ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OAR-2016-0598; FRL-10011-45-OAR]

Petition for Partial Reconsideration of Interstate Transport of Fine Particulate Matter: Revision of Federal Implementation Plan Requirements for Texas

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of action denying petition for reconsideration.

SUMMARY: The Environmental Protection Agency (EPA) is providing notice that it has responded to a petition for partial reconsideration of a final rule under the Clean Air Act (CAA) published in the **Federal Register** on September 29, 2017, titled, "Interstate Transport of Fine Particulate Matter: Revision of Federal Implementation Plan Requirements for Texas." This rule removed Texas from the Cross-State Air Pollution Rule (CSAPR) trading programs for annual emissions of sulfur dioxide (SO_2) and nitrogen oxides (NO_X), and affirmed the continued validity of the EPA's 2012 determination that participation in CSAPR meets the Regional Haze Rule's criteria for an alternative to the application of source-specific best available retrofit technology (BART). The November 28, 2018, petition, submitted by Sierra Club and the National Parks Conservation Association, requested that the EPA reconsider the latter aspect of the rule. The EPA has denied the petition in a letter to the petitioners for reasons the EPA explains in that document.

FOR FURTHER INFORMATION CONTACT: Corey A. Mocka, U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, Air Quality Policy Division, 109 T.W. Alexander Drive, Mail Code C539-04, Research Triangle Park, N.C. 27711; phone number: (919) 541-5142; email address: mocka.corey@epa.gov.

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SUPPLEMENTARY INFORMATION:

I. Where Can I Get Copies of This Document and Other Related Information?

This **Federal Register** notice, the petition for reconsideration, and the response letter to the petitioner are available in the docket that the EPA established for the rulemaking, under Docket ID NO. EPA-HQ-OAR-2016-0598.

All documents in the docket are listed in the index at *http://www.regulations.gov*. Although listed in the index, some information may not be publicly available, i.e., Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form.

Out of an abundance of caution for members of the public and our staff, the EPA is temporarily suspending the Docket Center and Reading Room for public visitors to reduce the risk of transmitting COVID-19. Our Docket Center staff will continue to provide remote customer service via email, phone, and webform. For further information and updates on EPA Docket Center services, please visit us online at *https://www.epa.gov/dockets*. The EPA continues to carefully and continuously monitor information from the Centers for Disease Control and Prevention, local area health departments, and our federal partners so we can respond rapidly as conditions change regarding COVID-19.

In addition, the EPA has established a website for visibility and regional haze rulemakings at: *https://www.epa.gov/visibility*. This **Federal Register** notice, the petition for reconsideration, and the response letter denying the petition are also available on this website along with other information.

II. Judicial Review

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Section 307(b)(1) of the CAA indicates which Federal Courts of Appeal have venue for petitions of review of final actions by the EPA. This section provides, in part, that petitions for review must be filed in the Court of Appeals for the District of Columbia Circuit: (i) when the agency action consists of "nationally applicable regulations promulgated, or final actions taken, by the Administrator," or (ii) when such action is locally or regionally applicable, if "such action is based on a determination of nationwide scope or effect and if in taking such action the Administrator finds and publishes that such action is based on such a determination."

This action is a denial of an administrative petition requesting reconsideration of an aspect of a final rule, "Interstate Transport of Fine Particulate Matter: Revision of Federal Implementation Plan Requirements for Texas," 82 FR 45481 (September 29, 2017). That rule is nationally applicable; in addition, to the extent that rule may be found to be locally or regionally applicable, the EPA found in that rule that it is based on a determination of "nationwide scope or effect" within the meaning of CAA section 307(b)(1). *See* 82 FR at 45495-96. Further, that rule is currently being challenged in the Court of Appeals for the District of Columbia Circuit.[1] For the same reasons set forth in that rule, 82 FR at 45495-96, this action denying a petition for reconsideration of that rule is nationally applicable and, in addition, to the extent this action may be found to be locally or regionally applicable, the Administrator finds that the action is based on a determination of nationwide scope or effect for purposes of CAA section 307(b)(1). Thus, pursuant to CAA section 307(b), any petition for review of this action denying the petition for reconsideration must be filed in the Court of Appeals for the District of Columbia Circuit on or

[1] *Nat'l Parks Conservation Ass'n v. EPA*, No. 17-1253 (D.C. Cir., filed November 28, 2018).

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before **[INSERT DATE 60 DAYS FROM DATE OF PUBLICATION IN THE FEDERAL REGISTER].**

Dated:

Andrew Wheeler,
Administrator.

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