ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 257

[EPA–HQ–OLEM–2017–0613; FRL–9979–88–OLEM]

Oklahoma: Approval of State Coal Combustion Residuals Permit Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notification of final authorization.

SUMMARY: Pursuant to the Resource Conservation and Recovery Act (RCRA or Act), the Environmental Protection Agency (EPA) is approving the Oklahoma Department of Environmental Quality's Coal Combustion Residuals (CCR) State permit program, which will operate in lieu of the Federal CCR program. EPA has determined that Oklahoma's program meets the standard for approval under RCRA. Facilities operating under the state program requirements and resulting permit provisions will also be subject to EPA's inspection and enforcement authorities under RCRA.

DATES: The final authorization is effective on July 30, 2018.

FOR FURTHER INFORMATION CONTACT: Mary Jackson, Office of Resource Conservation and Recovery, Environmental Protection Agency; *telephone number:* (703) 308–8453; *email address: jackson.mary@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document ''we,'' ''us,'' and ''our'' means the EPA.

I. General Information

A. Overview of Final Authorization

EPA is granting approval to Oklahoma's CCR state permit program application, pursuant to RCRA 4005(d)(1)(B). Oklahoma's program allows the Oklahoma Department of Environmental Quality (ODEQ) to enforce state rules related to CCR disposal activities in non-Indian country, as well as to review for approval permit applications and to enforce permit violations. Oklahoma's CCR permit program will operate in lieu of the Federal CCR program, codified at 40 CFR part 257, subpart D.

EPA will retain sole authority to regulate and permit CCR units in Indian country as defined in 18 U.S.C. 1151, which includes reservations, dependent Indian communities, and Indian allotments, whether restricted or held in trust by the United States. EPA treats as reservations trust lands validly set aside for the use of a tribe even if the trust lands have not been formally designated as a reservation.[1] EPA has engaged federally-recognized Tribes within the state of Oklahoma in consultation and coordination regarding the program authorizations for ODEQ and established opportunities for formal as well as informal discussion throughout the consultation period, beginning with an initial conference call on October 19, 2017. On that call, the authorization procedures and the impact of granting authorization were discussed, and further consultation was offered. Tribal consultation is conducted in accordance with the EPA policy on Consultation and Coordination with Indian Tribes. (see *https://www.epa.gov/sites/production/files/2013-08/documents/cons-and-coord-with-indian-tribes-policy.pdf*).[2]

B. Background

CCR are generated from the combustion of coal, including solid fuels classified as anthracite, bituminous, subbituminous, and lignite, for the purpose of generating steam for powering a generator to produce electricity or electricity and other thermal energy by electric utilities and independent power producers. CCR include fly ash, bottom ash, boiler slag, and flue gas desulfurization materials. CCR can be sent off-site for disposal or beneficial use or may be disposed in on-site landfills or surface impoundments.

On April 17, 2015, EPA published a final rule, creating 40 CFR part 257, subpart D, which established nationally applicable minimum criteria for the safe disposal of CCR in landfills and surface impoundments (80 FR 21302). The rule created a self-implementing program which regulates the location, design, operating criteria, groundwater monitoring and corrective action for CCR disposal, as well as regulating the closure and post-closure care of CCR units and recordkeeping and notifications for CCR units. The regulations do not cover the ''beneficial use'' of CCR as that term is defined in § 257.53.

C. Statutory Authority

EPA is issuing this action under the authority of RCRA sections 4005(d) and 7004(b)(1). See 42 U.S.C. 6945(d), 6974(b)(1).

In December 2016, Congress passed and the President signed the Water Infrastructure Improvements for the Nation (WIIN) Act. Section 2301 of the WIIN Act amended Section 4005 of RCRA, creating a new subsection (d) that establishes a Federal permitting program similar to those under RCRA section 4005(c) and subtitle C, as well as other environmental statutes. See 42 U.S.C. 6945(d). Under section 4005(d), states may develop and submit a CCR permit program to EPA for approval; once approved the state permit program operates in lieu of the Federal requirements. See 42 U.S.C. 6945(d)(1)(A).

To become approved, the statute requires that a state provide ''evidence of a permit program or other system of prior approval and conditions under state law for regulation by the state of coal combustion residuals units that are located in the state.'' See 42 U.S.C. 6945(d)(1)(A). In addition, the statute directs that the state submit evidence that the program meets the standard in section 4005(d)(1)(B), *i.e.,* that it will require each CCR unit located in the state to achieve compliance with either: (1) The Federal CCR requirements at 40 CFR part 257, subpart D; or (2) other state criteria that the Administrator, after consultation with the state, determines to be at least as protective as the Federal requirements. See 42 U.S.C. 6945(d)(1)(B). EPA has 180 days after submittal of such evidence to make a final determination, and must provide public notice and an opportunity for public comment. See 42 U.S.C. 6945(d)(1)(B).

To receive EPA approval, EPA must determine that the state program requires each CCR unit located in the state to achieve compliance either with the requirements of 40 CFR part 257, subpart D, or with state criteria that EPA determines (after consultation with the state) to be at least as protective as the requirements of 40 CFR part 257, subpart D. See 42 U.S.C. 6945(d)(1)(B). EPA may approve a proposed state permit program in whole or in part. *Id.*

Once a program is approved, EPA must review the program at least every 12 years, as well as no later than three years after a revision to an applicable section of 40 CFR part 257, subpart D, or one year after any unauthorized significant release from a CCR unit located in the state. See 42 U.S.C. 6945(d)(1)(D)(i)(I)–(III). EPA also must review a program at the request of another state alleging that the soil, groundwater, or surface water of the requesting state is or is likely to be

[1] *See, e.g.,* Oklahoma Tax Commission vs. Citizen Band Potawatomi Indian Tribe of Oklahoma, 498 U.S. 505, 511 (1991).

[2] See October 12, 2017 letter from Wren Stenger to Chet Brooks, Chief, Delaware Tribe of Oklahoma. EPA–HQ–OLEM–2017–0613.

adversely affected by a release from a CCR unit in the approved state. See 42 U.S.C. 6945(d)(1)(D)(i)(IV).

In a state with an approved CCR program, EPA may commence administrative or judicial enforcement actions under RCRA section 3008 if the state requests assistance or if EPA determines that an EPA enforcement action is likely to be necessary to ensure that a CCR unit is operating in accordance with the criteria of the approved permit program. See 42 U.S.C. 6945(d)(4).

II. Oklahoma's Application

ODEQ issued a notice of rulemaking intent related to its proposed CCR program and accepted public comments from December 1, 2015, through January 13, 2016. ODEQ then published an Executive Summary rulemaking document that included the public comments received and the ODEQ responses.

In September 2016, ODEQ promulgated Oklahoma Administrative Code (OAC) Title 252 Chapter 517 *Disposal of Coal Combustion Residuals from Electric Utilities,* establishing its CCR program. OAC 252:517 incorporates the Federal technical regulations at 40 CFR part 257, subpart D, with some minor modifications discussed below.

On August 3, 2017, EPA received an application from the state of Oklahoma requesting a review of their CCR state permit program. EPA determined that the application was complete and notified Oklahoma of its determination by letter dated December 21, 2017.[3] On January 16, 2018, EPA published a notification and requested comment on its proposed determination to approve the Oklahoma CCR program (83 FR 2100). The comment period closed on March 19, 2018.

On February 13, 2018, EPA conducted a public hearing on the application at the ODEQ building located at 707 N Robinson Avenue, Oklahoma City, Oklahoma. The public hearing provided interested persons the opportunity to present information, views or arguments concerning ODEQ's program application. Comments from the hearing as well as additional comments received during the comment period are included in the docket for this document.

The state indicates there are currently five CCR facilities in Oklahoma.[4] A facility previously thought to be regulated under the CCR part 257 regulations was not correctly identified initially. One of the current five facilities is not yet permitted as it was previously under the jurisdiction of the Oklahoma Department of Mines. The other four facilities have permitted landfills and/or surface impoundments that are now subject to the CCR part 257 regulations. Approval of ODEQ's CCR application allows the ODEQ regulations to apply to existing CCR units, as well as any future CCR units not located in Indian country, in lieu of the Federal requirements.

EPA is not aware of any existing CCR units in Indian country within Oklahoma, but EPA will maintain sole authority to regulate and permit CCR units in Indian country, meaning formal and informal reservations, dependent Indian communities, and Indian allotments, whether restricted or held in trust by the United States.

III. EPA Analysis of Oklahoma's Application

As discussed in Section I.C. of this document, the statute requires EPA to evaluate two components of a state program to determine whether it meets the standard for approval. First, EPA is to evaluate the adequacy of the permit program itself (or other system of prior approval and conditions). See 42 U.S.C. 6945(d)(1)(A). Second, EPA is to evaluate the adequacy of the technical criteria that will be included in each permit to determine whether they are the same as the Federal criteria, or to the extent they differ, whether the modified criteria are ''at least as protective as'' the Federal requirements. See 42 U.S.C. 6945(d)(1)(B). Only if both components meet the statutory requirements may EPA approve the program. See 42 U.S.C. 6945(d)(1).

On that basis, EPA conducted a review of ODEQ's application, including a thorough analysis of OAC 252:517 and its adoption of 40 CFR part 257, subpart D (see section A. Adequacy of Oklahoma's Permit Program and section B. Adequacy of Technical Criteria below.). Based on this review, EPA has determined that ODEQ's CCR permit program as submitted meets the standard for approval in section 4005(d)(1)(A) and (B). Oklahoma's program contains all but two of the technical elements of the Federal rule, including requirements for location restrictions, design and operating criteria, groundwater monitoring and corrective action, closure requirements and post-closure care, recordkeeping, notification and internet posting requirements. As discussed in greater detail below, the two exceptions relate to the requirements at 40 CFR 257.3–1 (which address siting of units in floodplains), and 257.3–2 (which addresses the protection of endangered and threatened species). Oklahoma has not adopted the specific language of either of these Federal regulations but is relying on its existing state regulations at OAC 252:517–5–8 and 5–9 which EPA has determined to be at least as protective as the Federal criteria. The program also contains state-specific language, references and state-specific requirements that differ from the Federal rule, which EPA has determined to be at least as protective as the Federal criteria. EPA's analysis and findings are discussed in greater detail below and in the Technical Support Document for the Approval of Oklahoma's Coal Combustion Residuals State Permit Program, which is included in the docket to this action.

The OAC rules promulgated in 2016 included language inserts and deletions to enable ODEQ to permit CCR units and enforce the Oklahoma rule. The revisions include: The removal of statements regarding national applicability; the inclusion of language to require submittal and approval of plans to ODEQ; the inclusion of permitting provisions to allow ODEQ to administer the CCR rules in the context of a permitting program; the inclusion of state-specific location restrictions; the inclusion of procedures for subsurface investigation; and the inclusion of provisions addressing cost estimates and financial assurance.

Throughout Oklahoma's Chapter 517 rules, references for tribal notifications and/or approval that appear in the Federal rule have been deleted along with the terms ''Indian Country,'' ''Indian Lands,'' and ''Indian Tribe.'' Per the WIIN Act, EPA will retain sole authority to operate the Federal CCR program in Indian country, including the regulation and permitting of CCR units. As defined in 18 U.S.C. 1151, Indian country includes reservations. Dependent Indian communities, and Indian allotments, whether restricted or held in trust by the United States. EPA treats as reservations trust lands validly set aside for the use of a tribe even if the trust lands have not been formally designated as a reservation. *See, e.g., Oklahoma Tax Commission vs. Citizen Band Potawatomi Indian Tribe of Oklahoma,* 498 U.S. 505, 511 (1991).

[3] ODEQ's initial CCR permit program application, subsequent supplementation, and EPA's determination of completeness letter are available in the docket supporting this authorization.

[4] The notification for proposed authorization indicated six facilities in Oklahoma. Currently there are 5 facilities at which CCR units are located. The sixth facility identified in the proposal stores fly and bottom ash in metal bins or enclosed structures neither of which meets the definition of a CCR unit.

A. Adequacy of Oklahoma's Permit Program

RCRA section 4005(d)(1)(A) requires a state seeking program approval to submit to EPA an application with ''evidence of a permit program or other system of prior approval and conditions under state law for regulation by the state of coal combustion residuals units that are located in the State.'' RCRA section 4005(d) does not require EPA to promulgate regulations for determining the adequacy of state programs. EPA therefore evaluated the adequacy of ODEQ's permit program against the standard in RCRA section 4005(d)(1)(A) by reference to the existing regulations in 40 CFR part 239, Requirements for State Permit Program Determination of Adequacy and the statutory requirements for public participation in RCRA Section 7004(b). The Agency's general experience in reviewing and approving state programs also informed EPA's evaluation.

In order to aid states in developing their programs and to provide a clear statement of how, in EPA's judgment, the existing regulations and statutory requirements in sections 4005(d) and 7004(b) apply to state CCR programs, EPA announced on August 15, 2017, the availability of an interim final Guidance for Coal Combustion Residuals State Permit Programs (82 FR 38685). This guidance outlines the process and procedures EPA generally intends to use to review and make determinations on state CCR permit programs, and that were used in evaluating Oklahoma's application.

RCRA section 7004(b) applies to all RCRA programs, directing that ''public participation in the development, revision, implementation, and enforcement of any . . . program under this chapter shall be provided for, encouraged, and assisted by the Administrator and the States.'' 42 U.S.C.S. 6974(b)(1). Although 40 CFR part 239 applies to approval of state Municipal Solid Waste Landfill (MSWLF) programs under RCRA 4005(c)(1), rather than EPA's evaluation of CCR permit programs under RCRA 4005(d), the specific criteria outlined in part 239 provide a helpful framework to more broadly examine the various aspects of ODEQ's proposed program. States are familiar with these criteria through the MSWLF program (all states have MSWLF programs that have been approved pursuant to these regulations) and the regulations are generally regarded as protective and appropriate. In general, EPA considers that a state program that is consistent with the part 239 provisions would meet the section 7004(b)(1) directive regarding public participation. As part of analyzing the application, EPA reviewed the four categories of criteria outlined in 40 CFR part 239 as guidelines for permitting requirements, requirements for compliance monitoring authority, requirements for enforcement authority, and requirements for intervention in civil enforcement proceedings.

To complete its evaluation, EPA relied on the information contained in the original application, as well as all materials submitted during the comment period and at the public hearing. The findings are also based on additional information submitted by Oklahoma on April 27, 2018 and May 9, 14, 16, and 31, 2018, in response to follow-up questions from EPA on the authorization application. All of this information is included in the docket for this document. A summary of EPA's findings is provided below, organized by the program elements identified in the part 239 regulations and EPA's interim final guidance document; detailed analysis of the submitted state program can be found in the Technical Support Document, which is included in the docket for this action.

1. Permitting Guidelines

Based on RCRA section 7004 and on the part 239 regulations, an adequate permitting program will provide for public participation by ensuring that: Documents for permit determinations are made available for public review and comment; final determinations on permit applications are made known to the public; and public comments on permit determinations are considered.

All environmental permit and modification applications in Oklahoma are subject to the Oklahoma Uniform Environmental Permitting Act (UEPA) and the permitting rules promulgated to carry out UEPA. UEPA classifies all permit applications and modifications into three tiers that determine the level of public participation and administrative review the permit application will receive. (Section 27A–2–14–201(B)(1)). In making determinations for Tier I, II or III, the following criteria are considered:

- The significance of the potential impact of the type of activity on the environment,
- the amount, volume and types of waste proposed to be accepted, stored, treated, disposed, discharged, emitted or land applied,
- the degree of public concern traditionally connected with the type of activity,
- the Federal classification, if any, for such proposed activity, operation or type of site or facility, and
- any other factors relevant to such determinations.

Such designations must be consistent with any analogous classifications set forth in applicable Federal programs. Section 27A OS–2–14–201(B)(2). Oklahoma classifies solid waste management applications, including CCR applications, into their respective tiers at OAC 252:4–7–58 through 60. All permit documents, regardless of tier, are available for public review and copying. OAC 252:4–1–5.

Oklahoma describes the Tier I permit application process as ''the category for those things that are basically administrative decisions which can be made by a technical supervisor with no public participation except for the landowner.'' OAC 252:4–7–2. The Tier I permit application requires an application, notice to the landowner, and Department review. 27A O.S. section 2–14–103(9). Applications for minor modifications, and approval of technical plans fall within the Tier I category. OAC 252:4–7–58. Such plans would include, for example, fugitive dust control plans, run-on/runoff control system plans. EPA notes that these plans would be available for public comment and review if they are part of a new permit or other action designated as Tier II or III as discussed below.

Under OAC 252:4–7–58 (2)(A)(iii), modifications to closure or post-closure plans and modifications to technical plans are considered Tier 1 modifications. ODEQ has stated that, when applying the regulations and designating the appropriate Tier for these plan modifications, the underlying UEPA statute requires consideration of potential environmental impact.[5] For example, if a facility had an approved closure plan to close the unit with waste in place and they sought approval instead to ''clean close'' the unit, that would be considered minor (Tier I) because clean closure is generally a more aggressive and difficult to achieve option. However, if a facility applied to amend a closure plan that specifies clean closure, and it is modified to authorize closure of the unit with waste in place, such a change would be designated as Tier II (discussed below). The basis for requiring this would be the statutory provisions at 27A–2–14–201 listed above. Thus, the seemingly broad categories of Tier 1 modifications must

[5] Telephone Conference Call May 11, 2018 EPA Region VI, EPA Office of Resource Conservation and Recovery, ODEQ.

be interpreted to be consistent with the statutory directive.

The Tier II permit application process expands upon the Tier I requirements to include published notice of the application filing, published notice of the draft permit or denial, opportunity for a public meeting, and submittal of public comment. 27A O.S. section 2–14–103(10). The Tier II process applies to new permits for on-site CCR disposal units and all modifications to existing facilities unless specifically listed under Tier I. OAC 252:4–7–59. ODEQ requires any application for expansion of a CCR unit or additional capacity, whether existing or new surface impoundment or landfill, to follow at a minimum the Tier II process. Non-generator owned facilities that receive material from off-site follow the Tier III process.

The Tier III permit application process includes the requirements of Tiers I and II and adds notice of an opportunity for a process meeting (*i.e.* how the permit process works). The Tier III process applies to new permits for off-site disposal units and permits for some significant modifications to off-site disposal units. OAC 252:4–7–60.

UEPA provides for public notice and review of permit applications and significant permit modifications through its Tier II and III programs. In the case of Tier II and III applications that do not receive timely comments or public meeting request and for which no public meeting was held, the final permit would be issued or denied by ODEQ. For Tier II and III applications for which comments or a public meeting request was received or which a public meeting was held, ODEQ considers the comments and then prepares a response to comments prior to issuance of the final permit. These programs provide opportunities for public participation and the application of UEPA to the CCR permitting program is consistent with Oklahoma's practice across environmental programs. Permit and permit modification applications for CCR facilities fall under the existing solid waste management application requirements at OAC 252:4–7–58 through 60. Thus, EPA has determined that the Oklahoma program provides for adequate public participation, thereby satisfying the requirements of RCRA section 7004.

2. Guidelines for Compliance Monitoring Authority

EPA considers that the ''evidence of a permit program or other system of prior approval and conditions under state law for regulation by the state of coal combustion residuals units'' required under RCRA 4005(d)(1)(A) should normally include information to demonstrate that the state has the authority to gather information about compliance, perform inspections, and ensure that information it gathers is suitable for enforcement. Note that this is consistent with the part 239 regulations and with the interpretation expressed in EPA's interim final guidance.

ODEQ has compliance monitoring authority under 27A O.S. section 2–3–501, allowing for inspections, sampling, information gathering, and other investigations. This authority extends to ODEQ's proposed CCR permit program and would provide the authority to adequately gather information for enforcement.

3. Guidelines for Enforcement Authority

EPA considers that the ''evidence of a permit program or other system of prior approval and conditions under state law for regulation by the state of coal combustion residual units'' required under RCRA 4005(d)(1)(A) should normally include information to demonstrate that the state has adequate authority to administer and enforce RCRA CCR permit programs, including: the authority to restrain any person from engaging in activity which may damage human health or the environment, the authority to sue to enjoin prohibited activity, and the authority to sue to recover civil penalties for prohibited activity.

EPA has determined that ODEQ has adequate authority to administer and enforce its existing programs under 27A O.S. section 2–3–501–507 and that authority extends to the ODEQ CCR permit program.

4. Intervention in Civil Enforcement Proceedings

Based on RCRA section 7004, EPA considers that the ''evidence of a permit program or other system of prior approval and conditions under state law for regulation by the state of coal combustion residuals units'' required under RCRA 4005(d)(1)(A) includes a demonstration that the state provides adequate opportunity for citizen intervention in civil enforcement proceedings. As EPA has explained (for example, in the interim final guidance) the standards found in 40 CFR 239.9 provide a useful model. Using those standards, the state must have authority to allow citizen intervention or provide assurance of (1) a notice and public involvement process, (2) investigating and providing responses about violations, and (3) not opposing intervention when permitted by statute, rule, or regulation.

Using 40 CFR 239.9(a) as a model, ODEQ's CCR program satisfies the civil intervention requirement by allowing intervention by right (12 OK Stat section 12–2024).[6] In addition, ODEQ's CCR program would satisfy the requirements of 40 CFR 239.9(b) by providing a process to respond to citizen complaints (see 27A O.S. section 2–3–101,503) and by not opposing citizen intervention when allowed by statute (see 27A O.S. section 2–7–133).

ODEQ has a robust process for responding to citizen complaints. Under 27A O.S. section 2–3–101–F–1, the complaints program is responsible for intake processing, mediation and conciliation of inquiries and complaints received by the Department and provides for the expedient resolution of complaints within the jurisdiction of the Department. Under 27A O.S. section 2–3–503, if the Department undertakes an enforcement action as a result of a complaint, the Department notifies the complainant of the enforcement action by mail. The state program in 27A O.S. section 2–3–503 offers the complainant an opportunity to provide written information pertinent to the complaint within fourteen (14) calendar days after the date of the mailing. The state program also goes further in 27A O.S. section 2–3–104 stating that the complaints program shall, in addition to the responsibilities specified by section 2–3–101, refer, upon written request, all complaints in which one of the complainants remains unsatisfied with the Department's resolution of said complaint to an outside source trained in mediation. These additional elements of the state's complaint process indicate that ODEQ takes public intervention seriously in enforcement actions.

EPA has determined that these requirements meet the level of public participation in the enforcement process required under RCRA 7004(b).

B. Adequacy of Technical Criteria

EPA has determined that ODEQ's CCR permit program meets the standard for approval in RCRA section 4005(d)(1)(B)(i), as it will require each CCR unit located in Oklahoma to achieve compliance with the applicable criteria for CCR units under 40 CFR part 257 or with other state criteria that the Administrator, after consultation with

[6] Under 12 OK Stat section 12–2024, intervention by right is allowed when a statute confers an unconditional right to intervene; or when the applicant claims an interest relating to the property or transaction which is the subject of the action and the applicant is so situated that the disposition of the action may as a practical matter impair or impede the applicant's ability to protect that interest.

the state, has determined to be at least as protective as the criteria in part 257. To make this determination, EPA compared ODEQ's proposed CCR permit program to 40 CFR part 257 to determine whether it differed from the Federal requirements, and if so, whether those differences met the standard for approval in RCRA section 4005(d)(1)(B)(ii) and (C).

Oklahoma has adopted all but two of the technical criteria at 40 CFR part 257, subpart D, into its regulations at OAC Title 252 Chapter 517. The two exceptions are discussed in sections 1 and 2 below.

While ODEQ's CCR permit program also includes some modification of 40 CFR part 257, subpart D, the majority of ODEQ's modifications were needed to allow the state to implement the part 257 criteria through a permit process. As mentioned above, the 40 CFR part 257, subpart D, rules were meant to be implemented directly by the regulated facility, without the oversight of any regulatory authority, such as a state permitting program. ODEQ thus needed to make some changes to the part 257 regulations to allow it to implement the permit program. Examples of these changes include the addition of language to require submittal and approval of plans to ODEQ, and of permitting provisions to allow the ODEQ to administer the CCR rules in the context of a permitting program. ODEQ also made some minor modifications to address state-specific issues: For example, the state did not incorporate 40 CFR 257.61(a)(2)(iv), which references the Marine Protection, Research, and Sanctuaries Act (MPRSA) requirements because Oklahoma does not have any coastal or ocean environments which apply under the MPRSA regulations. Oklahoma also included provisions to integrate purely state-law requirements into the Federal criteria—such as state-specific locations restrictions; procedures for subsurface investigation; and provisions addressing cost estimates and financial assurance. EPA considers these revisions to be administrative ones, that they do not substantively modify the Federal technical criteria.[7]

Other minor changes made by ODEQ to the 40 CFR part 257, subpart D, criteria reflect the integration of the CCR rules with the responsibilities of other state agencies or state specific conditions. Additional changes include removal of the web link to EPA publication SW–846 under the definition ''*Representative Sample*'' in 40 CFR 257.53; and the replacement of 40 CFR 257.91(e) with a reference to the Oklahoma Water Resources Board (OWRB) section 785:35–7–2. A few changes were made inadvertently including a typographic error in Chapter 517–9–4(g)(5) and the inadvertent removal of the words ''*and the leachate collection and removal*'' from section 252:517–11–1(e)(1). The state has updated their rule language to correct the errors.

EPA finds these references to OWRB standards to be minor because the key aspects of the CCR program, including requirements for location restrictions, design and operating criteria, groundwater monitoring and corrective action, closure requirements and post-closure care, recordkeeping, notification and internet posting requirements, are not substantially changed or reduced and in one example, are more stringent. These changes do not keep the overall program from being at least as protective as 40 CFR part 257, subpart D. EPA's full analysis of Oklahoma's CCR permit program can be found in the Technical Support Document, located in the docket for this document.

1. Adequacy of State Analog to 40 CFR 257.3–1 Regarding Floodplains

The current Federal criteria at § 257.3–1 addresses location of CCR units in floodplains as follows:

Facilities or practices in floodplains cannot restrict the flow of the base flood, reduce the temporary water storage capacity of the floodplain, or result in washout of solid waste, so as to pose a hazard to human life, wildlife, or land or water resources.

(1) Base flood means a flood that has a one percent or greater chance of recurring in any year or a flood of a magnitude equaled or exceeded once in 100 years on the average over a significantly long period.

(2) Floodplain means the lowland and relatively flat areas adjoining inland and coastal waters, including flood-prone areas of offshore islands, which are inundated by the base flood.

(3) Washout means the carrying away of solid waste by waters of the base flood.

Oklahoma's floodplain requirement at section 252:517–5–9 states that no waste management or disposal area of a CCR unit can be located within the 100-year floodplain except: (1) CCR units that were permitted before April 9, 1994 and that meet the same criteria under the Federal floodplain standards at 40 CFR 257.3–1 and summarized above; and (2) units that have received an authorized variance for waste management or disposal areas of new CCR units, or expansions of waste management or disposal areas of existing units, provided the variance is conditioned upon the subsequent redefinition of the floodplain to not include the land area proposed by the variance.

Discussions with ODEQ provided additional information regarding how the variance is implemented.[8] Specifically, to qualify for the variance, facilities may employ engineering solutions such as building a dike, changing the flow of water or changing the elevation of the area, and seek to have the floodplain redefined not to include the land area of the new or expanded unit. To authorize the redefinition of the floodplain based on these engineering solutions, an application is submitted by the facility to the Federal Emergency Management Administration (FEMA) for receipt of a Letter of Map Revision (LOMR). If approved, the facility first receives a Conditional Letter of Map Revision (CLOMR) allowing construction of the unit and the engineering solutions per the conditions outlined in the CLOMR. If the conditions of the CLOMR are met, a LOMR is issued by FEMA authorizing that agency to revise the flood hazard map information so as not to include the land area of the new or expanded unit (see *https://www.fema.gov/flood-map-revision-processes#4* for additional information on the FEMA process).

ODEQ has stated that no CCR unit can begin receiving CCR until approval of the redefined floodplain by FEMA and receipt of the LOMR by the facility. Based on all of these facts, EPA has determined that the Oklahoma floodplain standard would be at least as protective as the Federal part 257 standard.

2. Adequacy of State Analog to 40 CFR 257.3–2

As noted previously, Oklahoma has not adopted the Federal regulation, but is relying on its existing state regulation at OAC 252:517–5–8. EPA has determined that this regulation meets the standard for approval in RCRA section 4005(d)(1)(B)(ii) and (C) as it is at least as protective as the Federal criteria in 40 CFR 257.3–2.

OAC 252:517–5–8. Endangered or Threatened Species requires that for a new CCR unit, or expansion of the permit boundary of an existing CCR unit, a statement from the Oklahoma Department of Wildlife Conservation (ODWC) and from the Oklahoma Biological Survey (OBS), must be submitted regarding current information

[7] List of revisions included in the docket for this document.

[8] See summary of call with ODEQ May 31, 2018 included in the docket for this authorization.

about endangered or threatened wildlife or plant species listed in state and Federal laws, that exist within one mile of the permit boundary or expansion area. If threatened or endangered species exist within, or periodically utilize any area within, or within one mile of, the permit boundary or expansion area, the projected impacts on the identified species must be addressed, and measures specified to avoid or mitigate the impacts.

When impacts are unavoidable, a mitigation plan that has been approved by ODWC for wildlife or OBS for plants, must be submitted to ODEQ. ODEQ confirmed the language in OAC 252:517–5–8 includes fish. See OAC 800:25–19–6.

EPA has compared the existing Federal CCR regulations at 40 CFR 257.52 with ODEQ's act and regulation and has determined that ODEQ's provision is at least as protective as the Federal CCR provision. Specifically, the term ''impact'' in the state rule is consistent with ''taking'' in the Federal rule. Pursuant to 40 CFR 257.3–2(a), facilities or practices cannot cause or contribute to the taking of an endangered or threatened species. All the actions included in the definition of ''taking'' in 40 CFR 257.3–2(b)(3) can have an impact on a particular species and therefore fall within the scope of OAC 252:517–5–8(a).

Pursuant to OAC 252:517–5–8(1), the facility must address any projected impact on any threatened or endangered species that exists within or periodically utilizes any area within one mile of the permit boundary or proposed area of expansion. Furthermore, the facility must specify measures to avoid or mitigate the projected impacts. The state interprets this provision to include any destruction or adverse modification of critical habitat of the endangered/threatened species, as that would have an impact on the species.

The Federal provision has no time-specific trigger of when any review, etc. is to occur. The state provision requires that the facility, upon the proposed permitting of a new CCR unit or the expansion of a facility's permit boundaries, shall provide confirmation from the OBS of any state and Federal listed threatened or endangered species that can be found within a mile of the facility or expansion area. Due to the inclusion of state-listed species, EPA has read this provision to be more protective than the Federal requirements.

Pursuant to OAC 252:517–5–8(2), if a projected impact is determined to be unavoidable, the facility must develop and submit a mitigation plan to ODWC or OBS for approval. An approved plan must be submitted to ODEQ with the permit application for the new CCR unit or expansion of the permitted boundary. In the event a Federal listed species is involved, ODWC refers the matter to USFWS. For purposes of wetlands, OAC 252:517–5–2(a)(2)(C) contains the same restrictions as 40 CFR 257.61(a)(2)(iii). Any additional ESA requirements beyond what is set out in the Federal and state provisions being compared must still be complied with by all facilities under ODEQ's rules. OAC 252:517–1–2 expressly provides that compliance with Chapter 517 does not affect the need for a CCR facility to comply with any other applicable Federal, state, tribal, or local laws or requirements. Therefore, compliance with Chapter 517 does not preclude any additional ESA requirements.

Overall, based on our analysis, EPA concludes that Oklahoma's Endangered Species Act provisions are as protective as the Federal standards.

C. EPA Responses to Major Comments on the Proposed Determination

Below is a summary of the major comments received on the February 20, 2018, proposed notification: Approval of Coal Combustion Residuals State Permit Programs: Oklahoma. (EPA–HQ–OLEM–2017–0613–0013). The major comments received focused on three primary topics: Facility compliance with (and state oversite of) state and Federal groundwater protection standards for CCR units, public participation under the Oklahoma CCR permitting program and facility compliance with the Endangered Species Act. Responses to all other comments received are summarized in the Response to Comments document included in the docket for this document.

Commenters raised a number of questions or concerns about compliance issues at individual facilities, with varying specificity and supporting data. EPA is not making any determinations regarding the compliance status of individual facilities based on the public comment process for this action. However, some commenters raised these concerns about compliance issues in the broader context of program approval, and questioned whether Oklahoma has the ability and inclination to fully implement an approved program. EPA has reviewed all significant comments on this issue, and has identified evidence of actions taken by ODEQ to address instances of non-compliance through notices and consent orders.

EPA reviews of state program applications focus primarily on the legal and regulatory framework that the state puts forward. The Agency has determined that the underlying statutes and regulations, provide Oklahoma the authority to implement the program, and that there is evidence that Oklahoma has utilized its authority to implement these provisions since it adopted the Federal standards in 2016, and also prior to that time. Given that Oklahoma is in the early stages of implementing its new CCR rules, it is not unexpected that compliance with those rules across the state may be evolving. EPA does not view instances of non-compliance as a reason to deny approval of a State program. Implementation and enforcement of Oklahoma's CCR requirements in Oklahoma are expected to continue, and enforcement of those provisions may be initiated not only by ODEQ, but also by EPA or citizens, as appropriate. In accordance with the WIIN Act, the Agency must also conduct continuing periodic reviews of state permit programs (see Section IV below for additional details).

1. Compliance With Groundwater Standards

Comments: When CCR is dumped without proper safeguards, hazardous chemicals are released to groundwater, surface water, soil and air, and nearby communities and ecosystems are harmed. There is evidence that CCR regulatory oversight by state agencies has failed to prevent contamination of Oklahoma's fresh groundwater or CCR from blowing into and harming Oklahoma communities.

For example, recent groundwater monitoring conducted at Oklahoma CCR units pursuant to the Federal CCR rule shows that groundwater can contain contaminants at levels significantly higher than the corresponding Maximum Concentration Levels (MCLs) established under the Safe Drinking Water Act.[9] Other harmful metals were found in concentrations multiple times greater than the Regional Screening Levels for tap water. Chloride, fluoride, sulfate and total dissolved solids (''TDS'')—all indicators of coal ash pollution—were also found in elevated concentrations in the groundwater. Other recent groundwater testing showed high concentrations of arsenic, lead, mercury, nickel, selenium, and vanadium.

Response: Under both the Federal CCR regulations and the state program,

[9] Maximum Contaminant Levels (MCLs) are standards that are set by the EPA for drinking water quality. An MCL is the legal threshold limit on the amount of a substance that is allowed in public water systems under the Safe Drinking Water Act.

the determination that a release has occurred that may result in contamination of groundwater is not determined solely by contaminant concentrations that exceed an MCL or Regional Screening Levels cited above.[10] Rather, it is first determined if those exceedances represent statistically significant increases (SSIs) of Appendix III and IV contaminants over background levels. Corrective action is required when there is an SSI of any Appendix IV contaminants that exceeds the groundwater protection standard, typically set at the applicable MCL. (See 40 CFR 257.96(a), OAC 252–917–9–5,6).

Public comments and EPA's analysis both indicate that some Oklahoma CCR units may not currently be in compliance with OAC standards requiring the establishment of a groundwater monitoring program and the posting of the first annual groundwater monitoring report.[11] As discussed above, the state is addressing such instances of noncompliance through inspection or investigation. In general, ODEQ may give the owner or operator of the unit a written notice of the specific violation and the duty to correct it (a notice of deficiency). The failure to do so can result in the issuance of a compliance order (CO). If the owner or operator fails to come into compliance or fails to agree to a schedule to come into compliance, the Department may issue a CO, which becomes final within fifteen days unless an administrative enforcement hearing is requested. The CO may assess administrative penalties for each day the owner or operator fails to comply. If a facility does not comply with a CO or an administrative compliance order (ACO) within the specified time frames, an Assessment Order to impose an additional penalty may be issued. ODEQ may also pursue action in District Court for an injunction to require a facility to comply and, in rare and extreme instances, may seek to revoke or suspend the permit of a facility. Criminal enforcement proceedings may also be pursued in some instances.[12]

Oklahoma has provided evidence that it has taken actions to ensure that all CCR facilities covered by the OAC standards are either complying with or will be put on a schedule to comply with the applicable groundwater monitoring requirements.[13]

The Agency notes that Oklahoma facilities have submitted most of the compliance documents that are required to be placed on the facilities' internet site (see OAC 252:517–19–1). Oklahoma has provided information to EPA about its current enforcement strategy for this requirement. Specifically, when documents that are required to be posted to the internet are received, permit engineers will check to ensure those documents have been posted to a facility's website. Compliance inspections will include website reviews as part of records checks during annual, in-depth inspections. Failure to maintain required documents on a facility's public website will be handled similarly to a deficient record, and as an issue of noncompliance.[14]

2. Public Participation

i. Permitting and Enforcement

Comments: Oklahoma's CCR program fails to provide adequate opportunities for public participation in the development, revision, implementation, and enforcement of its CCR regulations. For permitting, the program fails to require new CCR units to submit key compliance proposals and compliance demonstrations in permit applications, such as groundwater monitoring plans, sampling and analysis plan, plans and specifications relating to design requirements (*i.e.* structural stability assessments), retrofit plans and post-closure care plans. The public is not provided an opportunity to review and comment on those documents during the permitting process. For existing CCR units, Oklahoma is entirely depriving the public of any opportunity to review and comment on permit applications, associated supporting documents, and even the CCR unit's permit itself prior to issuance of that permit.

Oklahoma's program grants CCR units a ''permit for life'' without providing the public any opportunity to review and comment on those critical site-specific compliance documents before the permitting decision is made.

Finally, Oklahoma failed to show that its CCR program affords the public participation opportunities in enforcement required by RCRA section 7004(b)(1) and set forth in 40 CFR 239.75. Specifically, the state has not shown that it provides for citizen intervention in civil enforcement proceedings.

Response: The Agency does not agree that the Oklahoma program fails to provide public participation opportunities for enforcement and for permitting. State regulations require new CCR units to submit plans containing compliance proposals and compliance demonstrations in permit applications. As discussed in section III. A. (1), Oklahoma statutes and regulations (section 27A–2–14–201(B)(1) and OAC 252:4–7–58 through 60) set out the appropriate tier for processing permit applications and modifications. These classifications are consistent with the requirements for all other Oklahoma solid waste disposal facilities (OAC 252:4–7–58 through 60 apply to all solid waste disposal facilities).

All plans and subsequent modifications fall within the permitting tier classifications and are approved either through review and action on an original permit application or as a subsequent modification to that permit. The permit general conditions provide that any permit noncompliance, including noncompliance with the original permit or any subsequent permit modification, is grounds for an enforcement action. ODEQ has the authority to evaluate permit applications for administrative and technical completeness and request changes,[15] revisions, corrections, or supplemental submissions to ensure consistency with the Chapter 517 code and all rules. ODEQ may also evaluate plans or other supplemental attachments to applications for sufficiency of content and compliance and require that omissions or inaccuracies be remedied.

Regarding lack of public participation for existing permits for CCR landfills, each application and permit would have been required to provide the appropriate public participation opportunities when those permits were issued. When the permits are modified, the OAC will require public participation according to the established tiering classifications in UEPA (see section 27A–2–14–201(B)(1) and OAC 252:4–7–58 through 60). Examples of Tier II modifications for previously permitted CCR landfills are provided in the docket for this action. Each Tier II or Tier III modification allows for the opportunity for public participation.

Unlike CCR landfill units, surface impoundments were not previously permitted by ODEQ. In accordance with state and Federal CCR standards, permit applications for surface impoundments for regulation under OAC 252:517 must be submitted to ODEQ by October 2018.

[10] RSLs are screening levels generally used for Superfund sites to determine the need for further remedial action. *www.epa/risk/regional-screening-levels.*

[11] October 17, 2017 was the compliance deadline for instillation of groundwater monitoring, sampling and analysis and initial detection monitoring (see 40 CFR 257.90).

[12] Email from Patrick Riley, ODEQ to Mary Jackson, EPA. April 27, 2018. Included in the docket for this authorization.

[13] Ibid.

[14] Ibid.

[15] Oklahoma CCR Program Application in docket for this document.

These new surface impoundment permits authorizing disposal of CCR generated onsite, will follow ODEQs Tier II process and provide opportunity for public participation.

Nothing in the Federal rule prohibits granting such permits for life. The life of a CCR unit begins when it is initially permitted for waste disposal and continues through active operations, closure of the unit, and conclusion of the post-closure monitoring period. The post-closure period begins at closure and continues for a minimum of 30 years. With the exception of an ODEQ enforcement action to revoke a facility's permit, a facility's permit will not terminate until the facility successfully completes closure, post-closure and any corrective action requirements. The facility's closure, post-closure, and corrective action plans are all available through ODEQ and on the facility's publicly accessible internet site. The ability for the public to comment on the initial plans and any subsequent modifications will depend on the associated permitting tier classification when applications for modifications are submitted to ODEQ.

Regarding public participation opportunities in enforcement required by RCRA section 7004(b)(1), ODEQ has reaffirmed that its CCR program allows intervention by right (see 12 OK Stat section 12–2024).[16] In addition, ODEQ's CCR program provides a process to respond to citizen complaints (see 27A O.S. section 2–3–101,503) and by not opposing citizen intervention when allowed by statute (see 27A O.S. section 2–7–133). In the event any member of the public believes a facility is not in compliance with any permitting requirement, the ODEQ complaints program requires investigation and the expedient resolution of complaints involving noncompliance with statutory, regulatory, and permitting requirements. *See ODEQ* Application on page 8. In the event a complainant remains unsatisfied with the resolution of a complaint, mediation is available by statute. *See ODEQ* Application on page 9.

This satisfies the civil intervention requirement at 40 CFR 239.9(a), and on that basis, EPA considers the requirements of RCRA section 7004(b) satisfied.

ii. Permit Modifications

Comment: Most permit modifications are Tier I, which does not require public participation.

Response: The Agency agrees that under OAC rules, most permit modifications are Tier I since they address minor or administrative changes to the permit, which can occur frequently. All existing CCR landfills in the state submitted Tier I modification requests to change the applicable standards in their permit from the previous state solid waste standards at OAC 252:215 to the new CCR standards at OAC 252:217. As a Tier I modification, the public would not have had opportunity for input into these 252:517 CCR landfill permits. Further, the public will not have opportunity for comment on these ''permits for life'' in the future unless the permit is modified under a Tier II or Tier III modification (see preceding discussion on comment/response above).

Based on information submitted by the state comparing standards under OAC 252:215 and OAC 252:217 (included in the docket for this authorization), the Agency has concluded that for existing landfill units, the standards under the two sets of regulations were substantially the same and the public participation opportunities were appropriate. Specifically, as indicated previously, each application and permit issuance under OAC 252:515, including permit modifications, would have included the public participation opportunities that were required when those permits were issued. Public participation requirements under the previous program in OAC 252:515 and the current program in OAC 252:517 are authorized by the same standard under Oklahoma UEPA (27A O.S. section 2–14–104).

As discussed above, permit applications for new units classified as Tier II (for on-site facilities) and Tier III (for off-site facilities) require public notice and comment and the opportunity for a public hearing. In the case of Tier II and III applications that do not receive timely comments or public meeting requests and for which no public meeting was held, ODEQ considers the comments and then prepares a response to comments prior to final permit issuance determinations. The Department makes available Tier II applications and draft permits and Tier III applications, draft permits, and proposed permits on the Department's website.[17]

As discussed, Tier II and III permit modifications focus on substantive changes and require public participation for any permit modifications not specifically covered under Tier I. The Tier II and III permit application processes include: Published notice of the application filing, published notice of the draft permit or denial, and opportunity for a public meeting. In determining the appropriate Tier for an application, the significance of the potential impact on the environment and other criteria outlined in III. A. 1 are considered.

iii. Endangered Species Act

Comment: Under the ESA, Federal agencies must, in consultation with FWS and/or NMFS, insure that any action authorized, funded, or carried out by the agency is not likely to jeopardize the continued existence of endangered or threatened species or result in the destruction or adverse modification of designated critical habitat. 16 U.S.C. 1536(a)(2). An agency proposing an action must first determine whether the action ''may affect'' species listed as threatened or endangered under the ESA. 50 CFR 402.14. EPA's proposal to approve Oklahoma's Application creates a significant risk that CCR units in the state would pollute water more than if EPA did not approve that Application, and thus the proposed action may affect listed species within the meaning of 50 CFR 402.14. As a result, EPA must initiate consultation with FWS and NMFS under ESA Section 7 prior to making a final determination as to whether to approve or deny Oklahoma's Application. See generally Nat'l Parks Conservation Ass'n v. Jewell, 62 F. Supp. 3d at 17 (finding that a 2008 rule revising standards for coal mining near streams may affect listed species where there was ''clear evidence that habitats within stream buffer zones are home to threatened and endangered species and that mining operations affect the environment, water quality, and all living biota'').

Response: As discussed in section III.B.2, EPA has concluded that Oklahoma's regulation applicable to endangered and threatened species (OAC 252:517–5–8) is at least as protective as the Federal criteria in 40 CFR 257.3–2. Having made this determination, RCRA section 4005(d)(1)(C) expressly mandates that EPA approve the state's program. Therefore, consistent with 50 CFR 402.03, the requirement for EPA to consult under section 7(a)(2) of the ESA does not apply to this action.

IV. Approval of the ODEQ CCR Permitting Program

On July 30, 2018, for those CCR units that are currently permitted and regulated by ODEQ under OAC 252:517,

[16] Email from Patrick Riley, ODEQ to Mary Jackson, EPA April 27, 2018. Included in the docket for this authorization.

[17] Oklahoma CCR Program Application in docket for this document.

such permits will be in effect in lieu of the Federal 40 CFR part 257, subpart D, CCR regulations. For those CCR units that are not yet permitted, the Federal regulations at part 257 will remain in effect until such time that ODEQ issues permits under this CCR program for those units.

The WIIN Act specifies that EPA will review a state CCR permit program:

- From time to time, as the Administrator determines necessary, but not less frequently than once every 12 years;
- Not later than 3 years after the date on which the Administrator revises the applicable criteria for CCR units under part 257 of title 40, CFR (or successor regulations promulgated pursuant to sections 1008(a)(3) and 4004(a));
- Not later than 1 year after the date of a significant release (as defined by the Administrator), that was not authorized at the time the release occurred, from a CCR unit located in the state; and
- In request of any other state that asserts that the soil, groundwater, or surface water of the state is or is likely to be adversely affected by a release or potential release from a CCR unit located in the state for which the program was approved.

The WIIN Act also provides that in a state with an approved CCR permitting program, the Administrator may commence an administrative or judicial enforcement action under section 3008 if:

- The state requests that the Administrator provide assistance in the performance of an enforcement action; or
- After consideration of any other administrative or judicial enforcement action involving the CCR unit, the Administrator determines that an enforcement action is likely to be necessary to ensure that the CCR unit is operating in accordance with the criteria established under the state's permit program.

Further, in the case of an enforcement action by the Administrator, before issuing an order or commencing a civil action, the Administrator shall notify the state in which the coal combustion residuals unit is located.

V. Action

In accordance with 42 U.S.C. 6945(d), EPA is approving ODEQ's CCR permit program application.

Dated: June 18, 2018.

E. Scott Pruitt,

Administrator.

[FR Doc. 2018–13461 Filed 6–27–18; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 2 and 90

[PS Docket Nos. 13–87, 06–229; WT Docket No. 96–86, RM–11433, RM–11577; FCC 16–111]

Service Rules Governing Narrowband Operations in the 769–775/799–805 MHz Bands

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Federal Communications Commission (Commission) amends the Commission's rules to promote spectrum efficiency, interoperability, and flexibility in 700 MHz public safety narrowband (769–775/799–805 MHz).

DATES: Effective July 30, 2018.

FOR FURTHER INFORMATION CONTACT: John A. Evanoff, Policy and Licensing Division, Public Safety and Homeland Security Bureau, (202) 418–0848 or *john.evanoff@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Second Report and Order on Reconsideration* in PS Docket No. 13–87, FCC 18–11, released on February 12, 2018, and corrected by *Erratum* released on May 10, 2018. The complete text of this document is also available for inspection and copying during normal business hours in the FCC Reference Information Center, Portals II, 445 12th Street SW, Room CY–A257, Washington, DC 20554. To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an email to *FCC504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (TTY).

Synopsis

In this *Second Report and Order,* the Commission amends and clarifies the Commission's 700 MHz narrowband (769–775/799–805 MHz) interoperability and technical rules. Specifically, this *Second Report and Order* (1) amends and clarifies the rules to exempt 700 MHz low-power Vehicular Repeater Systems (VRS) from the 700 MHz trunking requirements; (2) amends the rules to ensure that 700 MHz public safety licensees receive information on the basis of vendor assertions that equipment is interoperable across vendors and complies with Project 25 (P25) standards; and (3) amends the rules to require that all narrowband mobile and portable 700 MHz public safety radios, as supplied to the ultimate user, must be capable of operating on all of the narrowband nationwide interoperability channels without addition of hardware, firmware, or software, and must be interoperable across vendors and operate in conformance with P25 standards.

In the companion *Order on Reconsideration,* the Commission addresses the Petition for Partial Reconsideration filed by Motorola Solutions, Inc. (Motorola), which requested that the Commission postpone the effective date of certain previously adopted rules (*i.e.* 47 CFR Sections 2.1033(c) and 90.548(c)) until complementary proposals that were the subject of the *Further Notice of Proposed Rulemaking* in this proceeding are resolved. As requested by Motorola, we adopt a uniform effective date for the rules that were the subject of the Motorola Petition for Partial Reconsideration and the rules newly adopted in this *Second Report and Order.*

Procedural Matters

The Final Regulatory Flexibility Analysis required by section 604 of the Regulatory Flexibility Act, 5 U.S.C. 604, is included in Appendix A of the *Second Report and Order and Order on Reconsideration.*

Final Regulatory Flexibility Analysis

As required by the Regulatory Flexibility Act of 1980, as amended (RFA), an Initial Regulatory Flexibility Analysis (IRFA) was incorporated into the *Further Notice of Proposed Rule Making (FNPRM)* in PS Docket No. 13–87 released on August 22, 2016. *See* 81 FR 65984 (2016). The Commission sought written public comment on proposals in the *FNPRM,* including comments on the IRFA. No comments were filed addressing the IRFA. The present Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.

Need for, and Objectives of, the Final Rules

In the *Second Report and Order* in this proceeding, we amend the interoperability and technical rules governing 700 MHz public safety narrowband spectrum (769–775 MHz and 799–805 MHz). The rule changes promote interoperable and efficient use of 700 MHz public safety narrowband spectrum while reducing the regulatory burdens on public safety entities, manufacturers and other stakeholders wherever possible. In order to achieve these objectives, we revise the rules to exempt low power vehicular repeater