

obligation under CAA section 110(a)(2)(D)(i)(I) because New Mexico will not significantly contribute to nonattainment or interfere with maintenance of the 2008 ozone NAAQS in any other state and (2) approve the October 10, 2018 New Mexico and October 4, 2018 City of Albuquerque-Bernalillo County SIP revisions for the 2008 ozone NAAQS interstate transport requirements of CAA 110(a)(2)(D)(i)(I).

## V. Statutory and Executive Order Reviews

Under the CAA, 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 CAA. Accordingly, this action merely proposes to approve 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);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted 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 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 proposed 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).

## List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Nitrogen oxides, Ozone.

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

Dated: November 21, 2019.

**Kenley McQueen,**

*Regional Administrator, Region 6.*

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R06-OAR-2018-0208; FRL-10002-11-Region 6]

### Air Plan Approval; Oklahoma; Updates to the General SIP and New Source Review Permitting Requirements

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** Pursuant to the Federal Clean Air Act (CAA or the Act), the Environmental Protection Agency (EPA) is proposing to approve identified portions of revisions to the State Implementation Plan (SIP) for Oklahoma submitted by the State of Oklahoma designee by letters dated May 16, 1994; July 26, 2010; January 8, 2018; May 16, 2018; and December 19, 2018 and as clarified on May 16, 2018. This action addresses the revisions submitted to the Oklahoma SIP pertaining to incorporation by reference of Federal requirements, updates to the general SIP provisions and New Source Review (NSR) permit programs to address public notice and modeling requirements, including certain statutory provisions.

**DATES:** Written comments must be received on or before January 3, 2020.

**ADDRESSES:** Submit your comments, identified by Docket No. EPA-R06-OAR-2018-0208, at <https://www.regulations.gov> or via email to [wiley.adina@epa.gov](mailto:wiley.adina@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 Adina Wiley, (214) 665-2115, [wiley.adina@epa.gov](mailto:wiley.adina@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](http://www.regulations.gov) and in hard copy at the EPA Region 6 Office, 1201 Elm Street, Suite 500, Dallas, Texas. While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (*e.g.*, copyrighted material), and some may not be publicly available at either location (*e.g.*, CBI).

**FOR FURTHER INFORMATION CONTACT:** Adina Wiley, EPA Region 6 Office, Air Permits Section, 1201 Elm Street, Suite 500, Dallas, TX 75270, 214-665-2115, [wiley.adina@epa.gov](mailto:wiley.adina@epa.gov). To inspect the hard copy materials, please schedule an appointment with Adina Wiley or Mr. Bill Deese at 214-665-7253.

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

## I. Background

Section 110 of the Act requires states to develop air pollution regulations and control strategies to ensure that air quality meets the EPA's National Ambient Air Quality Standards (NAAQS). These ambient standards are established under section 109 of the Act and they currently address six criteria pollutants: Carbon monoxide, nitrogen

dioxide, ozone, lead, particulate matter, and sulfur dioxide. The state's air regulations are contained in its SIP, which is basically a clean air plan. Each state is responsible for developing SIPs to demonstrate how the NAAQS will be achieved, maintained, and enforced. The SIP must be submitted to the EPA for approval and any changes a state makes to the approved SIP also must be submitted to the EPA for approval.

Section 110(a)(2)(C) of the CAA requires states to develop and submit to the EPA for approval into the SIP, preconstruction review and permitting programs applicable to certain new and modified stationary sources of air pollutants for attainment and nonattainment areas that cover both major and minor new sources and modifications, collectively referred to as the NSR SIP. The CAA NSR SIP program is composed of three separate programs: Prevention of Significant Deterioration (PSD), Nonattainment New Source Review (NNSR), and Minor NSR. The EPA codified minimum requirements for these State permitting programs including public participation and notification requirements at 40 CFR 51.160–51.164. Requirements specific to construction of new stationary sources and major modifications in nonattainment areas are codified in 40 CFR 51.165 for the NNSR program. Requirements for permitting of new stationary sources and major modifications in attainment areas subject to PSD, including additional public participation requirements, are found at 40 CFR 51.166.

The State of Oklahoma submitted revisions to the Oklahoma SIP on May 16, 1994; July 16, 2010; January 8, 2018; May 16, 2018; and December 19, 2018 and a clarification letter dated May 16, 2018. On May 16, 1994, the Governor of Oklahoma submitted the recodification of the Oklahoma regulations as a revision to the Oklahoma SIP. The EPA addressed most of this recodification on November 3, 1999; this proposed rulemaking addresses the repeal of Regulation 3.8. See 64 FR 59629. On July 16, 2010, Mr. J.D. Strong, Secretary of Environment, submitted revisions to the Oklahoma SIP to implement NSR Reform. The submittal included revisions to Subchapters 1 and 8 in OAC 252:100 that became effective June 15, 2006. The EPA has acted on all portions of the July 16, 2010, submittal except for the adoption of OAC 252:100–8–36.1, which will be addressed in this proposed rulemaking. See 81 FR 66535. On January 8, 2018, Mr. Michael Teague, Secretary of Energy and Environment, submitted revisions to the Oklahoma SIP that included the annual

SIP update for 2017, with amendments to Subchapters 1, 2, 8, and Appendix Q. On May 16, 2018, Mr. Michael Teague, Secretary of Energy and Environment, submitted revisions to the Oklahoma SIP that included updates and amendments to OAC 252:4, relevant Oklahoma statutes, and a clarification letter dated May 16, 2018, about how the Oklahoma public notice process addresses the requirements for PSD public notice. On December 19, 2018, Mr. Michael Teague, Secretary of Energy and Environment, submitted revisions to the Oklahoma SIP that included the annual SIP updates for 2018, with amendments to OAC 252:100, Subchapters 2, 8, and Appendix Q. Collectively, the submitted revisions update the incorporation by reference of Federal requirements, the general SIP provisions and New Source Review (NSR) permit programs to address public notice and modeling requirements.

## II. The EPA's Evaluation

The accompanying Technical Support Document (TSD) for this action includes a detailed analysis of the submitted revisions to the Oklahoma SIP. Our analysis indicates that the May 16, 1994; July 16, 2010; January 8, 2018; May 16, 2018; and December 19, 2018, SIP revisions were developed in accordance with the CAA and the State provided reasonable notice and public hearing.

### General SIP Updates

- On May 16, 1994, the Governor of Oklahoma submitted a recodification of the existing Oklahoma regulations as a revision to the Oklahoma SIP; as part of this recodification the State of Oklahoma requested that we remove Regulation 3.8 from the SIP. The EPA has determined that the provisions of Regulation 3.8, approved into the Oklahoma SIP on August 15, 1983, address the control of emissions of hazardous air pollutants (HAPs) and therefore do not need to be included in the Oklahoma SIP. Control of HAP emissions is appropriately addressed through the delegation of NESHAP and MACT standards; see the EPA's recent approval at 83 FR 53183 (October 22, 2018).

- The January 8, 2018, submittal updated the general definitions applicable to the entire Oklahoma SIP at OAC 252:100–1–3 to be consistent with Federal requirements. The definition of “building, facility, or installation” was revised to be consistent with the requirements at 40 CFR 51.165(a)(1)(ii)(A) and (B) and 40 CFR 51.166(b)(6)(i) and (ii). The definition of “carbon dioxide equivalent emissions”

was revised to delete the Greenhouse Gas (GHG) Biomass Deferral provisions.<sup>1</sup> On May 23, 2016, the EPA disapproved the GHG Biomass Deferral revisions to the definition of “carbon dioxide equivalent emissions” at OAC 252:100–1–3 in the January 8, 2013, SIP submittal. See 81 FR 32239. The deletion of the provisions in the January 8, 2018, submittal is approvable as consistent with Federal requirements for permitting of GHGs and the EPA's May 23, 2016, disapproval. Additionally, removal of the GHG Biomass Deferral provisions from the definition will enable the EPA to remove the disapproval at 40 CFR 52.1922(c).

- The revisions to OAC 252:100, Subchapter 2 and Appendix Q submitted on January 8 and December 19, 2018, update the incorporation by reference dates so the Oklahoma SIP maintains consistency with Federal requirements. The State of Oklahoma is also incorporating by reference the requirements of the EPA's Guideline on Air Quality Models at 40 CFR part 51, appendix W; this updated incorporation ensures that the ODEQ will apply the current EPA models and requirements for SIP and air permit modeling needs.

- The May 16, 2018, Oklahoma SIP submittal included several revisions to existing SIP-approved requirements at OAC 252:4, Rules of Practice and Procedure, applicable to the entirety of the Oklahoma SIP. The submittal included revisions to OAC 252:4, Subchapter 1—General Provisions adopted May 6, 2005, April 25, 2013, and June 9, 2016; OAC 252:4, Subchapter 3—Meetings and Public Forums adopted March 27, 2007; and OAC 252:4, Subchapter 9—Administrative Proceedings, Part 3—Individual Proceedings adopted May 1, 2009, and April 25, 2013. The submitted revisions clarify existing SIP-approved requirements and update internal cross-references to other Oklahoma regulations.

- The May 16, 2018, Oklahoma SIP submittal included several revisions to the existing permit-related SIP requirements at OAC 252:4, Subchapter 7—Environmental Permit Process adopted on March 28, 2002; March 25, 2003, April 25, 2013, and June 13, 2017. OAC 252:4–7–5 has been expanded to clarify how the ODEQ processes permit fees and fee refunds. OAC 252:4–7–13

<sup>1</sup> On July 12, 2013, the D.C. Circuit, in *Center for Biological Diversity v. EPA*, 722 F.3d 401, vacated the provisions of the GHG Biomass Deferral. Due to a series of extension requests and rehearing proceedings, the court did not issue its mandate making the vacatur effective until August 10, 2015. However, the GHG Biomass Deferral expired by its own terms on July 21, 2014.

has been revised to include new public notice requirements. Revisions to OAC 252:4-7-13(g)(1)-(3) adopted on March 25, 2003, ensure consistency with Federal public notice requirements at 40 CFR 51.166(q)(2)(iii) by requiring public notices to be published in a newspaper of general circulation, identify the emissions changes involved in the modification, and require written notice to neighboring states where the air quality may be impacted. Revisions to OAC 252:4-7-13(g)(5) adopted on June 13, 2017, require public notices for PSD permits to specify the degree of increment consumption and that public notices for PSD permits are sent to the applicant, EPA Administrator, and officials and agencies having cognizance over the location of the proposed construction, consistent with the Federal PSD requirements at 40 CFR 51.166(q)(2)(iii) and (iv), discussed more fully in the section about PSD public notice requirements.<sup>2</sup> Section OAC 252:4-7-18 has been expanded to clarify how the ODEQ will review and correct a permit prior to issuance. Section OAC 252:4-7-20 has been added to specify the process of ODEQ review of a final permit decision and the contents of the final permit decision administrative record. The SIP-approved portions of OAC 252:4-7-32 have been renumbered; the EPA is only addressing the renumbering in this proposal. Section OAC 252:4-7-33 has been expanded to include new 7-33(c)(3) which requires Tier II public notice for the SIP-approved plant-wide emission plan approvals at OAC 252:100, Subchapters 37 or 39.

- The new provisions at OAC 252:4-17-1—OAC 252:4-17-7 adopted on April 27, 2007, and the revisions to OAC 252:4-17-2 and OAC 252:4-17-4 adopted on June 9, 2016, submitted as a revision to the Oklahoma SIP on May 16, 2018, establish the requirements for Cross-Media Electronic Reporting Rule (CROMERR) compliant electronic reporting under 40 CFR parts 51 and 52 in the State of Oklahoma. The EPA has separately evaluated and approved the Oklahoma Electronic Document Receiving System as CROMERR compliant. See 73 FR 58587, 79 FR 55792, and 81 FR 36301. The requirements at OAC 252:4-17-1 through OAC 252:4-17-7 are approvable as revisions to the Oklahoma SIP consistent with the requirements of 40 CFR 51.286.

<sup>2</sup> The EPA is taking no action on the severable revision to OAC 252:4-7-13(g)(4) adopted on March 25, 2003, and submitted May 16, 2018. This adopted provision is specific to operating permits, which are addressed through a state's part 70 program rather than the SIP.

The EPA has determined it is appropriate to approve the general revisions to the Oklahoma SIP discussed above because these revisions maintain consistency with Federal requirements and will not interfere with any applicable requirement concerning attainment and reasonable further progress or any other applicable CAA requirements.

#### *PSD Updates*

The State of Oklahoma submitted revisions to the PSD Program on January 8, 2018, that were adopted on June 13, 2017 at OAC 252:100-8-31, Definitions; OAC 252:100-8-33, Exemptions; and OAC 252:100-8-35, Air quality impact evaluation. Additional revisions to OAC 252:100-8-35 were adopted on June 18, 2018 and submitted on December 19, 2018.

- The submitted revisions to OAC 252:100-8-31, update the definitions of: (1) “Regulated NSR Pollutant” to be consistent with the Federal requirements at 40 CFR 51.166(b)(49); (2) “Significant” to be consistent with the Federal requirements at 40 CFR 51.166(b)(23); and (3) “Subject to regulation” to remove the GHG Biomass Deferral and GHG PSD permitting requirements for non-anyway sources to be consistent with the Federal requirements at 40 CFR 51.166(b)(48). On May 23, 2016, the EPA disapproved the GHG Biomass Deferral and GHG PSD permitting requirements for non-anyway sources in the definition of “Subject to regulation” at OAC 252:100-8-31 in the January 8, 2013 SIP submittal. See 81 FR 32239. Approval of the revisions to the definition of “Subject to regulation” will allow the EPA to remove the disapproval of the Oklahoma non-anyway permitting provisions at 40 CFR 52.1922(b)(2) and the disapproval of the GHG Biomass Deferral at 40 CFR 52.1922(c).

- The revisions to OAC 252:100-8-33 update the PSD Exemptions consistent with Federal requirements. The provisions at OAC 252:100-8-33(a)(2) have been updated to reflect the Federal requirements at 40 CFR 51.166(i)(2) for nonattainment designations for revoked NAAQS. The exemptions from air quality analysis requirements at OAC 252:100-8-33(c) have been updated to remove the significant monitoring concentration exemption for PM<sub>2.5</sub>, consistent with the Federal PSD requirements at 40 CFR 51.166(i)(5)(i) and the EPA's prior disapproval on October 28, 2016. See 81 FR 74921. As a result of this change, the EPA will remove the disapproval at 40 CFR 52.1920(b)(3).

- The revisions to OAC 252:100-8-35(a) adopted June 13, 2017 and submitted January 8, 2018, remove the provisions establishing PM<sub>2.5</sub> significant impact levels. The EPA previously disapproved the provisions at OAC 252:100-8-35(a)(2) on October 28, 2016. See 81 FR 74921. The deletion of these provisions from the State regulations is consistent with Federal PSD requirements at 40 CFR 51.166(k)(2) and addresses our disapproval. As such, the EPA will remove the disapproval at 40 CFR 52.1922(b)(4).

- The revisions to OAC 252:100-8-35(b) adopted June 18, 2018 and submitted December 19, 2018, remove the incorporation by reference date of the EPA's Guideline on Air Quality Models at 40 CFR part 51, appendix W. This revision is necessary to update the Oklahoma PSD SIP to use the current version of the EPA's Guideline on Air Quality Modeling, consistent with Federal PSD requirements at 40 CFR 51.166(l). The removal of the IBR date in OAC 252:100-8-35(b) works with the updated incorporation by reference dates submitted in OAC 252:100, Subchapter 2 and Appendix Q. As the EPA makes updates to appendix W, the ODEQ will update the Oklahoma SIP IBR dates in OAC 252:100, Subchapter 2 and Appendix Q, thereby ensuring the Oklahoma PSD program will be updated in the future.

- The revisions to OAC 252:100-8-35(c) adopted June 18, 2018 and submitted December 19, 2018, remove the incorporation by reference date of the EPA's 40 CFR part 58, appendix B. The removal of this date ensures the Oklahoma SIP can use the latest version of 40 CFR part 58, appendix B, consistent with the Federal PSD permitting requirements at 40 CFR 51.166(m)(3).

The EPA has determined it is appropriate to approve the revisions to the Oklahoma PSD program submitted January 8 and December 19, 2018, as discussed above because these revisions maintain consistency with Federal requirements and will not interfere with any applicable requirement concerning attainment and reasonable further progress or any other applicable CAA requirements.

#### *NNSR Updates*

The State of Oklahoma submitted revisions to the NNSR Program on January 8, 2018 that were adopted on June 13, 2017 at OAC 252:100-8-51.1, Emissions reductions and offsets. The submitted revisions update the incorporation by reference date of 40 CFR 51.165(a)(11) to April 6, 2015, consistent with the effective date of the

revisions promulgated by the EPA on March 6, 2015 to address the NNSR permitting requirements for the 2008 ozone standard. *See* 80 FR 12264. The March 6, 2015, final rule specifies that emission offsets for NNSR permitting must be for the same regulated pollutant; states have the discretion to allow interprecursor trading for either ozone or direct PM<sub>2.5</sub> emissions only if this discretion is identified in the SIP. The State of Oklahoma is attainment for both ozone and PM<sub>2.5</sub>; there is no requirement for the Oklahoma SIP to include an NNSR program for either ozone or PM<sub>2.5</sub>, or to identify whether the State will exercise its discretionary authority to allow interprecursor trading to satisfy emission offset requirements. We can propose approval of the revisions to OAC 252:100–8–51.1 because the State has incorporated by reference Federal permitting requirements. However, if the State of Oklahoma is designated nonattainment for ozone or PM<sub>2.5</sub> at any time in the future, a subsequent SIP revision would be necessary to provide for interprecursor trading for emission offsets.

#### *PSD Public Notice Updates*

On June 15, 2006, the State of Oklahoma adopted, and submitted on July 26, 2010, a new provision for PSD Public Notice at OAC 252:100–8–36.1. This section relies on the separate authorities found at OAC 252:4 and 27A Oklahoma Statutes (O.S.) 2–5–112 and 27A O.S. 2–14–101 to 2–14–304 to satisfy the Federal public notice requirements for PSD permit applications. On May 16, 2018, the State of Oklahoma submitted a revision to the Oklahoma SIP that included revisions to OAC 252:4, updated versions of the Oklahoma Statutes, and a clarification letter dated May 16, 2018 regarding PSD public notice requirements. The EPA's evaluation of how these regulations and statutes satisfy PSD public notice requirements is summarized below. The full analysis is contained in the TSD for this action.

- 40 CFR 51.166(q)(1) requires that the permitting authority will notify all applicants within a specified time period as to the completeness of the application or any deficiency in the application. The Oklahoma SIP satisfies 40 CFR 51.166(q)(1) through OAC 252:4–7–7, which requires the ODEQ to complete an administrative completeness review within 60 calendar days from receipt of the permit application. If the application is deemed incomplete, then the applicant is notified by mail of the deficiencies and supplemental information is requested.

The EPA SIP-approved OAC 252:4–7–7 on May 15, 2017. *See* 82 FR 22281.

- 40 CFR 51.166(q)(2)(i) requires that within one year after receipt of a complete application, the reviewing authority will make a preliminary determination whether construction should be approved, approved with conditions, or disapproved. The Oklahoma SIP satisfies 40 CFR 51.166(q)(2)(i) through OAC 252:4–7–31, which requires that construction permits for PSD sources be reviewed and issued or denied within 365 days. Construction permits generally cover new PSD sources and modifications to existing PSD sources. The EPA SIP-approved OAC 252:4–7–31 on May 15, 2017. *See* 82 FR 22281.

- 40 CFR 51.166(q)(2)(ii) requires that within one year after receipt of a complete application, the reviewing authority will make available in at least one location in each region in which the proposed source is proposed to be constructed a copy of all materials the applicant submitted, a copy of the preliminary determination, and any other materials considered in making the preliminary determination. The Oklahoma SIP satisfies 40 CFR 51.166(q)(2)(ii) through the May 16, 2018 clarification letter, the application of 27A O.S. 2–14–302(A), 302(B), and the definition of “Record” at 51 O.S. 24A.3 and OAC 252:4–1–5. Under the definition of “Record” at 51 O.S. 24A.3, any materials provided to the ODEQ during the permit application process would be considered part of the permit record in the State of Oklahoma. Section OAC 252:4–1–5 requires the permit record to be available for public inspection and copying at the ODEQ offices. The ODEQ confirmed this through the May 16, 2018, clarification letter in which they state “All applications, including all materials, updates, modeling files, etc. that are submitted with the application or in support/clarification of the application, are considered part of the application, and, along with the Department’s draft permit decision and analysis, are available for public review in the Department’s main Oklahoma City office (and/or Tulsa office) (regardless of Tier).” In addition, 27A O.S. 2–14–302(B) (applicable to Tier II and Tier III applications, per 27A O.S. 2–14–302(A)) requires the applicant upon publication of notice of a draft permit, to make the draft permit and the application available for public review at a location in the county where the proposed new site or existing facility is located.

- 40 CFR 51.166(q)(2)(iii) requires that within one year of receipt of a complete application, the reviewing

authority will provide public notice in a newspaper of general circulation in each region in which the proposed source would be constructed of the application, the preliminary determination, the expected degree of increment consumption and the opportunity for comment at a public hearing as well as written comments. The Oklahoma SIP satisfies 40 CFR 51.166(q)(2)(iii) through the May 16, 2018 clarification letter, the submitted revisions to OAC 252:4–7–13(g)(5) and the application of 27A O.S. 2–14–301 and 2–14–302. The Oklahoma SIP relies on newspaper notice for the consistent method of noticing under the Federal PSD requirements. 27A O.S. 2–14–301 requires that a permit applicant publish notice of filing in a local newspaper. 27A O.S. 2–14–302 requires that the public notice of the draft permit be provided by the applicant in a local newspaper; notice of a draft denial will be provided by the ODEQ in a local newspaper. The notice of the draft permit or denial will provide 30 days for public comment and the opportunity to request a public meeting. The revisions to OAC 252:4–7–13(g)(5) require that all published notices for a PSD permit application must include the expected degree of increment consumption.

- 40 CFR 51.166(q)(2)(iv) requires that within one year of receipt of a complete application, the reviewing authority will send a copy of the notice of public comment to the applicant, the EPA Administrator, and to officials and agencies having cognizance over the location where the proposed construction would occur. The Oklahoma SIP satisfies 40 CFR 51.166(q)(2)(iv) through the May 16, 2018 clarification letter, the submitted revisions to OAC 252:4–7–13(g) and the application of 27A O.S. 2–14–302. 27A O.S. 2–14–302 requires public notice of the draft permit or denial through the local newspaper. OAC 252:4–7–13(g)(1) requires that permit applicants give notice to individuals on a mailing list maintained by the ODEQ. The revisions to OAC 252:4–7–13(g)(5) specify that the mailing list for PSD permit applicants must include the applicant; the EPA Administrator; chief executives of the city and county where the source would be located; any comprehensive regional land use planning agency; and any State, Federal Land Manager or Tribal Government whose lands may be affected by emissions from the source or modifications.

- 40 CFR 51.166(q)(2)(v) requires that within one year from receipt of a complete application, the reviewing authority must provide opportunity for

a public hearing for interested persons to appear and submit written or oral comments. The Oklahoma SIP satisfies 40 CFR 51.166(q)(2)(v) through the May 16, 2018 clarification letter and the application of 27A O.S. 2-14-302 and 27A O.S. 2-14-303. 27A O.S. 2-14-302 requires that a public notice include a 30-day public comment period and the opportunity to request a formal public meeting. 27A O.S. 2-14-303 provides the rules the ODEQ will follow if a formal meeting is requested.

- 40 CFR 51.166(q)(2)(vi) requires that within one year from receipt of a complete application, the reviewing authority will consider all comments, both written and oral, and make all comments available for public inspection. The Oklahoma SIP satisfies 40 CFR 51.166(q)(2)(vi) through the May 16, 2018 clarification letter, the definition of “response to comments” at 27A O.S. 2-14-103, the application of 27A O.S. 2-14-304, the definition of “Record” at 51 O.S. 24A.3, and OAC 252:4-1-5. Through the definition of “record”, any comments submitted either written or oral, would be considered part of the ODEQ’s permitting record and pursuant to OAC 252:4-1-5, must be available at the ODEQ offices. The ODEQ is required to prepare a response to comments document consistent with the definition at 27A O.S. 2-14-103 and the requirements at 27A O.S. 2-14-304.

- 40 CFR 51.166(q)(2)(vii) requires that within one year from receipt of a complete application, the reviewing authority will make a final determination on the permit application. The Oklahoma SIP satisfies 40 CFR 51.166(q)(2)(vii) through OAC 252:4-7-31 which requires that construction permits for PSD sources be reviewed and issued or denied within 365 days. This would apply to a new PSD source or modification to an existing PSD source. EPA SIP-approved OAC 252:4-7-31 on May 15, 2017. *See* 82 FR 22281.

- 40 CFR 51.166(q)(2)(viii) requires that within one year from receipt of a complete application, the reviewing authority will notify the applicant in writing of the final determination and make the notification available for public inspection. The Oklahoma SIP satisfies 40 CFR 51.166(q)(2)(viii) through the May 16, 2018 clarification letter, the submitted revisions to OAC 252:4-7-20(c), the requirements at OAC 252:4-7-31, the application of 27A O.S. 2-14-304, 27A O.S. 2-14-304(C)(2), 27A O.S. 2-14-304(F), and the definition of “Record” at 51 O.S. 24A.3. OAC 252:4-7-31 requires that PSD construction permits will be issued or

denied within one year from receipt of a complete application. The EPA SIP-approved the requirements at OAC 252:4-7-31 on November 26, 2010. *See* 75 FR 72695. 27A O.S. 2-14-304 requires the ODEQ to give notice of the final permit decision to the applicant. The new requirements at OAC 252:4-7-20(c) identify the elements of the permit administrative record that must be prepared by the ODEQ, including the final permit. In addition, OAC 252:4-1-5 requires the record to be available for public inspection at the ODEQ offices.

The EPA has also determined we need to approve portions of the submitted Oklahoma statutes into the Oklahoma SIP because they provide unique authorities not provided elsewhere through Oklahoma regulation. Specifically, the following statutory provisions are necessary for the Oklahoma SIP to satisfy the PSD public notice requirements:

- Definitions of “Process Meeting” and “Response to Comments” at 27A O.S. 2-14-103 added July 1, 1994, and last modified and effective November 1, 2015;
- The provisions for notification to an affected state at 27A O.S. 2-5-112(E) added May 15, 1992, and last modified and effective June 3, 2004;
- 27A O.S. 2-14-301, 2-14-302, and 2-14-303 added and in effect July 1, 1996;
- 27A O.S. 2-14-304 added July 1, 1996, and last modified and effective May 9, 2002;
- Definition of “Record” at 51 O.S. 24A.3, added November 1, 1985, and last modified and effective November 1, 2014;
- The requirement to maintain, and the description of the contents of, the rulemaking record at 75 O.S. 302(B) promulgated in 1963 and last modified and effective November 1, 1998;
- The process for adoption, amendment or revocation of a rule at 75 O.S. 303 promulgated in 1963 and last modified and effective November 1, 2013; and
- Definition of “Meeting” at 25 O.S. 304(2) added October 1, 1977, and last modified and effective in 2010.

The EPA has determined it is appropriate to approve the above identified statutory provisions and regulatory revisions into the Oklahoma SIP because these revisions maintain consistency with Federal requirements for PSD public notice and will not interfere with any applicable requirement concerning attainment and reasonable further progress or any other applicable CAA requirements.

### III. Proposed Action

We are proposing to approve under section 110 of the CAA, revisions to the Oklahoma SIP that revise the incorporation by reference dates for Federal requirements and update the NSR PSD and NNSR permitting programs to maintain consistency with Federal requirements. We have determined that the revisions submitted on May 16, 1994; July 26, 2010; January 8, 2018; May 16, 2018; and December 19, 2018, as clarified by letter dated May 16, 2018, were developed in accordance with the CAA and EPA’s regulations, policy, and guidance for SIP development and NSR permitting. The EPA proposes approval of the following as revisions to the Oklahoma SIP:

- Removal of Regulation 3.8, adopted on March 30, 1994, submitted May 16, 1994;
- New OAC 252:100-8-36.1, Public Participation, adopted on April 28, 2006, effective on June 15, 2006, submitted July 16, 2010;
  - Submitted on January 8, 2018:
    - Revisions to OAC 252:100-1-3, Definitions, adopted on June 13, 2017 and effective September 15, 2017;
    - Revisions to OAC 252:100-2-3 and Appendix Q for Incorporation by Reference, adopted on June 13, 2017 and effective September 15, 2017;
    - Revisions to OAC 252:100-8-31, Definitions, adopted on June 13, 2017 and effective September 15, 2017;
    - Revisions to OAC 252:100-8-33, Exemptions, adopted on June 13, 2017 and effective September 15, 2017;
    - Revisions to OAC 252:100-8-35, Air quality impact evaluation, adopted on June 13, 2017 and effective September 15, 2017; and
    - Revisions to OAC 252:100-8-51.1, Emissions reductions and offsets, adopted on June 13, 2017 and effective September 15, 2017.
  - Submitted on May 16, 2018:
    - Revisions to OAC 252:4-1-2, Definitions, adopted on June 9, 2016, effective September 15, 2016;
    - Revisions to OAC 252:4-1-3, Organization, adopted on April 25, 2013, effective July 1, 2013, and revisions adopted on June 9, 2016, effective September 15, 2016;
    - Revisions to OAC 252:4-1-5, Availability of a record, adopted on May 6, 2005, effective June 15, 2005, and revisions adopted on April 25, 2013, effective July 1, 2013;
    - Revisions to OAC 252:4-1-6, Administrative fees, adopted on May 6, 2005, effective June 15, 2005;
    - Revisions to OAC 252:4-3-1, Meetings, adopted on March 27, 2007, effective June 15, 2007;

- Revisions to OAC 252:4-7-5, Fees and fee refunds, adopted on June 13, 2017, effective September 15, 2017;
- Revisions to OAC 252:4-7-13, Notices, adopted on March 25, 2003, effective June 1, 2003, except for OAC 252:4-7-13(g)(4), and revisions adopted April 25, 2013, effective July 1, 2013;
- Revisions to OAC 252:4-7-15, Permit issuance or denial, adopted on May 28, 2002, effective June 1, 2002, and revisions adopted April 25, 2013, effective July 1, 2013;
- Revisions to OAC 252:4-7-18, Pre-issuance permit review and correction, adopted April 25, 2013, effective July 1, 2013;
- New OAC 252:4-7-20, Agency review of final permit decision, adopted April 25, 2013, effective July 1, 2013;
- Revisions to OAC 252:4-7-32, Air quality applications -Tier I, adopted March 25, 2003, effective June 1, 2003;
- Revisions to OAC 252:4-7-33, Air quality applications—Tier II, adopted March 25, 2003, effective June 1, 2003, except for OAC 252:4-7-33(c)(4);
- Revisions to OAC 252:4-9-32, Individual proceedings filed by others, as adopted on May 1, 2009, effective July 1, 2009 and revisions adopted April 25, 2013, effective July 1, 2013;
- Revisions to OAC 252:4-9-51, In general, adopted on March 24, 2004, effective June 1, 2004;
- Revisions to OAC 252:4-9-52, Individual proceedings, adopted on March 24, 2004, effective June 1, 2004;
- New OAC 252:4-17, Electronic Reporting, sections OAC 252:4-17-1—OAC 252:4-17-7, adopted April 27, 2007, effective June 15, 2017;
- Revisions to OAC 252:4-17-2, Definitions, adopted June 9, 2016, effective September 15, 2016;
- Revisions to OAC 252:4-17-4, Electronic signature agreement, adopted June 9, 2016, effective September 15, 2016;
- Letter to Ms. Anne Idsal, Regional Administrator, EPA Region 6, dated May 16, 2018 regarding “Clarification of PSD Public Participation Procedures under 2017 Revisions to the Oklahoma State Implementation Plan (SIP)”;
- Definitions of “Process Meeting” and “Response to Comments” at 27A O.S. 2-14-103 added July 1, 1994, and last modified and effective November 1, 2015;
- The provisions for notification to an affected state at 27A O.S. 2-5-112(E) added May 15, 1992, and last modified and effective June 3, 2004;
- 27A O.S. 2-14-301, 2-14-302, and 2-14-303 added and in effect July 1, 1996;
- 27A O.S. 2-14-304 added July 1, 1996, and last modified and effective May 9, 2002;

- Definition of “Record” at 51 O.S. 24A.3, added November 1, 1985, and last modified and effective November 1, 2014;
- The requirement to maintain, and the description of the contents of, the rulemaking record at 75 O.S. 302(B) promulgated in 1963 and last modified and effective November 1, 1998;
- The process for adoption, amendment or revocation of a rule at 75 O.S. 303 promulgated in 1963 and last modified and effective November 1, 2013; and
- Definition of “Meeting” at 25 O.S. 304(2) added October 1, 1977, and last modified and effective in 2010.

- Submitted December 19, 2018:
- Revisions to OAC 252:100-2-3 and Appendix Q adopted on June 18, 2018 and effective September 15, 2018; and
- Revisions to OAC 252:100-8-35, Air quality impact evaluation, adopted on June 18, 2018 and effective September 15, 2018.

The EPA is proposing that the provisions in OAC 252:4-1-1, 4-1-2, 4-1-3, 4-1-4, 4-1-5, 4-1-6, 4-1-7, 4-1-8, and 4-1-9, and OAC 252:100-5-1, 5-1.1 and 5-2.2 are applicable to the entirety of the Oklahoma SIP and the amendatory language table at 40 CFR 52.1920(c) should be modified to reflect this finding. Additionally, the EPA proposes to remove the disapprovals listed in 40 CFR 52.1922(b)(2), (3), and (4) and (c), because the State has submitted appropriate revisions to the SIP to correct the disapprovals.

#### IV. Incorporation by Reference

In this action, we are proposing to include in a final rule regulatory text that includes incorporation by reference. In accordance with the requirements of 1 CFR 51.5, we are proposing to incorporate by reference revisions to the Oklahoma regulations and statutes as described in the Proposed Action section above. We have made, and will continue to make, these documents generally available electronically through [www.regulations.gov](http://www.regulations.gov) and in hard copy at the EPA Region 6 office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

#### V. Statutory and Executive Order Reviews

Under the CAA, 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 CAA. Accordingly, this action merely proposes to approve 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);
  - Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted 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 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 proposed 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).

#### List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide,

Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

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

Dated: November 21, 2019.

**Kenley McQueen,**

*Regional Administrator, Region 6.*

[FR Doc. 2019-25954 Filed 12-2-19; 8:45 am]

**BILLING CODE 6560-50-P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 679

[Docket No. 191126-0094]

RTID 0648-XY201

#### Fisheries of the Exclusive Economic Zone Off Alaska; Gulf of Alaska; Proposed 2020 and 2021 Harvest Specifications for Groundfish

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Proposed rule; harvest specifications and request for comments.

**SUMMARY:** NMFS proposes 2020 and 2021 harvest specifications, apportionments, and Pacific halibut prohibited species catch limits for the groundfish fishery of the Gulf of Alaska (GOA). This action is necessary to establish harvest limits for groundfish during the 2020 and 2021 fishing years and to accomplish the goals and objectives of the Fishery Management Plan for Groundfish of the Gulf of Alaska. The 2020 harvest specifications supersede those previously set in the final 2019 and 2020 harvest specifications, and the 2021 harvest specifications will be superseded in early 2021 when the final 2021 and 2022 harvest specifications are published. The intended effect of this action is to conserve and manage the groundfish resources in the GOA in accordance with the Magnuson-Stevens Fishery Conservation and Management Act.

**DATES:** Comments must be received by January 2, 2020.

**ADDRESSES:** Submit comments on this document, identified by NOAA-NMFS-2019-0102, by either of the following methods:

- **Federal e-Rulemaking Portal:** Go to [www.regulations.gov/](http://www.regulations.gov/) #!docketDetail;D=NOAA-NMFS-2019-0102, click the "Comment Now!" icon, complete the required fields, and enter or attach your comments.

- **Mail:** Submit written comments to Glenn Merrill, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region NMFS, Attn: Records Office. Mail comments to P.O. Box 21668, Juneau, AK 99802-1668.

**Instructions:** NMFS may not consider comments if they are sent by any other method, to any other address or individual, or received after the comment period ends. All comments received are a part of the public record, and NMFS will post the comments for public viewing on [www.regulations.gov](http://www.regulations.gov) without change. All personal identifying information (*e.g.*, name, address), confidential business information, or otherwise sensitive information submitted voluntarily by the sender is publicly accessible. NMFS will accept anonymous comments (enter "N/A" in the required fields if you wish to remain anonymous).

Electronic copies of the Alaska Groundfish Harvest Specifications Final Environmental Impact Statement (Final EIS), Record of Decision (ROD) for the Final EIS, the annual Supplementary Information Reports (SIRs) to the Final EIS, and the Initial Regulatory Flexibility Analysis (IRFA) prepared for this action area available from <https://www.regulations.gov>. An updated 2020 SIR for the final 2020 and 2021 harvest specifications will be available from the same source. The final 2018 Stock Assessment and Fishery Evaluation (SAFE) report for the groundfish resources of the GOA, dated November 2018, is available from the North Pacific Fishery Management Council (Council) at 605 West 4th Avenue, Suite 306, Anchorage, AK 99501-2252, phone 907-271-2809, or from the Council's website at <https://www.npfmc.org>. The 2019 SAFE report for the GOA will be available from the same source.

**FOR FURTHER INFORMATION CONTACT:** Obren Davis, 907-586-7228.

**SUPPLEMENTARY INFORMATION:** NMFS manages the groundfish fisheries in the exclusive economic zone (EEZ) of the GOA under the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP). The Council prepared the FMP under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), 16 U.S.C. 1801, *et seq.* Regulations governing U.S. fisheries and implementing the FMP

appear at 50 CFR parts 600, 679, and 680.

The FMP and its implementing regulations require that NMFS, after consultation with the Council, specify the total allowable catch (TAC) for each target species, the sum of which must be within the optimum yield (OY) range of 116,000 to 800,000 metric tons (mt) (§ 679.20(a)(1)(i)(B)). Section 679.20(c)(1) further requires NMFS to publish and solicit public comment on proposed annual TACs and apportionments thereof, Pacific halibut prohibited species catch (PSC) limits, and seasonal allowances of pollock and Pacific cod. The proposed harvest specifications in Tables 1 through 19 of this rule satisfy these requirements. For 2020 and 2021, the sum of the proposed TAC amounts is 408,534 mt.

Under § 679.20(c)(3), NMFS will publish the final 2020 and 2021 harvest specifications after (1) considering comments received within the comment period (see **DATES**), (2) consulting with the Council at its December 2019 meeting, (3) considering information presented in the 2020 SIR to the Final EIS that assesses the need to prepare a Supplemental EIS (see **ADDRESSES**), and (4) considering information presented in the final 2019 SAFE reports prepared for the 2020 and 2021 groundfish fisheries.

#### Other Actions Affecting or Potentially Affecting the 2020 and 2021 Harvest Specifications

##### *Reclassify Sculpins as an Ecosystem Component Species*

In October 2019, the Council recommended that sculpins be reclassified in the FMP as an "ecosystem component" species, which is a category of non-target species that are not in need of conservation and management. Currently, NMFS annually sets an overfishing level (OFL), Acceptable Biological Catch (ABC), and TAC for sculpins in the GOA groundfish harvest specifications. Under the Council's recommended action, OFL, ABC, and TAC specifications for sculpins would no longer be required. NMFS intends to develop rulemaking to implement the Council's recommendation for sculpins. Such rulemaking would prohibit directed fishing for sculpins, maintain recordkeeping and reporting, and establish a sculpin maximum retainable amount when directed fishing for groundfish species at 20 percent to discourage retention, while allowing flexibility to prosecute groundfish fisheries. Further details (and public comment on the sculpin action) will be available on publication of the proposed