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6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R06-OAR-2012-0263; FRL-9953-46-Region 6]

Approval and Promulgation of Implementation Plans; Oklahoma; Disapproval of Prevention of Significant Deterioration for Particulate Matter Less than 2.5 Micrometers – Significant Impact Levels and Significant Monitoring Concentration

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is disapproving the severable portions of the February 6, 2012, Oklahoma State Implementation Plan (SIP) submittal which establish certain *de minimis* thresholds for particulate matter less than 2.5 micrometers in diameter (PM_{2.5}) in the Prevention of Significant Deterioration (PSD) permitting requirements. Specifically, we are disapproving provisions that adopt and implement the PM_{2.5} significant impact levels (SILs) and significant monitoring concentration (SMC); both of which were vacated by a federal court and subsequently removed from federal PSD regulations. We are disapproving the submitted provisions as inconsistent with federal laws and regulations for the permitting of PM_{2.5}. The EPA is finalizing this disapproval under section 110 and part C of the Clean Air Act (CAA).

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-2012-0263. All documents in the docket are listed on the <http://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 <http://www.regulations.gov> or in hard copy at the EPA Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202-2733.

FOR FURTHER INFORMATION CONTACT: Adina Wiley, (214) 665-2115, wiley.adina@epa.gov.

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

I. Background

The background for this action is discussed in detail in our August 11, 2016, proposed disapproval at 81 FR 53098. In that document, we proposed to disapprove the severable portions of the February 6, 2012, Oklahoma SIP submittal which establish the voluntary PM_{2.5} SILs provision and SMC. We presented our preliminary determination that these submitted revisions to the Oklahoma SIP must be disapproved because they establish permitting SIP requirements that are inconsistent with the federal statutory and regulatory permitting requirements for PM_{2.5}. We did not receive any comments regarding our proposed disapproval

II. Final Action

We are disapproving the following severable portions of the February 6, 2012, Oklahoma SIP submittal establishing the voluntary PM2.5 SILs provision and SMC. We are taking this final action under section 110 and part C of the CAA.

- Substantive revisions to the Oklahoma SIP at OAC 252:100-8-33(c)(1)(C) establishing the PM_{2.5} SMC as submitted on February 6, 2012; and
- Substantive revisions to the Oklahoma PSD program in OAC 252:100-8-35(a)(2) establishing the PM_{2.5} PSD SILs provision as submitted on February 6, 2012.

The EPA is disapproving the revisions listed because the submitted provisions are inconsistent with the federal statutory and regulatory permitting requirements for PM_{2.5}. Upon the effective date of this final disapproval, owners or operators of a proposed source or modification will continue to satisfy the source impact analysis provisions for PM_{2.5} as required under the Oklahoma SIP at OAC 252:100-8-35(a)(1). Additionally, the State of Oklahoma will continue to have the necessary authority to require monitoring of PM_{2.5} under the Oklahoma SIP at OAC 252:100-8-35.1(b)(3), consistent with the provisions of 40 CFR 52.21(m). This final disapproval does not require the EPA to promulgate a Federal Implementation Plan, because the Oklahoma PSD SIP program continues to satisfy the Federal PSD SIP requirements for PM_{2.5} monitoring and source impact analysis. We are finalizing this disapproval under section 110 and part C of the Act; as such, the EPA will not impose sanctions as a result of this final disapproval.

III. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

This action is not a significant regulatory action and was therefore not submitted to the Office of Management and Budget (OMB) for review.

B. Paperwork Reduction Act (PRA)

This action does not impose an information collection burden under the PRA. There is no burden imposed under the PRA because this action disapproves submitted revisions that are no longer consistent with federal laws and regulations for the regulation and permitting of PM_{2.5}.

C. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. This action will not impose any requirements on small entities. This action disapproves submitted revisions that are no longer consistent with federal laws and regulations for the regulation and permitting of PM_{2.5}, and therefore will have no impact on small entities.

D. Unfunded Mandates Reform Act (UMRA)

This action does not contain any unfunded mandate as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. The action imposes no enforceable duty on any state, local or tribal governments or the private sector. This action disapproves submitted revisions that are no longer consistent with federal laws and regulations for the regulation and permitting of PM_{2.5}, and therefore will have no impact on small governments.

E. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

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

This action does not have tribal implications as specified in Executive Order 13175. This action disapproves provisions of state law that are no longer consistent with federal law for the

regulation and permitting of PM_{2.5}; there are no requirements or responsibilities added or removed from Indian Tribal Governments. Thus, Executive Order 13175 does not apply to this action.

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

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that the EPA has reason to believe may disproportionately affect children, per the definition of “covered regulatory action” in section 2-202 of the Executive Order. This action is not subject to Executive Order 13045 because it disapproves state permitting provisions that are inconsistent with federal laws and regulations for the regulation and permitting of PM_{2.5}.

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

This action is not subject to Executive Order 13211, because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act (NTTAA)

This rulemaking does not involve technical standards.

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

The EPA believes the human health or environmental risk addressed by this action will not have potential disproportionately high and adverse human health or environmental effects on minority, low-income or indigenous populations. This action is not subject to Executive Order

12898 because it disapproves state permitting provisions that are inconsistent with federal laws and regulations for the regulation and permitting of PM_{2.5}.

K. Congressional Review Act (CRA)

This action is subject to the CRA, 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).

L. 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 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 CAA section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements.

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

Dated: October 21, 2016.

Ron Curry,

Regional Administrator, Region 6.

40 CFR part 52 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. Section 52.1922 is revised to read as follows:

§52.1922. Approval status.

- (a) With the exceptions set forth in this subpart, the Administrator approves Oklahoma's State Implementation Plan under section 110 of the Clean Air Act for the attainment and maintenance of the national standards.
- (b) The EPA is disapproving the following severable portions of the February 6, 2012, Oklahoma SIP submittal:
 - (1) Revisions establishing Minor New Source Review Greenhouse Gas (GHG) permitting requirements at OAC 252:100–7–2.1 as submitted on February 6, 2012.
 - (2) Revisions to the Oklahoma Prevention of Significant Deterioration (PSD) program in OAC 252:100–8–31 establishing PSD permitting requirements for sources that are classified as major and thus required to obtain a PSD permit based solely on their potential GHG emissions (“Step 2 sources”) at paragraph (E) of the definition of “subject to regulation” as submitted on February 6, 2012.
 - (3) Revisions to the Oklahoma PSD Program at OAC 252:100-8-33(c)(1)(C) establishing the PM_{2.5} Significant Monitoring Concentration as submitted on February 6, 2012.

- (4) Revisions to the Oklahoma PSD Program in OAC 252:100-8-35(a)(2) establishing the PM_{2.5} PSD Significant Impact Levels as submitted on February 6, 2012.
- (c) The EPA is disapproving the revisions to the Oklahoma State Implementation Plan definitions of “carbon dioxide equivalent emissions” at OAC 252:100-1-3 and “subject to regulation” at OAC 252:100-8-31 to implement the Greenhouse Gas Biomass Deferral as submitted on January 18, 2013.

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