published in the system notice, an exemption from this provision is necessary to protect the confidentiality of sources of information and to protect the privacy and physical safety of witnesses and informants. Accordingly, application of exemptions (j)(2) and (k)(1) may be necessary.

(H) *Subsection (e)(5).* It is often impossible to determine in advance if investigatory records contained in this system are accurate, relevant, timely and complete, but, in the interests of effective law enforcement, it is necessary to retain this information to maintain an accurate record of the investigatory activity to preserve the integrity of the investigation and satisfy various Constitutional and evidentiary requirements, such as mandatory disclosure of potentially exculpatory information in the investigative file to a defendant. It is also necessary to retain this information to aid in establishing patterns of activity and provide investigative leads. With the passage of time, seemingly irrelevant or untimely information may acquire new significance as further investigation brings new details to light and the accuracy of such information can only be determined through judicial processes. Accordingly, application of exemption (j)(2) may be necessary.

(I) *Subsection (e)(8).* To serve notice could give persons sufficient warning to evade investigative efforts. Accordingly, application of exemption (j)(2) may be necessary.

(J) *Subsection (f).* The agency's rules are inapplicable to those portions of the system that are exempt. Accordingly, application of exemptions (j)(2), (k)(1), (k)(2) and (k)(5) may be necessary.

(K) *Subsection (g).* This subsection is inapplicable to the extent that the system is exempt from other specific subsections of the Privacy Act. Accordingly, an exemption from subsection (g) is claimed pursuant to (j)(2).

(iv) *Exempt records from other systems.* In the course of carrying out the overall purpose for this system, exempt records from other systems of records may in turn become part of the records maintained in this system. To the extent that copies of exempt records from those other systems of records are maintained in this system, the DoD claims the same exemptions for the records from those other systems that are entered into this system, as claimed for the prior system(s) of which they are a part, provided the reason for the exemption remains valid and necessary.

* * * * *

Dated: January 30, 2023.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2023–02191 Filed 2–2–23; 8:45 am]

BILLING CODE 5001–06–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R06–OAR–2016–0674; FRL–10596–01–R6]

Air Approval Plan; Oklahoma; Excess Emission and Malfunction Reporting Requirements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: Pursuant to the Federal Clean Air Act (CAA, the Act), the Environmental Protection Agency (EPA) is proposing to approve a revision to the Oklahoma State Implementation Plan (SIP) submitted by the State of Oklahoma through the Secretary of Energy & Environment on November 7, 2016. The revision was submitted in response to a finding of substantial inadequacy and SIP call published by EPA on June 12, 2015, which included certain provisions in the Oklahoma SIP related to excess emissions during startup, shutdown, and malfunction (SSM) events. The submittal requests the removal of the provisions identified in the 2015 SIP call from the Oklahoma SIP. EPA is proposing to determine that the removal of these substantially inadequate provisions from the SIP will correct the deficiencies in the Oklahoma SIP identified in the June 12, 2015 SIP call.

DATES: Comments must be received on or before March 6, 2023.

ADDRESSES: Submit your comments, identified by Docket No. EPA–R06–OAR–2016–0674 at *https://www.regulations.gov* or via email to *Shar.alan@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 Mr. Alan Shar, (214) 665–6691, *Shar.alan@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* and in hard copy at the EPA Region 6 Office, 1201 Elm Street, Suite 500, Dallas, Texas 75270. 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: Mr. Alan Shar, Regional Haze and SO_2 Section, EPA Region 6 Office, 1201 Elm Street, Suite 500, Dallas, Texas 75270, (214) 665–6691, *Shar.Alan@epa.gov.* Out of an abundance of caution for members of the public and our staff, the EPA Region 6 office may be closed to the public to reduce the risk of transmitting COVID–19. We encourage the public to submit comments via *https://www.regulations.gov,* as there will be a delay in processing mail and no courier or hand deliveries will be accepted. Please call or email 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.

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I. Background

A. EPA's 2015 SIP Action

On February 22, 2013, EPA issued a **Federal Register** proposed rulemaking action outlining EPA's policy at the time with respect to SIP provisions related to periods of SSM. EPA analyzed specific SSM SIP provisions and explained how

each one either did or did not comply with the CAA with regard to excess emission events.[1] For each SIP provision that EPA determined to be inconsistent with the CAA, EPA proposed to find that the existing SIP provision was substantially inadequate to meet CAA requirements and thus proposed to issue a SIP call under CAA section 110(k)(5). On September 17, 2014, EPA issued a document supplementing and revising what the Agency had previously proposed on February 22, 2013, in light of a D.C. Circuit decision that determined the CAA precludes authority of EPA to create affirmative defense provisions applicable to private civil suits. EPA outlined its updated policy that affirmative defense SIP provisions are not consistent with CAA requirements. EPA proposed in the supplemental proposal document to apply its revised interpretation of the CAA to specific affirmative defense SIP provisions and proposed SIP calls for those provisions where appropriate (79 FR 55920, September 17, 2014).

On June 12, 2015, pursuant to CAA section 110(k)(5), EPA finalized ''State Implementation Plans: Response to Petition for Rulemaking; Restatement and Update of EPA's SSM Policy Applicable to SIPs; Findings of Substantial Inadequacy; and SIP Calls To Amend Provisions Applying to Excess Emissions During Periods of Startup, Shutdown and Malfunction,'' (80 FR 33839, June 12, 2015), hereafter referred to as the ''2015 SSM SIP Action.'' The 2015 SSM SIP Action clarified, restated, and updated EPA's interpretation that SSM exemption and affirmative defense SIP provisions are inconsistent with CAA requirements. The 2015 SSM SIP Action found that certain SIP provisions in 36 states, including Oklahoma, were substantially inadequate to meet CAA requirements and issued a SIP call to those states to submit SIP revisions to address the inadequacies. EPA established an 18-month deadline by which the affected states had to submit such SIP revisions. States were required to submit corrective revisions to their SIPs in response to the SIP calls by November 22, 2016. The detailed rationale for issuing the SIP call to Oklahoma can be found in the 2015 SSM SIP Action and preceding proposed actions.

EPA issued a Memorandum in October 2020 (2020 Memorandum), which stated that certain provisions governing SSM periods in SIPs could be viewed as consistent with CAA requirements.[2] Importantly, the 2020 Memorandum stated that it ''did not alter in any way the determinations made in the 2015 SSM SIP Action that identified specific state SIP provisions that were substantially inadequate to meet the requirements of the Act.'' Accordingly, the 2020 Memorandum had no direct impact on the SIP call issued to Oklahoma in 2015. The 2020 Memorandum did, however, indicate EPA's intent at the time to review SIP calls that were issued in the 2015 SSM SIP Action to determine whether EPA should maintain, modify, or withdraw particular SIP calls through future agency actions.

On September 30, 2021, EPA's Deputy Administrator withdrew the 2020 Memorandum and announced EPA's return to the policy articulated in the 2015 SSM SIP Action (2021 Memorandum).[3] As articulated in the 2021 Memorandum, SIP provisions that contain exemptions or affirmative defense provisions are not consistent with CAA requirements and, therefore, generally are not approvable if contained in a SIP submission. This policy approach is intended to ensure that all populations, including overburdened communities, impacted by air pollution receive the full health and environmental protections provided by the CAA.[4] The 2021 Memorandum also retracted the prior statement from the 2020 Memorandum of EPA's plans to review and potentially modify or withdraw particular SIP calls. That statement no longer reflects EPA's intent. EPA intends to implement the principles laid out in the 2015 SSM SIP Action as the agency takes action on SIP submissions, including this SIP submittal provided by Oklahoma in response to the 2015 SIP call.

B. Oklahoma's Subchapter 9 (OAC 252:100–9) Excess Emission and Malfunction Reporting Requirements

Oklahoma Administrative Code (OAC), Title 252, Chapter 100, Subchapter 9 (OAC 252:100–9) Excess Emission and Malfunction Reporting Requirements (hereafter, Subchapter 9) was approved into the Oklahoma SIP on November 3, 1999 (64 FR 59629), and became federally effective on January 3, 2000.

As a part of EPA's 2015 SSM SIP Action, EPA made a finding that certain provisions in the Oklahoma SIP are substantially inadequate to meet CAA requirements because they provide for discretionary exemptions from otherwise applicable SIP emission limitations, and thus issued a SIP call with respect to these provisions. The SIP-called provisions were OAC 252:100–9–3(a) and OAC 252:100–9–3(b) of Subchapter 9.[5]

II. Analysis of SIP Submission

In response to EPA's 2015 SSM SIP Action, Oklahoma submitted a SIP revision on November 7, 2016, requesting the removal of the SIP-called provisions, OAC 252:100–9–3(a) and OAC 252:100–9–3(b) of Subchapter 9. Although not part of the finding in the 2015 SIP call, in addition to OAC 252:100–9–3(a) and (b), Oklahoma decided to remove the remaining sections of EPA-approved Subchapter 9: OAC 252:100–9–1, OAC 252:100–9–2, OAC 252:100–9–4, OAC 252:100–9–5, and OAC 252:100–9–6 from its SIP.[6] EPA believes that removal of Subchapter 9 from the Oklahoma SIP will eliminate the impermissible discretionary exemptions from applicable emissions limits, but will not otherwise affect the adequacy of the remaining portions of the Oklahoma SIP. EPA concurs with this State action and is proposing to approve removing these provisions (OAC 252:100–9–1, OAC 252:100–9–2, OAC 252:100–9–4, OAC 252:100–9–5, and OAC 252:100–9–6) in addition to the substantially inadequate SIP-called provisions (OAC 252:100–9–3(a) and OAC 252:100–9–3(b)) from the Oklahoma SIP.

Oklahoma's submittal also includes an analysis to demonstrate compliance with Section 110(l) of the Act.[7] Removal of Subchapter 9 in its entirety from the Oklahoma SIP is not expected to lead to any emissions increase and, therefore, will not affect the State's ability to attain or maintain state or federal standards or reasonable further progress. This

[1] State Implementation Plans: Response to Petition for Rulemaking; Findings of Substantial Inadequacy; and SIP Calls To Amend Provisions Applying to Excess Emissions During Periods of Startup, Shutdown, and Malfunction, (78 FR 12460) Feb. 22, 2013.

[2] October 9, 2020, memorandum ''Inclusion of Provisions Governing Periods of Startup, Shutdown, and Malfunctions in State Implementation Plans,'' from Andrew R. Wheeler, Administrator.

[3] September 30, 2021, memorandum ''Withdrawal of the October 9, 2020, Memorandum Addressing Startup, Shutdown, and Malfunctions in State Implementation Plans and Implementation of the Prior Policy,'' from Janet McCabe, Deputy Administrator.

[4] Section J, June 12, 2015 (80 FR 33985).

[5] Section G. Affected States in EPA Region VI, June 12, 2015 (80 FR 33968).

[6] Specifically, the remaining sections of EPA-approved Subchapter 9 Excess Emission and Malfunction Reporting Requirements are OAC 252:100–9–1 (concerning Purpose), OAC 252:100–9–2 (concerning Definitions), OAC 252:100–9–4 (concerning Maintenance Procedures), OAC 252:100–9–5 (concerning Malfunctions and Releases), and OAC 252:100–9–6 (concerning Excesses Resulting from Engineering Limitations).

[7] Pages 3–4 of the November 7, 2016 SIP submittal.

approach is consistent with the analogy presented in EPA's *Example 1* at 80 FR 33975 of the 2015 SSM SIP Action. Consequently, EPA is proposing to approve the removal of Subchapter 9 from the Oklahoma SIP.

We also note that Oklahoma has replaced the EPA-approved version of Subchapter 9 with a new State rule; however, Oklahoma has not submitted the new rule as a SIP revision, and it is not the subject of this rulemaking action. Applicable only under State law, the new Subchapter 9 rule establishes emission reporting requirements and criteria for seeking mitigation of penalties for excess emission violations sought in State enforcement actions. These provisions do not apply to actions brought by EPA or citizens to enforce excess emission violations.[8]

III. Impacts on Areas of Indian Country

Following the U.S. Supreme Court decision in *McGirt* v. *Oklahoma,* 140 S. Ct. 2452 (2020), the Governor of the State of Oklahoma requested approval under Section 10211(a) of the Safe, Accountable, Flexible, Efficient Transportation Equity Act of 2005: A Legacy for Users, Public Law 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 for areas outside of Indian country. The State's request excluded certain areas of Indian country further described below. In addition, the State only sought approval to the extent that such approval 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).[9]

On October 1, 2020, the EPA approved Oklahoma's SAFETEA request to administer all the State's EPA-approved environmental regulatory programs, including the Oklahoma SIP, 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 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.[10] 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).[11]

As explained above, the EPA is proposing to approve a revision to the Oklahoma SIP submitted by the State of Oklahoma on November 7, 2016. More specifically, we are proposing to approve the removal of OAC 252:100–9–1, OAC 252:100–9–2, OAC 252:100–9–3(a) and (b), OAC 252:100–9–4, OAC 252:100–9–5, and OAC 252:100–9–6 of Subchapter 9 Excess Emission and Malfunction Reporting Requirements of the Oklahoma SIP. Consistent with the D.C. Circuit's decision in *ODEQ* v. *EPA* and with EPA's October 1, 2020 SAFETEA approval, if this approval is finalized as proposed, these SIP revisions will apply to all Indian country within the State of Oklahoma, other than the excluded Indian country lands. Because—per the State's request under SAFETEA—EPA's October 1, 2020 approval does not displace any SIP authority previously exercised by the State under the CAA as interpreted in *ODEQ* v. *EPA,* the SIP will also apply to any Indian allotments or dependent Indian communities located outside of an Indian reservation over which there has been no demonstration of tribal authority.

IV. Proposed Action

EPA is proposing to approve a revision to the Oklahoma SIP submitted by the State of Oklahoma on November 7, 2016, in response to EPA's SSM SIP Action, concerning excess emissions during periods of SSM. Specifically, we are proposing to approve the removal of OAC 252:100–9–1, OAC 252:100–9–2, OAC 252:100–9–3(a) and (b), OAC 252:100–9–4, OAC 252:100–9–5, and OAC 252:100–9–6 of Subchapter 9 Excess Emission and Malfunction Reporting Requirements of the Oklahoma SIP. We are proposing to approve these revisions in accordance with section 110 of the Act. EPA is further proposing to determine that such SIP revision corrects the inadequacies in the Oklahoma SIP as identified in the 2015 SSM SIP Action. EPA is not reopening the 2015 SSM SIP Action and is only taking comment on whether this proposed SIP revision is consistent with CAA requirements and whether it addresses the substantial inadequacy in the provisions of the Oklahoma SIP identified in the 2015 SSM SIP Action.

V. Environmental Justice Considerations

For informational purposes only, EPA is providing additional information regarding this proposed action and potentially impacted populations. EPA defines environmental justice (EJ) as ''the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies.'' The EPA further defines the term fair treatment to mean that ''no group of people should bear a disproportionate burden of environmental harms and risks, including those resulting from the negative environmental consequences of industrial, governmental, and commercial operations or programs and policies.'' [12]

[8] OAC 252:100–9–8(e) (concerning Mitigation Determination).

[9] In *ODEQ* v. *EPA,* the D.C. Circuit held that under the CAA, a state has the authority to implement a SIP in non-reservation areas of Indian country in the state, where there has been no 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. ODEQ did not, however, substantively address the separate authority in Indian country provided specifically to Oklahoma under SAFETEA. That separate authority was not invoked until the State submitted its request under SAFETEA, and was not approved until EPA's decision, described in this section, on October 1, 2020.

[10] EPA's prior approvals relating to Oklahoma's SIP frequently noted that the SIP was not approved to apply in areas of Indian country (consistent with 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.

[11] On December 22, 2021, the EPA proposed to withdraw and reconsider the October 1, 2020, SAFETEA approval. See *https://www.epa.gov/ok/proposed-withdrawal-and-reconsideration-and-supporting-information.* The EPA expects to have further discussions with tribal governments and the State of Oklahoma as part of this reconsideration. The EPA also notes that the October 1, 2020, approval is the subject of a pending challenge in federal court. *Pawnee Nation of Oklahoma* v. *Regan,* No. 20–9635 (10th Cir.). The EPA may make further changes to any approval of Oklahoma's program to reflect the outcome of the proposed withdrawal and reconsideration of the October 1, 2020, SAFETEA approval.

[12] *https://www.epa.gov/environmentaljustice/learn-about-environmental-justice.*

EPA reviewed demographic data for Oklahoma, which provides an assessment of individual demographic groups of the populations living within the State.[13] EPA then compared this data to the national average for each of the demographic groups. The results of the demographic analysis indicate that, for populations within Oklahoma, the percent people who reported their race as a category other than White alone (not Hispanic or Latino) is higher than national average (63.8 percent versus 59.3 percent). The percent of population that is American Indian/Alaska Native alone is significantly higher than the national average (9.7 percent versus 1.3 percent). The percent of people living below the poverty level in Oklahoma is higher than the national average (14.3 percent versus 11.4 percent). The percent of people over 25 with a high school diploma in Oklahoma is similar to the national average (88.6 percent versus 88.5 percent), while the percent with a Bachelor's degree or higher is lower than the national average (26.1 percent versus 32.9 percent).

Communities in close proximity to and/or downwind of industrial sources may be subject to disproportionate environmental impacts of excess emissions. Short- and/or long-term exposure to air pollution has been associated with a wide range of human health effects including increased respiratory symptoms, hospitalization for heart or lung diseases, and even premature death. Excess emissions during startups, shutdowns, and malfunctions exceed applicable emission limitations and can be considerably higher than emissions under normal steady-state operations. As to all population groups within the State of Oklahoma, as explained below, we believe that this proposed action will be beneficial and may reduce impacts. As discussed earlier in this notice, this rulemaking, if finalized as proposed, would result in the removal of the provisions in the Oklahoma SIP applicable to all areas in the State that provide sources emitting pollutants in excess of otherwise allowable amounts with the opportunity to seek executive director discretion for violations involving excess emissions during startup, shutdown, and malfunctions. Federal removal of such impermissible executive director discretion provisions from the SIP is necessary to preserve the enforcement structure of the CAA, to preserve the jurisdiction of courts to adjudicate questions of liability and remedies in judicial enforcement actions and to preserve the potential for enforcement by the EPA and other parties under the citizen suit provision as an effective deterrent to violations. If finalized as proposed, this action is intended to ensure that overburdened communities and affected populations across the State and downwind areas receive the full human health and environmental protection provided by the CAA. There is nothing in the record which indicates that this proposed action, if finalized, would have disproportionately high or adverse human health or environmental effects on communities with environmental justice concerns.

[13] *https://www.census.gov/quickfacts/fact/table/OK,US/INC110220.*

VI. 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 remove the Oklahoma regulations described in the Proposed Action section above. The EPA has made, and will continue to make, these documents generally available electronically through *www.regulations.gov* and in hard copy at the EPA Region 6 office.

VII. Statutory and Executive Order Reviews

Under the 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, EPA's role is to approve state choices, provided that they meet the criteria of the Act. 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 Order 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- 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 Act; 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).

This proposed approval of a revision to the Oklahoma SIP removing provisions providing discretionary exemptions from excess emission violations as discussed more fully elsewhere in this document will apply, if finalized as proposed, to certain areas of Indian country as discussed in the preamble, and therefore has tribal implications as specified in E.O. 13175 (65 FR 67249, November 9, 2000). However, this action will neither impose substantial direct compliance costs on federally recognized tribal governments, nor preempt tribal law. This action will not impose substantial direct compliance costs on federally recognized tribal governments because no actions will be required of tribal governments. This action will also not preempt tribal law as no Oklahoma tribe implements a regulatory program under the CAA, and thus does not have applicable or related tribal laws. Consistent with the EPA Policy on Consultation and Coordination with Indian Tribes (May 4, 2011), the EPA has offered consultation to tribal governments that may be affected by this action.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Particulate matter, Sulfur dioxide, Reporting and recordkeeping requirements, Volatile organic compounds.

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

Dated: January 30, 2023.

Earthea Nance,

Regional Administrator, Region 6.

[FR Doc. 2023–02289 Filed 2–2–23; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R05–OAR–2023–0058; FRL–10634–01–R5]

Air Plan Approval; Michigan; Clean Data Determination for the Detroit Area for the 2015 Ozone Standard

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to determine under the Clean Air Act (CAA) that the Detroit, Michigan nonattainment area (hereafter also referred to, respectively, as the ''Detroit area'' or ''area'') has attained the 2015 ozone National Ambient Air Quality Standards (NAAQS or standard). This determination is based upon complete, quality-assured, and certified ambient air monitoring data for the 2020–2022 design period showing that the area achieved attainment of the 2015 ozone NAAQS. EPA also proposes to take final agency action on an exceptional events request submitted by the Michigan Department of Environment, Great Lakes, and Energy (EGLE) on January 26, 2023, and concurred on by EPA on January 30, 2023. As a result of these determinations, EPA is proposing to suspend the requirements for the area to submit attainment demonstrations and associated Reasonably Available Control Measures (RACM), Reasonable Further Progress (RFP) plans, contingency measures for failure to attain or make reasonable progress, and other planning State Implementation Plans (SIPs) related to attainment of the 2015 ozone NAAQS, for as long as the area continues to attain the 2015 ozone NAAQS. This action does not constitute a redesignation of the area to attainment of the 2015 ozone NAAQS, and the area remains designated nonattainment until such time as EPA determines that the area meets the CAA requirements for redesignation to attainment and takes action to redesignate the area.

DATES: Comments must be received on or before March 6, 2023.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R05–OAR–2023–0058 at *http://www.regulations.gov,* or via email to *arra.sarah@epa.gov*. For comments submitted at *Regulations.gov*, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. For either manner of submission, 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. 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 the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www2.epa.gov/dockets/commenting-epa-dockets*.

FOR FURTHER INFORMATION CONTACT: Eric Svingen, Environmental Engineer, Attainment Planning and Maintenance Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353–4489, *svingen.eric@epa.gov*. The EPA Region 5 office is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays and facility closures due to COVID–19.

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

I. Background

EPA has determined that ground-level ozone is detrimental to human health. On October 1, 2015, EPA promulgated a revised 8-hour ozone NAAQS of 0.070 parts per million (ppm). See 80 FR 65292 (October 26, 2015). Under EPA's regulations at 40 CFR part 50, the 2015 ozone NAAQS is attained in an area when the 3-year average of the annual fourth highest daily maximum 8-hour average concentration is equal to or less than 0.070 ppm, when truncated after the thousandth decimal place, at all of the ozone monitoring sites in the area. See 40 CFR 50.19 and appendix U to 40 CFR part 50.

Upon promulgation of a new or revised NAAQS, section 107(d)(1)(B) of the CAA requires EPA to designate as nonattainment any areas that are violating the NAAQS, based on the most recent three years of quality-assured ozone monitoring data. On August 3, 2018, EPA designated the Detroit area, consisting of Livingston, Macomb, Monroe, Oakland, St. Clair, Washtenaw, and Wayne Counties, as a Marginal nonattainment area for the 2015 ozone NAAQS (83 FR 25776). On January 26, 2023, the Regional Administrator of EPA Region 5 signed a final rulemaking determining, based on 2018–2020 monitoring data, that the Detroit area had failed to attain by its Marginal attainment date of August 3, 2021, and reclassifying the area to Moderate.[1]

II. Exceptional Events Demonstration

Congress has recognized that it may not be appropriate for EPA to use certain monitoring data collected by the ambient air quality monitoring network and maintained in EPA's Air Quality System (AQS) database in certain regulatory determinations. Thus, in 2005, Congress provided the statutory authority for the exclusion of data influenced by ''exceptional events'' meeting specific criteria by adding section 319(b) to the CAA.[2]

To implement this 2005 CAA amendment, on March 22, 2007, EPA promulgated the 2007 Exceptional Events Rule (72 FR 13560). The 2007 Exceptional Events Rule created a regulatory process codified at 40 CFR parts 50 and 51 (§§ 50.1, 50.14, and 51.930). These regulatory sections, which superseded EPA's previous guidance on handling data influenced by events, contain definitions, procedural requirements, requirements for air agency demonstrations, criteria for EPA's approval of the exclusion of

[1] EPA previously proposed to approve a January 3, 2022, request by EGLE to redesignate the Detroit area to attainment of the 2015 ozone NAAQS based on 2019–2021 monitoring data showing attainment of the 2015 ozone NAAQS (87 FR 14210). EPA's proposed approval was published on March 14, 2022, and the comment period closed on April 27, 2022. In this proposed action, EPA is not taking further action to finalize the proposed redesignation. EPA will respond to comments received during the comment period for the proposed redesignation should EPA take final action on EGLE's January 3, 2022, request.

[2] Under CAA section 319(b), an exceptional event means an event that (i) affects air quality; (ii) is not reasonably controllable or preventable; (iii) is an event caused by human activity that is unlikely to recur at a particular location or a natural event; and (iv) is determined by EPA under the process established in regulations promulgated by EPA in accordance with section 319(b)(2) to be an exceptional event. For the purposes of section 319(b), an exceptional event does not include (i) stagnation of air masses or meteorological inversions; (ii) a meteorological event involving high temperatures or lack of precipitation; or (iii) air pollution relating to source noncompliance.