power Station does not have tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000). In this action, EPA is not addressing any Tribal Implementation Plans. This action is limited to the withdrawal of the Oklahoma RH and IT FIP for AEP/PSO's Northeastern Power Station. Thus, Executive Order 13175 does not apply to this action.

G. Executive Order 13045 – Protection of Children from Environmental Health Risks and Safety Risks

EPA interprets Executive Order 13045 (62 FR 19885, April 23, 1997) as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under section 5-501 of the executive order has the potential to influence the regulation. This action is not subject to EO 13045 because EPA is withdrawing the Oklahoma RH and IT FIP for AEP/PSO's Northeastern Power Station, as authorized by the CAA.

H. Executive Order 13211 – Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

This FIP withdrawal action for AEP/PSO's Northeastern Power Station is not subject to Executive Order 13211 (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104 – 113, 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards. This FIP withdrawal action for AEP/PSO's Northeastern Power Station does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

J. Executive Order 12898 – Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations

This final rule 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).

K. Congressional Review Act

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).

L. Petitions for Judicial Review

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 from 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, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Particulate matter, Regional haze, Reporting and recordkeeping requirements, Sulfur dioxide, Visibility, and Volatile organic compounds.

Dated: February 7, 2014

Gina McCarthy,

Administrator

Title 40, chapter I, 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.*

2. Section 52.1923 is amended by revising the section heading, and paragraphs (a), (c), and (e)(1) to read as follows:

§52.1923 Best Available Retrofit Requirements (BART) for SO₂ and Interstate pollutant transport provisions; What are the FIP requirements for Units 4 and 5 of the Oklahoma Gas and Electric Muskogee plant; and Units 1 and 2 of the Oklahoma Gas and Electric Sooner plant affecting visibility?

(a) *Applicability.* The provisions of this section shall apply to each owner or operator, or successive owners or operators, of the coal burning equipment designated as: Units 4 or 5 of the Oklahoma Gas and Electric Muskogee plant; and Units 1 or 2 of the Oklahoma Gas and Electric Sooner plant.

* * * * *

(c) *Definitions.* All terms used in this part but not defined herein shall have the meaning given them in the CAA and in parts 51 and 60 of this chapter. For the purposes of this section:

24-hour period means the period of time between 12:01 a.m. and 12 midnight.

Air pollution control equipment includes selective catalytic control units, baghouses, particulate or gaseous scrubbers, and any other apparatus utilized to control emissions of regulated air contaminants that would be emitted to the atmosphere.

Boiler-operating-day means any 24- hour period between 12:00 midnight and the following midnight during which any fuel is combusted at any time at the steam generating unit.

Daily average means the arithmetic average of the hourly values measured in a 24-hour period.

Heat input means heat derived from combustion of fuel in a unit and does not include the heat input from preheated combustion air, recirculated flue gases, or exhaust gases from other sources. Heat input shall be calculated in accordance with 40 CFR part 75.

Owner or Operator means any person who owns, leases, operates, controls, or supervises any of the coal burning equipment designated as:

- (i) Unit 4 of the Oklahoma Gas and Electric Muskogee plant; or
- (ii) Unit 5 of the Oklahoma Gas and Electric Muskogee plant; or
- (iii) Unit 1 of the Oklahoma Gas and Electric Sooner plant; or
- (iv) Unit 2 of the Oklahoma Gas and Electric Sooner plant.

Regional Administrator means the Regional Administrator of EPA Region 6 or his/her authorized representative.

Unit means one of the coal fired boilers covered under paragraph (a) of this section.

* * * * *

(e) * * *

- (1) No later than the compliance date in paragraph (b) of this section, the owner or

operator shall install, calibrate, maintain and operate Continuous Emissions Monitoring Systems (CEMS) for SO₂ on Units 4 and 5 of the Oklahoma Gas and Electric Muskogee plant; and Units 1 and 2 of the Oklahoma Gas and Electric Sooner plant in accordance with 40 CFR 60.8 and 60.13(e), (f), and (h), and Appendix B of Part 60. The owner or operator shall comply with the quality assurance procedures for CEMS found in 40 CFR part 75. Compliance with the emission limits for SO₂ shall be determined by using data from a CEMS.

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