



Billing Code: 6560-50-P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR part 52

[EPA-R09-OAR-2017-0255; FRL-9972-79-Region 9]

#### **Air Plan Approval; Arizona; Stationary Sources; New Source Review; Ammonia**

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

**ACTION:** Supplemental proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is supplementing its prior proposed approval of regulatory revisions to the Arizona Department of Environmental Quality (ADEQ) portion of the applicable Clean Air Act (CAA or Act) state implementation plan (SIP) for the State of Arizona. This supplemental proposal is primarily intended to make corrections to ADEQ's SIP-approved rules for the issuance of CAA New Source Review (NSR) permits for stationary sources, with a focus on preconstruction permit requirements under the Act for major stationary sources and major modifications of such sources. It proposes conditional approval of ADEQ's NSR submittal specifically with respect to the CAA requirements related to ammonia as a precursor to PM<sub>2.5</sub> under the NA-NSR program requirements in CAA section 189(e). We are seeking comment on our proposed action and plan to follow with a final action.

**DATES:** Any comments must arrive by **[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 <https://www.regulations.gov>, or via email to [R9airpermits@epa.gov](mailto:R9airpermits@epa.gov). For comments submitted at Regulations.gov, follow the online instructions for submitting comments. Once submitted, comments cannot be removed or edited from 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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## DEFINITIONS

For this notice, we are giving meaning to certain words or initials as follows:

- (i) The words or initials *Act* or *CAA* mean or refer to the Clean Air Act, unless the context indicates otherwise.
- (ii) The initials *ADEQ* mean or refer to the Arizona Department of Environmental Quality.
- (iii) The initials *CFR* mean or refer to Code of Federal Regulations.
- (iv) The words *EPA*, *we*, *us* or *our* mean or refer to the United States Environmental Protection Agency.
- (v) The initials *FIP* mean or refer to Federal Implementation Plan.
- (vi) The initials *NAAQS* mean or refer to National Ambient Air Quality Standards.
- (vii) The initials *NA-NSR* mean or refer to Nonattainment New Source Review.
- (viii) The initials *NO<sub>x</sub>* mean nitrogen oxides.
- (ix) The initials *NSR* mean or refer to New Source Review.
- (x) The initials *PM<sub>2.5</sub>* mean or refer to particulate matter with an aerodynamic diameter of less than or equal to 2.5 micrometers (fine particulate matter).
- (xi) The initials *PSD* mean or refer to Prevention of Significant Deterioration.
- (xii) The initials *SIP* mean or refer to State Implementation Plan.

(xiii) The words *State* or *Arizona* mean the State of Arizona, unless the context indicates otherwise.

(xiv) The initials *SO<sub>2</sub>* mean sulfur dioxide.

(xv) The initials *TSD* mean or refer to a technical support document.

(xvi) The initials *VOC* means volatile organic compounds.

## **I. The State's Submittals**

### **A. Which rules did the State submit?**

On April 28, 2017, ADEQ submitted regulatory revisions for the ADEQ portion of the Arizona SIP to the EPA. This SIP revision submittal, which is the subject of this supplemental proposal and is referred to herein as the "April 2017 NSR submittal," contains revisions to ADEQ's rules governing preconstruction review and related permitting program requirements. These rule revisions are intended to correct deficiencies in ADEQ's SIP-approved NSR program related to the requirements under both part C (prevention of significant deterioration or PSD) and part D (nonattainment new source review or NA-NSR) of title I of the Act, which apply to major stationary sources and major modifications of such sources. The preconstruction review and permitting programs are often collectively referred to as New Source Review or NSR. On June 1, 2017, we proposed approval of these revisions into the Arizona SIP. These revisions are necessary to correct several deficiencies we identified in a 2015 rule action to update ADEQ's SIP-approved NSR program as well as certain deficiencies with ADEQ's NSR program that were the focus of a 2016 EPA rule action related to PM<sub>2.5</sub> precursors under the NA-NSR program requirements in CAA section 189(e) (referred to hereinafter as our "2016 PM<sub>2.5</sub> precursor action"). See 82 FR 25213 (June 1, 2017); see also 80 FR 67319 (Nov. 2, 2015) and 81

FR 40525 (June 22, 2016). For a detailed description of the rules in the April 2017 NSR submittal, please refer to Section I.A of our June 1, 2017 proposed rule (82 FR 25214).

B. Are there previous versions of the rules in the Arizona SIP?

As part of our June 1, 2017 proposed action on the April 2017 NSR submittal, we identified a number of rules in the Arizona SIP that would be superseded or removed from the Arizona SIP if the action were finalized as proposed; these rules would generally be replaced by the ADEQ rules proposed for approval. Please refer to Section I.B of our June 1, 2017 proposed rule for a detailed list of these rules (82 FR 25215). This supplemental proposal action does not modify the particular ADEQ rules that we are proposing to approve into, or remove from, the Arizona SIP in our action on the April 2017 NSR submittal.

C. What is the purpose of the EPA's supplemental proposal?

The purpose of this supplemental proposal is to (1) present our evaluation of ADEQ's April 2017 NSR submittal as it relates to ammonia as a precursor to PM<sub>2.5</sub> under the nonattainment NSR (NA-NSR) program requirements at CAA section 189(e) and EPA's implementing regulations; (2) discuss our proposed conditional approval action related to this issue, including the basis for this action; and (3) provide notice of and seek public comment on our proposed action.

## **II. The EPA's Evaluation**

A. How is the EPA evaluating the State's rules?

Section II.A of our June 1, 2017 proposed rule discusses our evaluation criteria for the April 2017 NSR submittal in detail. See 82 FR 25215. Generally, the EPA has reviewed the provisions in the April 2017 NSR submittal for compliance with the CAA's general requirements for SIPs in CAA section 110(a)(2), the EPA's regulations for stationary source permitting

programs in 40 CFR part 51, subpart I, and the CAA requirements for SIP revisions in CAA section 110(l) and 193.

For this supplemental proposal, our review focuses on one issue addressed in our 2016 PM<sub>2.5</sub> precursor action (81 FR 40525), which finalized a limited disapproval action for ADEQ's NA-NSR program specifically based on our finding that ADEQ's program did not fully address fine particulate matter (PM<sub>2.5</sub>) precursors as required by section 189(e) of the Act for the Nogales and West Central Pinal PM<sub>2.5</sub> nonattainment areas. This action triggered an obligation on the EPA to promulgate a Federal Implementation Plan (FIP) to address this deficiency unless the State of Arizona corrects the deficiency, and the EPA approves the related plan revisions, within two years of the final action. In addition, to avoid sanctions under section 179 of the Act, ADEQ has 18 months from the July 22, 2016 effective date of our 2016 PM<sub>2.5</sub> precursor action to correct the deficiency as it relates to part D of title I of the Act.

B. Do the rules meet the evaluation criteria?

In this action, we are supplementing our prior proposal only as it relates to specific deficiencies with ADEQ's NA-NSR rules identified in our 2016 PM<sub>2.5</sub> precursor action concerning ammonia as a precursor to PM<sub>2.5</sub>. As part of our review of the April 2017 NSR submittal culminating in our June 1, 2017 proposed rule, we considered whether the ADEQ rule revisions in the April 2017 NSR submittal met the applicable requirements under section 189(e) of the Act and the associated regulatory provisions for PM<sub>2.5</sub> for the Nogales and West Central Pinal PM<sub>2.5</sub> nonattainment areas that were identified as deficiencies in our 2016 PM<sub>2.5</sub> precursor action. These deficiencies were related to our finding that ADEQ's NSR program did not contain rules regulating volatile organic compounds (VOCs) or ammonia as PM<sub>2.5</sub> precursors under the NA-NSR program as required by CAA section 189(e), nor did the ADEQ NSR SIP submittal

under consideration at that time include a showing that the regulation of VOCs and ammonia was not necessary under section 189(e) of the Act. See 81 FR 40526.

As discussed in the May 2017 Technical Support Document (TSD) supporting our June 1, 2017 proposed rule action on the April 2017 NSR submittal, on August 24, 2016, the EPA finalized regulatory requirements for SIPs related to the 2012 PM<sub>2.5</sub> National Ambient Air Quality Standards (NAAQS), which became effective on October 24, 2016 (PM<sub>2.5</sub> Implementation Rule). 81 FR 58010. The PM<sub>2.5</sub> Implementation Rule includes provisions that address the permitting requirements for PM<sub>2.5</sub> precursors for major stationary sources in PM<sub>2.5</sub> nonattainment areas under section 189(e) of the Act. The EPA's NA-NSR regulations as amended by the PM<sub>2.5</sub> Implementation Rule provide that PM<sub>2.5</sub> precursors in PM<sub>2.5</sub> nonattainment areas include nitrogen oxides (NO<sub>x</sub>), VOCs, sulfur dioxide (SO<sub>2</sub>) and ammonia. See 40 CFR 51.165(a)(1)(xxxvii)(C)(2). Our NA-NSR regulations further provide that SIPs must require that the control requirements of 40 CFR 51.165 applicable to major stationary sources and major modifications of PM<sub>2.5</sub> also apply to major stationary sources and major modifications of PM<sub>2.5</sub> precursors in a PM<sub>2.5</sub> nonattainment area, except that a reviewing authority may exempt new major stationary sources and major modifications of a particular precursor from the requirements of 40 CFR 51.165 for PM<sub>2.5</sub> if the NA-NSR precursor demonstration submitted to and approved by the EPA Administrator shows that such sources do not contribute significantly to PM<sub>2.5</sub> levels that exceed the standard in the area. See 40 CFR 51.165(a)(13).

With respect to the April 2017 NSR submittal, in our evaluation that culminated in our June 1, 2017 proposed approval action, we found that ADEQ had submitted an updated NA-NSR program that included the permitting requirements for PM<sub>2.5</sub> precursors necessary to satisfy the requirements of CAA section 189(e) and the PM<sub>2.5</sub> Implementation Rule, except for a particular

requirement pertaining to ammonia as a precursor to PM<sub>2.5</sub>. See 80 FR at 25219; May 2017 TSD at 21-22. Specifically, the NA-NSR regulations relating to PM<sub>2.5</sub> precursors require that, for the purposes of applying the requirements of 40 CFR 51.165(a)(13) to modifications at existing major stationary sources of ammonia located in a PM<sub>2.5</sub> nonattainment area, if the SIP requires that the control requirements of 40 CFR section 51.165 apply to major stationary sources and major modifications of ammonia as a regulated NSR pollutant (as a PM<sub>2.5</sub> precursor), the plan shall also define “significant” for ammonia for that area, subject to the approval of the EPA Administrator. See 40 CFR 51.165(a)(1)(x)(F). We found that while ADEQ’s updated NA-NSR program, as reflected in the April 2017 NSR submittal, includes ammonia as a precursor to PM<sub>2.5</sub> in PM<sub>2.5</sub> nonattainment areas (at R18-2-101(124)(a)(iv) in the definition of the term “regulated NSR pollutant”), the rules in the April 2017 NSR submittal do not define the term “significant” for purposes of applying the requirements of 40 CFR 51.165(a)(13) to modifications at existing major stationary sources of ammonia located in a PM<sub>2.5</sub> nonattainment area, as required by 40 CFR 51.165(a)(1)(x)(F). See May 2017 TSD at 21-22. We noted in our June 1, 2017 proposal that ADEQ intended to address this deficiency in a separate SIP submittal. See 82 FR 25219.

To address this remaining deficiency, in a letter dated December 6, 2017, ADEQ committed to adopt revisions to provisions in R18-2-101 and/or make other specific demonstrations consistent with 40 CFR 51.165(a)(1)(x)(F) and/or 40 CFR 51.165(a)(13) to satisfy the requirements of section 189(e) and the PM<sub>2.5</sub> Implementation Rule governing ammonia as a precursor to PM<sub>2.5</sub> under the NA-NSR program. See Letter from Timothy S. Franquist, Director, Air Quality Division, ADEQ to Alexis Strauss, Acting Regional Administrator, EPA Region 9, dated Dec. 6, 2017. ADEQ committed in this letter to take certain specific actions, including the submittal of the required rule and/or demonstration to the EPA by

March 31, 2019, or within one year from the date on which the EPA takes final action on the April 2017 NSR submittal, whichever is earlier. Accordingly, pursuant to section 110(k)(4) of the Act, the EPA is proposing a conditional approval of ADEQ's NA-NSR program solely as it pertains to section 189(e) of the Act and the associated regulatory requirements for ammonia as a PM<sub>2.5</sub> precursor. We are proposing to conditionally approve the April 2017 NSR submittal with respect to this issue because ADEQ's 2017 NSR submittal largely includes the requirements for ammonia as a PM<sub>2.5</sub> precursor required under section 189(e) of the Act and the associated regulatory requirements, and ADEQ's December 6, 2017 commitment letter provides adequate assurance that the one deficiency concerning ammonia as a PM<sub>2.5</sub> precursor will be addressed in a timely manner, consistent with CAA section 110(k)(4).<sup>1</sup> We conclude that if ADEQ submits the rule revisions and/or demonstrations that it has committed to submit by the deadline that it has committed to meet, then this deficiency will be cured. However, if ADEQ fails to submit these revisions and/or demonstrations within the required timeframe, the conditional approval will automatically become a disapproval for the specific issue of whether ADEQ's NA-NSR program meets the requirements of section 189(e) of the Act with respect to ammonia as a PM<sub>2.5</sub> precursor, and the EPA will issue a finding of disapproval. The EPA is not required to propose the finding of disapproval.

C. Do the rules meet the evaluation criteria under Sections 110(l) and 193 of the Clean Air Act?

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<sup>1</sup> We also note that it is our understanding that there are currently no major stationary sources of ammonia under ADEQ's jurisdiction, nor are there any NSR permit applications currently under review by ADEQ for a proposed major stationary source of ammonia. While ADEQ's NA-NSR program currently does not define the level that is considered "significant" for ammonia as a precursor to PM<sub>2.5</sub>, the federal NA-NSR regulations at 40 CFR 51.165(a)(1)(x)(F) require this definition to potentially apply only to major sources of ammonia that may undertake modifications. Because there are no existing or currently proposed major sources of ammonia under ADEQ's jurisdiction, there are no sources that could potentially trigger the application of any such "significant" threshold for ammonia in the near future in the PM<sub>2.5</sub> nonattainment areas under ADEQ's jurisdiction.

Please see Section II.G of our June 1, 2017 proposed rule that discusses our determination that the April 2017 NSR submittal meets the evaluation criteria under Sections 110(l) and 193 of the Act and that we can approve the April 2017 NSR submittal under Sections 110(l) and 193 of the Act. See 82 FR 25220. This supplemental proposal does not change our prior determinations in this regard with respect to the April 2017 NSR submittal.

### **III. Public Comment and Proposed Action**

In conclusion, we have determined that the April 2017 NSR submittal, in conjunction with the commitment made by ADEQ in its December 6, 2017 commitment letter, adequately addresses the remaining deficiency related to section 189(e) of the Act and the associated regulatory requirements for ammonia as a precursor to  $PM_{2.5}$  in  $PM_{2.5}$  nonattainment areas. Accordingly, as authorized by section 110(k)(4) of the Act, the EPA proposes to conditionally approve the NA-NSR component of ADEQ's April 2017 NSR submittal solely with respect to ammonia as a  $PM_{2.5}$  precursor. While we cannot grant full approval of the submittal at this time with respect to this issue, ADEQ has satisfactorily committed to address this deficiency by providing the EPA with a SIP submittal by March 31, 2019, or within one year from the date on which the EPA takes final action on the April 2017 NSR submittal, whichever is earlier.

As noted previously, on June 1, 2017, we proposed full approval of all other aspects of ADEQ's April 2017 NSR submittal, including but not limited to revisions to ADEQ's NA-NSR program and the regulation of  $PM_{2.5}$  precursors other than ammonia in accordance with section 189(e) of the Act. Today's action does not modify the findings we made in that proposed action, and through this supplemental proposal, we are not reopening or otherwise seeking public comment on any other issues or findings in that June 1, 2017 proposed action.

We will accept comments from the public on this supplemental proposal until **[Insert date 30 days after date of publication in the Federal Register]**.

#### **IV. Incorporation by Reference**

This action supplements our prior proposed rule where the EPA has proposed to include in a final EPA rule regulatory text that includes incorporation by reference. This action does not propose additional material for incorporation by reference.

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

Under the CAA, the EPA Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA's role is to approve state choices, provided that they meet the criteria of the Act. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Is not an Executive Order 13771 (82 FR 9339, February 3, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866;
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);

- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 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 Clean Air Act; and
- Does not provide the EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

List of Subjects in 40 CFR Part 52

Environmental protection, 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: December 20, 2017.

Alexis Strauss,  
Acting Regional Administrator,  
Region IX.

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