



## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R09-OAR-2017-0255; FRL-9963-07-Region 9]

#### Determination to Defer Sanctions; Arizona Department of Environmental Quality

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

**ACTION:** Interim final rule.

**SUMMARY:** The EPA is making an interim final determination to defer imposition of sanctions based on a proposed determination, published elsewhere in this **Federal Register**, that the State of Arizona (State) has submitted rules that satisfy the requirements of part D of the Clean Air Act (CAA or Act) permitting program for areas under the jurisdiction of the Arizona Department of Environmental Quality (ADEQ).

**DATES:** This interim final determination is effective on [insert date of publication in the **Federal Register**]. However, comments will be accepted until [insert date 30 days after date of publication in the **Federal Register**].

**ADDRESSES:** Submit comments, identified by Docket ID No. EPA-R09-OAR-2017-0255, at <http://www.regulations.gov>, or via email to [R9airpermits@epa.gov](mailto:R9airpermits@epa.gov). For comments submitted at [Regulations.gov](http://www.regulations.gov), follow the online instructions for submitting comments. Once submitted, comments cannot be removed or edited from [Regulations.gov](http://www.regulations.gov). For either manner of submission, 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 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 <https://www.epa.gov/dockets/commenting-epa-dockets>.

**FOR FURTHER INFORMATION CONTACT:** Lisa Beckham, EPA Region 9, (415) 972-3811, [beckham.lisa@epa.gov](mailto:beckham.lisa@epa.gov).

**SUPPLEMENTARY INFORMATION:** Throughout this document, the terms “we,” “us,” and “our” refer to the EPA.

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### **I. Background**

On November 2, 2015 (80 FR 67319), the EPA issued a final limited approval and limited disapproval action for revisions to the ADEQ portion of the Arizona State Implementation Plan (SIP) that had been submitted by ADEQ to the EPA for approval (the 2015 NSR action).<sup>1</sup> The 2015 NSR action addressed ADEQ’s permitting program for the issuance of New Source Review (NSR) permits for stationary sources, including review and permitting of

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<sup>1</sup> We also finalized other actions, which included a partial disapproval related to the PM<sub>2.5</sub> significant monitoring concentration, and limited approvals, without corresponding limited disapprovals, related to section 189(e) of the Act.

major and minor sources under the Act. In our 2015 NSR action, we determined that while ADEQ's SIP revision submittal strengthened the Arizona SIP, the submittal did not fully meet the requirements for NSR permitting programs under the CAA. Our 2015 NSR action included a final limited disapproval action under title I, part D of the Act, relating to requirements for nonattainment areas. Pursuant to section 179 of the CAA and our regulations at 40 CFR 52.31, this limited disapproval action under title I, part D started a sanctions clock for imposition of offset sanctions 18 months after the action's effective date of December 2, 2015, and highway sanctions 6 months later.

On March 21, 2017, ADEQ revised its NSR permitting program rules and on April 28, 2017, ADEQ submitted a number of revised NSR permitting rules to the EPA for approval into the Arizona SIP (April 2017 NSR submittal), including rules intended to address the limited disapproval issues under title I, part D that we identified in our 2015 NSR action. In the Proposed Rules section of this **Federal Register**, we have proposed approval of ADEQ's April 2017 NSR submittal. Based on the proposed approval action, we are also taking this final rulemaking action, effective on publication, to defer imposition of the offset sanctions and highway sanctions that were triggered by our 2015 NSR action's limited disapproval of ADEQ's NSR permitting program, because we believe that ADEQ's April 2017 NSR submittal corrects the deficiencies that triggered such sanctions.

EPA is providing the public with an opportunity to comment on this deferral of sanctions. If comments are submitted that change our assessment described in this final determination and the proposed full approval of ADEQ's April 2017 NSR submittal with respect to the title I, part D deficiencies identified as limited disapproval issues in our 2015 NSR action, we would take final action proposing to lift this deferral of sanctions under 40 CFR 52.31. If no comments are

submitted that change our assessment, then all sanctions and any sanction clocks triggered by our 2015 NSR action would be permanently terminated on the effective date of our final approval of ADEQ's April 2017 NSR submittal.

## **II. EPA Action**

We are making an interim final determination to defer CAA section 179 sanctions associated with our limited disapproval action on November 2, 2015 of ADEQ's NSR permitting program with respect to the requirements of part D of title I of the CAA. This determination is based on our concurrent proposal to fully approve ADEQ's April 2017 NSR submittal, which resolves the deficiencies that triggered sanctions under section 179 of the CAA.

Because the EPA has preliminarily determined that ADEQ's April 2017 NSR submittal addresses the deficiencies under part D of title I of the CAA identified as limited disapproval issues in our 2015 NSR action, and is fully approvable, relief from sanctions should be provided as quickly as possible. Therefore, the EPA is invoking the good cause exception under the Administrative Procedure Act (APA) in not providing an opportunity for comment before this action takes effect (5 U.S.C. 553(b)(3)). However, by this action, the EPA is providing the public with a chance to comment on the EPA's determination after the effective date, and the EPA will consider any comments received in determining whether to reverse such action.

The EPA believes that notice-and-comment rulemaking before the effective date of this action is impracticable and contrary to the public interest. The EPA has reviewed the State's submittal and, through its proposed action, is indicating that it is more likely than not that the State has submitted a revision to the SIP that corrects deficiencies under part D of the Act that were the basis for the action that started the sanctions clocks. Therefore, it is not in the public interest to impose sanctions. The EPA believes that it is necessary to use the interim final

rulemaking process to defer sanctions while the EPA completes its rulemaking process on the approvability of the State's submittal. Moreover, with respect to the effective date of this action, the EPA is invoking the good cause exception to the 30-day notice requirement of the APA because the purpose of this notice is to relieve a restriction (5 U.S.C. 553(d)(1)).

### **III. Statutory and Executive Order Reviews**

This action defers sanctions and imposes no additional requirements.

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

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

B. Paperwork Reduction Act (PRA)

This action does not impose an information collection burden under the PRA. This action defers sanctions and imposes no new requirements.

C. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. This action will not impose any requirements on small entities. This action defers sanctions and imposes no new requirements.

D. Unfunded Mandates Reform Act (UMRA)

This action does not contain any unfunded mandate as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. The action imposes no enforceable duty on any state, local or tribal governments or the private sector.

E. Executive Order 13132: Federalism

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

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

This action does not have tribal implications as specified in Executive Order 13175. This action defers sanctions and imposes no new requirements. In addition, this action does not apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. Thus, Executive Order 13175 does not apply to this action.

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

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that the EPA has reason to believe may disproportionately affect children, per the definition of “covered regulatory action” in section 2-202 of the Executive Order. This rule is not subject to Executive Order 13045 because it does not concern an environmental health risk or safety risk.

H. Executive Order 13211: Actions that Significantly Affect Energy Supply, Distribution, or Use

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

I. National Technology Transfer and Advancement Act

This rulemaking does not involve technical standards.

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

The EPA believes that this action is not subject to Executive Order 12898 (59 FR 7629, February 16, 1994) because it does not establish an environmental health or safety standard. This action defers sanctions in accordance with CAA regulatory provisions and imposes no additional requirements.

K. Congressional Review Act (CRA)

This action is subject to the CRA, and the EPA will submit a rule report to each House of the Congress and to the Comptroller General of the United States. The CRA allows the issuing agency to make a rule effective sooner than otherwise provided by the CRA if the agency makes a good cause finding that notice and comment rulemaking procedures are impracticable, unnecessary or contrary to the public interest (5 U.S.C. 808(2)). The EPA has made a good cause finding for this rule as discussed in section II of this preamble, including the basis for that finding.

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[insert date 60 days after date of publication in the Federal Register]**. Filing a petition for reconsideration by the EPA Administrator of this final rule does not affect the finality of this rule for the purpose of judicial review nor does it extend the time within which petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements (see CAA section 307(b)(2)).

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

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

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

Dated: May 16, 2017.

Alexis Strauss,  
Acting Regional Administrator,  
Region IX.

[FR Doc. 2017-10942 Filed: 5/31/2017 8:45 am; Publication Date: 6/1/2017]