



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R06-OAR-2019-0616; FRL-10010-57-Region 6]

Air Plan Approval; Arkansas; Infrastructure for the 2015 Ozone National Ambient Air Quality Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: Under the Federal Clean Air Act (CAA or Act), the Environmental Protection Agency (EPA) is proposing to approve elements of a State Implementation Plan (SIP) submission from the State of Arkansas (State) for the 2015 Ozone (O₃) National Ambient Air Quality Standards (NAAQS). This submittal addresses how the existing SIP provides for implementation, maintenance, and enforcement of the 2015 O₃ NAAQS (infrastructure SIP or i-SIP). The i-SIP ensures that the Arkansas SIP is adequate to meet the state's responsibilities under the CAA for this NAAQS. We are also proposing to approve changes to the State's regulations to bring the State's rule up to date and consistent with the 2015 O₃ NAAQS.

DATES: Written comments must be received on or before **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: Submit your comments, identified by Docket No. EPA-R06-OAR-2019-0616, at <http://www.regulations.gov> or via email todd.robert@epa.gov. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from Regulations.gov. EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or

other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (i.e. on the web, cloud, or other file sharing system). For additional submission methods, please contact Robert M. Todd, (214) 665-2156, todd.robert@epa.gov. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <https://www.epa.gov/dockets/commenting-epa-dockets>. *Docket:* The docket index and publicly available docket materials for this action are available electronically at www.regulations.gov. While all documents in the docket are listed in the index, some information may not be publicly available due to file size or content (e.g., CBI).

FOR FURTHER INFORMATION CONTACT: Robert M. Todd, EPA Region 6 Office, Infrastructure & Ozone Section, 214-665-2156, todd.robert@epa.gov. Out of an abundance of caution for members of the public and our staff, the EPA Region 6 office may be closed to the public to reduce the risk of transmitting COVID-19. We encourage the public to submit comments via <https://www.regulations.gov>, as there will be a delay in processing mail and no courier or hand deliveries will be accepted. Please call or e-mail the contact listed above if you need alternative access to material indexed but not provided in the docket.

SUPPLEMENTARY INFORMATION: In this document “we,” “us,” and “our” means the EPA.

I. Background

Below is a short discussion of the background on the 2015 O₃ NAAQS and the SIP revisions addressed in this action. For more information, please see the Technical Support Document (TSD) in the docket for this action.¹

Following a periodic review of the 2008 NAAQS for O₃, EPA revised the primary and secondary O₃ NAAQS to 0.070 ppm (80 FR 65291, October 26, 2015).² The primary NAAQS is designed to protect human health, and the secondary NAAQS is designed to protect the public welfare.³

Whenever EPA promulgates a new or revised NAAQS, CAA section 110(a)(1) requires states to make SIP submissions to provide for the implementation, maintenance, and enforcement of the NAAQS. This type of SIP submission is commonly referred to as an “infrastructure SIP” or “i-SIP”. These submissions must meet the various requirements of CAA section 110(a)(2), as applicable. Due to ambiguity in some of the language of CAA section 110(a)(2), EPA believes that it is appropriate to interpret these provisions in the specific context of acting on infrastructure SIP submissions. EPA has provided guidance on the application of infrastructure provisions in SIP submissions and applied such guidance in regional actions on infrastructure submissions.⁴ We are following that existing approach in acting on this submission. In addition, in the context of acting on such infrastructure submissions, EPA evaluates the submitting state’s SIP for facial compliance with statutory and regulatory requirements, not for the state’s

¹ The TSD for this action can be accessed through www.regulations.gov (Docket No. EPA-R06-OAR-2019-0616).

² Additional information on the history of the NAAQS for ozone is available at <https://www.epa.gov/ground-level-ozone-pollution/table-historical-ozone-national-ambient-air-quality-standards-naaqs>.

³ Information on ozone formation and health effects is available at <https://www.epa.gov/ozonepollution>.

⁴ EPA explains and elaborates on these ambiguities and its approach to address them in its September 13, 2013, Infrastructure SIP Guidance (available at https://www.epa.gov/sites/production/files/2015-12/documents/guidance_on_infrastructure_sip_elements_multipollutant_final_sept_2013.pdf), as well as in numerous agency actions, including EPA’s prior action on Louisiana’s infrastructure SIP to address the 2006 PM_{2.5}, 2008 PB, 2008 O₃, 2010 NO₂, 2010 SO₂ and 2012 PM_{2.5} NAAQS (81 FR 68322 (October 4, 2016)).

implementation of its SIP.⁵ The EPA has other CAA authority to address any issues concerning a state's implementation of the rules, regulations, consent orders, etc. that comprise its SIP.

Each state must submit an i-SIP within three years after the promulgation of a new or revised NAAQS showing how it meets the elements of section 110(a)(2) of the CAA. This section of the CAA includes a list of specific elements necessary for a state's air quality program. On October 4, 2019, the Governor of Arkansas made one submission to address the 2015 NAAQS for O₃.⁶ The submittal addressed CAA sections 110(a)(2)(A) through (M).

We are proposing that the Arkansas SIP meets the requirements in CAA section 110(a)(1) and parts of section 110(a)(2). Specifically, we are proposing to approve the Arkansas i-SIP as it demonstrates compliance with CAA sections 110(a)(1) and 110(a)(2)(A) through (C) and (E) through (M). We are also proposing that Arkansas' i-SIP demonstrates compliance with CAA section 110(a)(2)(D)(i)(II), Interference with Prevention of Significant Deterioration (often referred to as prong 3) and CAA section 110(a)(2)(D)(ii), Interstate Pollution Abatement (which refers to CAA section 126) and International Air Pollution (which refers to CAA section 115). The remaining portions of the October 4, 2019, submittal, addressing CAA section 110(a)(2)(D)(i)(I), often referred to as interstate transport prongs 1 and 2, and CAA section 110(a)(2)(D)(i)(II), often referred to as interstate transport prong 4, will be addressed in separate,

⁵ See U.S. Court of Appeals for the Ninth Circuit decision in *Montana Environmental Information Center v. EPA*, No. 16-71933 (Aug. 30, 2018).

⁶ Additional information, including the history of the priority pollutants, their levels, the forms of the standard and the determination of compliance; EPA's approach for reviewing the i-SIP submittal and EPA's evaluation; the statute and regulatory citations in the Arkansas SIP specific to the review of this i-SIP, applicable CAA and EPA regulatory citations, Federal Register citations for the Arkansas SIP approvals; Arkansas' minor New Source Review program and EPA approval activities, and Arkansas' Prevention of Significant Deterioration program can be found in the TSD for this action.

subsequent actions.⁷ A copy of the State's submittal is provided in the docket for this proposed rulemaking.

Also, on September 27, 2019, after due opportunity for public notice and comment and following all the state's required administrative procedures the Arkansas Pollution Control and Ecology Commission (APC&EC) adopted changes to Regulation 19 (Regulations of the Arkansas Plan for Air Pollution Control). Regulation 19 changes were made to Chapter 2, Definitions and Appendix B, National Ambient Air Quality Standards List, that bring the state's rules up to date and consistent with the 2015 O₃ NAAQS. These changes were included in the i-SIP submittal. We are proposing to approve these changes into the Arkansas SIP.

II. EPA's Evaluation of the Arkansas 2015 O₃ NAAQS Submission

Below is a summary of our evaluation of the October 4, 2019, Arkansas submittal for each element of CAA section 110(a)(2) that we are proposing to approve.⁸

(A). Emission limits and other control measures: The SIP must include enforceable emission limits and other control measures, means or techniques, as well as schedules and timetables for compliance, as may be appropriate to meet the applicable requirements of the Act and other related matters as needed to implement, maintain and enforce each of the NAAQS.⁹

The State provided information to show that Arkansas' SIP contains enforceable emission limitations and other control measures requirements. The relevant provisions to address such

⁷ In an earlier action we proposed to approve the Arkansas submittal for interstate transport prong 4 (visibility protection). See 85 FR 14847 (March 16, 2020).

⁸ A detailed discussion of our evaluation can be found in the TSD for this action.

⁹ The specific nonattainment area plan requirements of section 110(a)(2)(I) are subject to the timing requirements of section 172, not the timing requirement of section 110(a)(1). Thus, section 110(a)(2)(A) does not require that states submit regulations or emissions limits specifically for attaining the 2015 Ozone NAAQS. Those SIP provisions are due as part of each state's attainment plan and will be addressed separately from the requirements of section 110(a)(2)(A). In the context of an infrastructure SIP, EPA is not evaluating the existing SIP provisions for this purpose. Instead, EPA is only evaluating whether the state's SIP has basic structural provisions for the implementation of the NAAQS.

requirements are included in the Arkansas Water and Air Pollution Control Act (AWAPCA), Arkansas Code Annotated (“Ark. Code Ann.”) section 8–4–101 *et seq.*, and those provisions of the APC&EC Regulation 19, codified in 40 CFR 52.170. The regulations in APC&EC Regulation 19 have been duly adopted by the State and where these provisions relate to CAA section 110 requirements, SIP revisions have been submitted to and approved by EPA. The EPA-approved SIP revisions are codified at 40 CFR part 52, subpart E. Arkansas has an EPA-approved air permitting program for both major and minor facilities, which ensures that all applicable requirements are included in any applicable facility permit. A detailed list of the applicable authorities and regulations is provided in the TSD in the docket to this action. Arkansas’ SIP contains enforceable emission limits and other control measures, which are also in the federally enforceable SIP.

(B) Ambient air quality monitoring/data system: The SIP must provide for establishment and implementation of ambient air quality monitors, collection and analysis of ambient air quality data, and providing such data to EPA upon request.

The SIP-approved APC&EC Regulation 19, Chapter 3 allows the Arkansas Department of Environmental Quality (ADEQ) to collect air monitoring data, quality-assure the results, and report the data. Arkansas’ Statewide Air Quality Surveillance Network was approved by EPA on August 6, 1981 (46 FR 40005) and consists of stations that measure ambient concentrations of the six criteria pollutants. ADEQ maintains and operates a monitoring network to measure levels of ozone, as well as other pollutants, in accordance with EPA regulations specifying siting and monitoring requirements. All monitoring data is measured using EPA approved methods and subject to the EPA quality assurance requirements. ADEQ submits all required data to us, following the EPA regulations. The monitoring network was approved into the SIP and it

undergoes annual review by EPA.¹⁰ In addition, ADEQ submits an assessment of its monitoring network every five years, as required by EPA rules. The most recent of these annual monitoring network assessments was submitted by ADEQ and approved by us on November 12, 2019. The most recent of the five-year monitoring assessments was submitted by ADEQ and approved by us on July 22, 2016. The ADEQ website provides the monitor locations and posts past and current concentrations of criteria pollutants measured by the State's network of monitors.¹¹

(C) Program for enforcement of control measures: The SIP must include the following three elements: (1) A program providing for enforcement of the measures in CAA section 110(a)(2)(A); (2) a minor new source review (NSR) program for the regulation of new and modified minor stationary sources and minor modifications of new major stationary sources as necessary to protect the applicable NAAQS; and (3) a major stationary source permit program to meet the prevention of significant deterioration (PSD) permitting requirements of the CAA (for areas designated as attainment or unclassifiable for the NAAQS in question). Each of these elements is described in more detail in the TSD for this action.

(1) Enforcement of SIP measures: The state must provide a program for enforcement of the necessary control measures described in subparagraph (A).

As discussed previously, the AWAPCA provides the ADEQ with authority to enforce the State's environmental quality rules. The ADEQ established rules governing emissions of the NAAQS and their precursors throughout the state, and these rules are in the federally-enforceable SIP. The rules in Regulation 19, Chapters 1, 3–5, 7–10, 13 and 14; Regulation 26, Chapters 3 and Regulation 31, Chapters 1, 3, 4 and 8 include allowable rates, compliance,

¹⁰A copy of the 2019 Annual Air Monitoring Network Plan and our approval letter, as well as the most recent five - year assessment and approval letter, are included in the docket for this proposed rulemaking.

¹¹ https://www.adeg.state.ar.us/techsvs/air_chem_lab/ozone_monitors.aspx?desktop_version=y

control plan requirements, monitoring and testing requirements, recordkeeping and reporting requirements, and control schedules. These rules set the boundaries beyond which regulated entities in Arkansas can expect enforcement action.

To meet the CAA requirement for having a program for the regulation of the modification and construction of any stationary source within the areas covered by the plan as necessary to assure that national ambient air quality standards are achieved—including a permit program as required by Parts C and D—generally, the State is required to have SIP-approved PSD, Nonattainment, and Minor NSR permitting programs adequate to implement the 2015 O₃ NAAQS. As explained in section I above and footnote 5, we are not evaluating nonattainment-related provisions—such as the Nonattainment NSR program required by part D in section 110(a)(2)(C) and measures for attainment required by section 110(a)(2)(I), as part of the infrastructure SIPs for these NAAQS—because these submittals are required beyond the date (3 years from NAAQS promulgation) that CAA section 110 infrastructure submittals are required.

(2) *Minor New Source Review (NSR)*. The SIP is required to include measures to regulate construction and modification of minor stationary sources and minor modifications to major stationary sources to protect the NAAQS. The Arkansas minor NSR permitting requirements are approved as part of the SIP.¹² Arkansas' minor source permitting requirements are contained at APC&EC Regulation 19, Chapter 4 and revisions to the rule were previously approved by EPA at 72 FR 18394 (April 12, 2007) and 83 FR 30553 (June 29, 2018). The SIP continues to require preconstruction permits for minor sources and minor modifications.

¹² EPA is not proposing in this action to approve or disapprove the existing Arkansas minor NSR program to the extent that it may be inconsistent with EPA's regulations governing this program. EPA has maintained that the CAA does not require that new infrastructure SIP submissions correct any defects in existing EPA-approved provisions of minor NSR programs for EPA to approve the infrastructure SIP for element C, program for enforcement of control measures (*e.g.*, 76 FR 41076–41079). The statutory requirements of section 110(a)(2)(C) of the Act provide for considerable flexibility in designing minor NSR programs. See the TSD for more information.

(3) *PSD permit program for major stationary sources.* The Arkansas PSD portion of the SIP covers all NSR regulated pollutants including the requirements for the 2015 O₃ NAAQS. See the TSD to this proposal for a full history on the state's PSD permitting program.

(D) *Interstate and international transport:* The requirements for interstate transport of O₃ emissions are that the SIP contain adequate provisions prohibiting Arkansas emissions which will (1) contribute significantly to nonattainment of the NAAQS, (2) interfere with maintenance of the NAAQS, (3) interfere with measures required to prevent significant deterioration or (4) interfere with measures to protect visibility (CAA section 110(a)(2)(D)(i)) in other states. As noted earlier, EPA often refers to these four requirements within CAA section 110(a)(2)(D)(i) as prongs or sub-elements. We are not evaluating prongs 1, 2, and 4 in this rulemaking action, but will address them in separate actions. However, we are proposing to approve prong 3 of CAA section 110(a)(2)(D)(i), because the Arkansas has a SIP-approved PSD permitting program that regulates all NSR pollutants, and thus, prevents interference with measures required to prevent significant deterioration in other states.

Section 110(a)(2)(D)(ii) of the CAA requires SIPs to include adequate provisions to ensure compliance with sections 115 and 126 of the Act, relating to international and interstate pollution abatement. Section 115 of the Act addresses endangerment of public health or welfare in foreign countries from pollution emitted in the United States. There are no final findings by the EPA that Arkansas air emissions affect other countries. Section 126(a) of the Act requires new or modified sources to notify neighboring states of potential impacts from such sources. The Arkansas SIP requires that each major proposed new or modified source provide such notification. The State also has no pending obligations under CAA section 126. See the TSD for more detail.

(E) Adequate authority, resources, implementation, and oversight: The SIP must provide for the following: (1) Necessary assurances that the state (and other entities within the state responsible for implementing the SIP) will have adequate personnel, funding, and authority under state or local law to implement the SIP, and that there are no legal impediments to such implementation; (2) requirements relating to state boards; and (3) necessary assurances that the state has responsibility for ensuring adequate implementation of any plan provision for which it relies on local governments or other entities to carry out that portion of the plan. As discussed in previously in the discussion of elements (A) and (E), the requirement that there is adequate authority to implement and enforce the SIP and that there are no legal impediments are addressed. The i-SIP submission for the 2015 O₃ NAAQS describes the SIP regulations governing the various functions of personnel within the ADEQ, including the administrative, technical support, planning, enforcement, and permitting functions of the program. With respect to necessary assurances, and the requirement to address funding, Arkansas has authority to establish and collect fees for operation of the state's permitting programs. Ark. Code Ann. section 8-1-103(1)(A) grants APC&EC the authority to establish, by regulation, reasonable fees for initial issuance, annual review, and modification of permits. Under Ark. Code Ann. section 8-1-103(3), ADEQ is authorized to collect the fees established by APC&EC and shall deny the issuance of an initial permit, a renewal permit, or a modification permit if and when a facility fails or refuses to pay the fees after reasonable notice. APC&EC Regulation 9, Fee Regulation, Chapter 5 Air Permit Fees, contains the air permit fees applicable to non-part 70 permits, part 70 permits and general permits. More specific information on permitting fees is provided in the TSD.

With respect to authority and personnel, Ark. Code Ann. section 8–1–202(b)(2)(D) states that the Director of ADEQ’s duties include the day-to-day administration of all activities that the Department is empowered by law to perform, including, but not limited to, the employment and supervision of such technical, legal, and administrative staff, within approved appropriations, as is necessary to carry out the responsibilities vested with ADEQ. The AWAPCA provides the ADEQ adequate authority, in part “to administer and enforce all laws and regulations relating to pollution of the air.” Ark. Code Ann. section 8–4–311(7). APC&EC Regulation 19.301 gives ADEQ the responsibility of meeting all applicable regulations and requirements contained in the CAA, as amended, if any area of the state is determined to be in violation of the NAAQS. APC&EC Regulation 19.410 gives ADEQ the authority to revoke, suspend, or modify any permit for cause. For further details, please refer to the TSD.

CAA section 110(a)(2)(E)(ii) requires that the State’s SIP comply with CAA section 128, which requires: (1) That the majority of the members of the state body that approves permits or enforcement orders do not derive any significant portions of their income from entities subject to permitting or enforcement orders under the CAA; and (2) any potential conflicts of interest by such body be adequately disclosed. In 1982, the EPA approved the State’s SIP submittal to demonstrate compliance of the SIP with Section 128 of the CAA. 47 FR 19136 (May 4, 1982). The submittal cited AWAPCA section 82–1901 as demonstrating compliance with CAA section 128(a)(1) and cited Arkansas Code of Ethics Law Act 570 of 1979, Section 3: Use of Public Office to Obtain Special Privilege Prohibited; Section 4: Use and Disclosure of Information — Acquired by Reason of Office Activities Requiring Disclosure; Section 5: Requirement to File Statement and Section 6: Statements Period Retained Public Access Signature Required.

Under APC&EC Regulation 8.202, the Director or the Director's delegate shall issue all permits with nothing in APC&EC Regulation 8 being construed to authorize APC&EC to issue a permit, including the power to reverse or affirm a permitting decision by the Director. Under Ark. Code Ann. section 21-8-1001, no member of a state board or commission or board member of an entity receiving state funds shall participate in, vote on, influence or attempt to influence an official decision if the member has pecuniary interest in the matter under consideration by the board, commission, or entity. In addition, no member of a state board or commission or board member of an entity receiving state funds shall participate in any discussion or vote on a rule or regulation that exclusively benefits the member. As required by the CAA, the SIP stipulates that any board or body, which approves permits or enforcement orders, must have at least a majority of members who represent the public interest and do not derive any "significant portion" of their income from persons subject to permits and enforcement orders or who appear before the board on issues related to the CAA. The members of the board or body, or the head of an agency with similar powers, are required to adequately disclose any potential conflicts of interest. While the ADEQ has no board or commission, the ADEQ submitted a letter dated January 19, 2012, that clarified that the Director of the ADEQ is considered the "the head of an executive agency with similar powers," and must meet the requirement to adequately disclose any potential conflicts of interest. The requirements of CAA section 110(a)(2)(E)(iii) concerning local governments or other entities, are not applicable to Arkansas because it does not rely on local agencies for specific SIP implementation.

(F) Stationary source monitoring system: The SIP must provide for the establishment of a system to monitor emissions from stationary sources and to submit periodic emission reports. It must require the installation, maintenance, and replacement of equipment, and the

implementation of other necessary steps, by owners or operators of stationary sources, to monitor emissions from such sources. The SIP shall also require periodic reports on the nature and amounts of emissions and emissions-related data from such sources and require that the state correlate the source reports with emission limitations or standards established under the CAA. These reports must be made available for public inspection at reasonable times.

The relevant regulatory requirements have been codified in APC&E Regulation 19, Regulations of the Arkansas Plan of Implementation for Air Pollution Control, Chapter 7 (pertaining to sampling and testing). Provisions in APC&EC Chapter 7, Regulation 19.705 provide for the reporting of emissions inventories in a format established by the ADEQ on a schedule set forth in that section. In addition, APC&EC Regulation 19.705 requires the submission of emission statements as required by the CAA. Area, mobile, and non-road data are required to be reported on a three-year cycle.

Enforceable emission limitations and other control measures are covered in the Arkansas Water and Air Pollution Control Act and those provisions of Ark. Code Ann. sections 8-4-310 and 8-4-311. Elements of the program for enforcement are found in the monitoring, recordkeeping and reporting requirements for sources in these control measures as well as individual SIP permits.

More detail and links to Arkansas' emissions data are provided in the TSD for this action.

(G) Emergency authority: The SIP must provide for authority to address activities causing imminent and substantial endangerment to public health or welfare or the environment and to include contingency plans to implement such authorities as necessary.

Ark. Code Ann. section 8-1-202(b)(2)(C) empowers the ADEQ to issue orders under circumstances that reasonably require emergency measures to be taken to protect the

environment or the public health and safety. APC&EC Regulation 8.502 requires ADEQ to publish a Notice of Emergency Order in a newspaper covering the affected area, or in a newspaper of statewide circulation. The notice must contain a description of the action, ADEQ's authority for taking the action and other information appropriate to ensure the public is informed about the action. Ark. Code Ann. section 8-4-202(e)(1) empowers APC&EC to declare an emergency and implement emergency rules, regulations, suspensions, or moratoria on categories or types of permits if APC&EC determines that imminent peril to the public health, safety, or welfare requires immediate change in the rules or immediate suspension or moratorium on categories or types of permits. APC&EC Regulation 8, Administrative Procedures, Regulation 8.807 authorizes the Commission to waive or reduce the notice requirements in cases involving emergency rulemaking. No emergency rule shall be effective for more than 180 days.

(H) Future SIP revisions: States must have the authority to revise their SIPs in response to changes in the NAAQS, availability of improved methods for attaining the NAAQS, or in response to an EPA finding that the SIP is substantially inadequate to attain the NAAQS.

The AWAPCA, Section 82-1935(1), empowers the APC&EC to "formulate and promulgate, amend, repeal, and enforce rules and regulations implementing or effectuating the powers and duties of the Commission [. . .] to control air pollution". Therefore, Arkansas has the authority to revise its SIP as may be necessary to take into account revisions of primary or secondary NAAQS, or the availability of improved or more expeditious methods of attaining such standards. Furthermore, Arkansas also has the authority under the AWAPCA provisions to revise its SIP in the event the EPA (pursuant to the Act) finds the SIP to be substantially inadequate to attain the NAAQS. APC&EC Regulation 19, Regulations of the Arkansas Plan of Implementation for Air Pollution Control, Chapter 1, provides a clear delineation of those

regulations that are promulgated by APC&EC in satisfaction of certain requirements of the CAA. Ark. Code Ann. section 8–4–311(a)(7) empowers ADEQ to administer and enforce all laws and regulations relating to pollution of the air. Ark. Code Ann. section 8–4–202(d)(4)(A)(ii) authorizes APC&EC to refer to the Code of Federal Regulations for any APC&EC standard or regulation that is identical to a regulation promulgated by the EPA. The APC&EC’s Regulation 19, Regulations of the Arkansas Plan of Implementation for Air Pollution Control, Chapter 1, demonstrates that those regulations that are promulgated by the Commission satisfy the requirements of this provision of the CAA.

(I) Nonattainment areas: CAA section 110(a)(2)(I) requires that in the case of a plan or plan revision for areas designated as nonattainment, states must meet applicable requirements of part D of the CAA, relating to SIP requirements for designated nonattainment areas. EPA does not expect infrastructure SIP submissions to address CAA section 110(a)(2)(I). The specific SIP submissions for designated nonattainment areas, as required under CAA title I, part D, are subject to different submission schedules than those for section 110 infrastructure elements. Instead, EPA will act on any part D nonattainment plan SIP submissions through a separate rulemaking process governed by the requirements for nonattainment areas, as described in part D.¹³

(J) Consultation with government officials, public notification, PSD and visibility protection: The SIP must meet the following three CAA requirements: (1) section 121, relating to interagency consultation regarding certain CAA requirements; (2) section 127, relating to public notification of NAAQS exceedances and related issues; (3) prevention of significant deterioration of air quality; and (4) visibility protection.

¹³ Arkansas does not presently have any designated ozone nonattainment areas.

Under APC&EC Regulation 19, Chapter 9, Arkansas has incorporated by reference the requirements in 40 CFR part 52 for PSD in their entirety, with the exception of 40 CFR 52.21(b)(2)(iii)(a), 52.21(b)(49), 52.21(b)(50), 52.21(b)(55–58), 52.21(i) and 52.21(cc). These provisions were approved by EPA as part of the federally-approved SIP. These incorporated provisions also provide for protection of visibility in Federal Class I areas. All new major sources and major modifications are subject to a comprehensive EPA-approved PSD permitting program, including GHG PSD permitting that was approved on April 2, 2013 (78 FR 19596) and PM2.5 PSD permitting approved on March 4, 2015 (80 FR 11573). Chapter 9 of APC&EC Regulation 19 authorizes enforcement of regulations governing the prevention of significant deterioration of air quality and regulations governing the protection of visibility in mandatory Federal Class I areas. The visibility sub-element of Element J is not being addressed because as EPA stated in a September 13, 2013 “Guidance on Infrastructure State Implementation Plan Elements under CAA sections 110(a)(1) and 110(a)(2),” we believe that there are no newly applicable visibility protection obligations pursuant to Element J after the promulgation of new or revised NAAQS.

(1) Consultation With Identified Official on Certain Actions: The i-SIP needs to show that there is an established process for consultation with general purpose local governments, designated organization of elected officials of local governments, and any federal land manager having authority over federal land to which the plan applies, consistent with CAA section 121, which lists the specific types of actions for which consultation is required. If the relevant statute is self-executing such that there is no associated regulation or other documents, then the statute would need to be included in the SIP. If a regulation or other document meeting the CAA requirements exists, then the regulation or other document would need to be included in the SIP

submission, and the authorizing statute should be referenced but the statute is not required to be part of the EPA approved SIP. Under the requirements of 40 CFR 51.240, the SIP would need to identify organizations “that will participate in developing, implementing, and enforcing the plan and the responsibilities of such organizations.” The plan should include any agreements or memoranda of understanding among the organizations. The AWAPCA, as codified under Ark Code Ann. section 8–1–203 provides that the APC&EC “shall meet regularly in publicly noticed open meetings to discuss and rule upon matters of environmental concern” prior to the adoption of any rule or regulation implementing the substantive statutes charged to the ADEQ for administration. In addition, Ark. Code Ann. section 8–4–311(a)(2) provides that the ADEQ or its successor shall have the power and duty “to advise, consult, and cooperate with other agencies of the state, political subdivisions, industries, other states, the Federal Government, and with affected groups in the furtherance of the purposes of this chapter.” Further, Regulation 19.904(D) provides that ADEQ shall make determinations that a source may affect air quality or visibility in a mandatory Class I federal area based on screening criteria agreed upon by the ADEQ and the Federal Land Manager.¹⁴

(2) *Public Notification:* The i-SIP submission needs to demonstrate that the air agency does regularly notify the public of instances or areas in which the new or revised primary NAAQS was exceeded; it needs to advise the public of health hazards associated with such exceedances and of ways in which the public can participate in regulatory and other efforts to improve air quality. Public notification begins with the air quality forecasts, which advise the public of conditions capable of exceeding the 8-hour ozone¹⁵ and PM2.5 NAAQS. The air quality forecasts can be found on the ADEQ Website: For 8- hour ozone and PM2.5, the forecast

¹⁴ See 72 FR 18394 (April 12, 2007).

¹⁵ The ADEQ forecasts for 8-hour ozone are based on the 2015 ozone standard, which is 70 ppb.

includes two regions in the State. Ozone forecasts are made daily during the ozone season for each of the forecast areas.¹⁶ The ozone forecasts are made, in most cases, a day in advance by 2:00 p.m. local time and are valid for the next day. When the forecast indicates that ozone levels will be above the 8-hour ozone standard, the ADEQ and the Arkansas Department of Health issue an Ozone Health Advisory. In addition, the State implements an Ozone Action Day (OAD) program¹⁷ and will issue an ozone alert in the afternoon on the day before an elevated level of ozone is expected to occur. Announcements for an OAD will be broadcast through television and other news media, and to employers participating in the OAD program. The OAD program includes examples of actions that can be implemented by individuals and organizations to reduce ozone levels and exposure to ozone. Also, through the Metroplan website, the public can subscribe to an electronic information system that provides air quality forecast and ozone alert information via email. Ozone data are posted on the ADEQ website; current, regional hourly and regional 8-hour ozone data are posted hourly (See http://www.adeq.state.ar.us/techsvs/air_chem_lab/ozone_monitors.aspx). Provisions regarding public availability of emission data were also approved into the Arkansas SIP on April 12, 2007 (72 FR 18394).

(3) PSD: CAA section 110(a)(2)(J) requires Arkansas to meet the applicable requirements of Part C, PSD. The state has a comprehensive EPA approved PSD permitting program, including GHG PSD permitting, in the Arkansas SIP. The PSD requirements for this

¹⁶ Ozone is a gas composed of three oxygen atoms. Ground level ozone is generally not emitted directly from a vehicle's exhaust or an industrial smokestack but is created by a chemical reaction between NOX and VOCs in the presence of sunlight and high ambient temperatures. Thus, ozone is known primarily as a summertime air pollutant. For Arkansas, the ozone season runs from March 1 through November 31 (see 40 CFR 58, APPENDIX D, Table D-3). The Arkansas air quality control regions are defined at 45 FR 6571 (January 29, 1980).

¹⁷ The 2 forecast areas for 8-hour ozone and PM2.5 are Little Rock and Springdale. See https://www.adeq.state.ar.us/techsvs/air_chem_lab/ozone_monitors.aspx and https://www.adeq.state.ar.us/techsvs/air_chem_lab/pm_monitors.aspx.

sub-element are much the same as those addressed earlier under CAA section 110(a)(2)(C), *Program for enforcement of control measures.*

(4) *Visibility Protection:* The ADEQ SIP requirements relating to visibility protection are not affected when EPA establishes or revises a NAAQS. Therefore, EPA believes that there are no new visibility protection requirements due to the revision of the NAAQS, and consequently there are no newly applicable visibility protection obligations.

(K) *Air quality and modeling/data:* The SIP must provide for performing air quality modeling, as prescribed by EPA, to predict the effects on ambient air quality of any emissions of any NAAQS pollutant, and for submission of such data to EPA upon request.

APC&EC Regulation 19, Chapter 3, requires that ADEQ conduct ambient air monitoring and computer modeling of regulated air pollutant emissions in any area that can reasonably be expected to be in excess of the NAAQS and to review the ambient air impacts of any new or modified source of federally regulated air emission that is the subject of the requirements of the SIP. See APC&EC Regulation 19.302(A) and (B). Under APC&EC Regulation 19.302(B), all computer modeling shall be performed using EPA-approved models and using averaging times commensurate with averaging times stated in the NAAQS. ADEQ has the ability to submit data related to air quality modeling to the EPA under Ark. Code Ann. section 8-4-311(a)(2) which gives ADEQ the power to advise, consult, and cooperate with the Federal Government. Modeling and emissions reductions measures have been submitted by Arkansas and approved into the SIP. For example, we reference the air modeling and emissions reductions data submitted within the Crittenden County Economic Development Zone SIP revisions, as well as the demonstration of maintenance of the 2008 8-hour ozone standard in Crittenden County. 81

FR 24030 (April 25, 2016). The measures in these SIPs were approved by EPA and adopted into the SIP.

The ADEQ has the power and duty, to conduct air quality research and assessments, including the causes, effects, prevention, control and abatement of air pollution. Past modeling and emissions reductions measures have been submitted by the State and approved into the SIP. Additionally, ADEQ can perform modeling for primary and secondary NAAQS on a case-by-case permit basis consistent with their SIP approved PSD rules and with EPA guidance.

(L) Permitting Fees: The SIP must require each major stationary source to pay permitting fees to the permitting authority, as a condition of any permit required under the CAA, to cover the cost of reviewing and acting upon any application for such a permit, and, if the permit is issued, the costs of implementing and enforcing the terms of the permit. The fee requirement applies until a fee program established by the state pursuant to Title V of the CAA, relating to operating permits, is approved by EPA.

Arkansas' statutes give ADEQ the authority to establish permit fees and adjust them as necessary. APC&EC Regulation No 26, Chapter 11 meets the CAA requirements for Title V permitting fee programs and Regulation No. 9, Chapter 5 contains the air permit fees applicable to non-part 70 permits and general permits.¹⁸ The ADEQ has adequate authority to hire and compensate employees; accept and administer grants or other funds; establish an emissions fee schedule for sources in order to fund the reasonable costs of administering various air pollution control programs; and authorizes the collection of additional fees necessary to cover reasonable costs associated with processing air permit applications and the costs of implementing and enforcing the terms and provisions of the permits. The state has in place fee programs for major

¹⁸ Last approved by EPA at 83 FR 6471, February 14, 2018.

and minor sources of air pollution, as well as an area source operating fee program that covers other sources in the state.

(M) Consultation/participation by affected local entities: The SIP must provide for consultation and participation by local political subdivisions affected by the SIP.

See the earlier discussions for CAA sections 110(a)(2)(J), sub-elements (1) and (2) for a description of the SIP's public participation process, the authority to advise and consult, and the PSD SIP's public participation requirements. Ark. Code. Ann. section 8-1-203 provides that the APC&EC shall meet regularly in publicly noticed open meetings to discuss and rule upon matters of environmental concern prior to the adoption of any rule or regulation implementing the substantive statutes charged to the ADEQ for administration.

Additionally, the state noted that pursuant to APC&EC Regulation 8, Arkansas will continue to provide for consultation and participation from those affected by the SIP. Under APC&EC Regulation 8, those organizations affected by the SIP will be able to participate in developing the SIP via comments and potential public hearings. ADEQ is the sole state-level enforcer and implementer of the SIP. See APC&EC Regulation 8.205 *Public Notice of Permit Application*; APC&EC Regulation. 8.206 *Request for Public Hearing on Application for Permit*; APC&EC Regulation 8.207 *Public Notice of Draft Permitting Decision*; APC&EC Regulation. 8.208 *Public Comment on Draft Permitting Decision*; APC&EC Regulation 8.209 *Public Hearings*; APC&EC Regulation 8.405 *Public Notice of Notices of Violations and Consent Administrative Orders*; APC&EC Regulation 8.801 *Public Notice of Rulemaking*.

ADEQ participates in the Central State Air Resources Agencies, which is an organization of states, tribes, federal agencies and other interested parties concerned with air quality. The

interactions and public participation on rule and plan development are consistent with the requirements of CAA section 110(a)(2)(M).

Modifications to Regulation 19, Definitions and Regulation 19, Appendix B

As part of the state’s implementation of the 2015 O₃ NAAQS, the State modified their Regulation 19 definition of “National Ambient Air Quality Standards” to include the 2015 O₃ NAAQS. The State also made the same change to the table entitled “Appendix B: National Ambient Air Quality Standard List” of Regulation 19. The APC&EC adopted these changes on September 27, 2019 and submitted them for inclusion into the state SIP along with the 2015 O₃ i-SIP elements. We find these changes are appropriate and will enable the State to implement the 2015 O₃ NAAQS. We are proposing to approve the changes to Regulation 19, Definitions, and the change to Regulation 19, Appendix B, into the Arkansas SIP.

III. Proposed Action

EPA is proposing to approve portions of the October 25, 2018, Arkansas i-SIP submittal for the 2015 ozone NAAQS as detailed in Table 1, below. The portions of the submittal dealing with CAA section 110(a)(2)(D)(i)(I), prongs 1 and 2, Significant Contribution to Nonattainment and Interference with Maintenance in other States, and CAA section 110(a)(2)(D)(i)(II), prong 4, Interference with Visibility Protection in other States will be addressed in separate, future actions.

Table 1: Proposed Action on Arkansas Infrastructure and Transport SIP Submittals for the 2015 Ozone NAAQS

Element	Proposed Action
(A): Emission limits and other control measures	A
(B): Ambient air quality monitoring and data system	A
(C)(i): Enforcement of SIP measures	A
(C)(ii):PSD program for major sources and major modifications	A
(C)(iii): Permitting program for minor sources and minor modifications	A
(D)(i)(I): Contribute to nonattainment/interfere with maintenance of NAAQS (prongs 1 and 2)	SA

(D)(i)(II): PSD (prong 3)	A
(D)(i)(II): Visibility Protection (prong 4)	SA
(D)(ii): Interstate and International Pollution Abatement	A
(E)(i): Adequate resources	A
(E)(ii): State boards	A
(E)(iii): Necessary assurances with respect to local agencies	A
(F): Stationary source monitoring system	A
(G): Emergency power	A
(H): Future SIP revisions	A
(I): Nonattainment area plan or plan revisions under part D	+
(J)(i): Consultation with government officials	A
(J)(ii): Public notification	A
(J)(iii): PSD	A
(J)(iv): Visibility protection	+
(K): Air quality modeling and data	A
(L): Permitting fees	A
(M): Consultation and participation by affected local entities	A

Key to Table 1:

A: Proposing to Approve

+: Not germane to infrastructure SIPs

SA: EPA is acting on this infrastructure requirement in a separate rulemaking action.

Based upon review of the State’s infrastructure SIP submission and relevant statutory and regulatory authorities and provisions referenced in this submission or referenced in the EPA-approved Arkansas SIP, EPA believes that Arkansas has the infrastructure in place to address all applicable required elements of CAA sections 110(a)(1) and (2), except as noted above, to ensure that the 2015 O₃ NAAQS is implemented in the State.

We are also proposing to approve the submitted changes to Regulation 19 Definitions and Appendix B that reference the 2015 ozone NAAQS.

IV. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA’s role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely proposes to approve state

law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a “significant regulatory action” subject to review by the Office of Management and Budget under Executive 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 2, 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 (Pub. L. 104–4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and

- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

The SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the proposed 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, Air pollution control, Incorporation by reference, Ozone.

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

Dated: June 16, 2020.

Kenley McQueen,

Regional Administrator, Region 6.

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