



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R06-OAR-2017-0435; FRL-9967-51-Region 6]

Approval and Promulgation of Implementation Plans; Arkansas; Revisions to Minor New Source Review Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: Pursuant to the Federal Clean Air Act (CAA or the Act), the Environmental Protection Agency (EPA) is proposing to approve revisions to the Arkansas State Implementation Plan (SIP) minor New Source Review (NSR) program submitted on July 26, 2010, and March 24, 2017, including supplemental information provided on November 30, 2015, May 26, 2016, and July 27, 2017. Specifically, we are proposing to approve revisions that revise the minor NSR permitting thresholds and *de minimis* levels, as well as, additional non-substantive revisions. This proposed action is consistent with the requirements of section 110 of the CAA.

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-2017-0435, at <http://www.regulations.gov> or via email to mohr.ashley@epa.gov. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from Regulations.gov. 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 Ashley Mohr, 214-665-7289, mohr.ashley@epa.gov. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <http://www2.epa.gov/dockets/commenting-epa-dockets>.

Docket: The index to the docket for this action is available electronically at www.regulations.gov and in hard copy at the EPA Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas. While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (e.g., copyrighted material), and some may not be publicly available at either location (e.g., CBI).

FOR FURTHER INFORMATION CONTACT: Ashley Mohr, 214-665-7289, mohr.ashley@epa.gov. To inspect the hard copy materials, please schedule an appointment with Ms. Ashley Mohr or Mr. Bill Deese at 214-665-7253.

SUPPLEMENTARY INFORMATION: Throughout this document wherever “we,” “us,” or “our” is used, we mean the EPA.

I. Background

The EPA is proposing approval of SIP revisions submitted by Arkansas on July 26, 2010, and March 24, 2017. The proposed revisions addressed in this action modify the Chapter 4 minor New Source Review rules enacted at Regulation Number 19 (Reg. 19), specifically the following

provisions are addressed in this action: Reg. 19.401, 19.407(C)(2)(a) and (b), and 19.417. The revisions include revisions to the minor NSR permitting thresholds and *de minimis* levels.

Our proposed approval of the revisions to the minor NSR permitting thresholds and *de minimis* levels does not remove, nor reduce, the federal and SIP approved requirements that each NSR permitting action authorizing emissions greater than the permitting thresholds provide an opportunity for the public to review and comment on the information submitted by the permit applicant. Nor does our action remove or reduce the federal and SIP approved requirements that as part of these permitting actions the public also have an opportunity to review and comment on the required Arkansas Department of Environmental Quality's (ADEQ) analysis and determination that the construction or modification of the facility will not interfere with attainment or maintenance of a national ambient air quality standard (NAAQS). Our action also does not remove the requirement that ADEQ's approval of all minor NSR permit actions include a technical analysis and determination that the change will not interfere with NAAQS attainment or maintenance.

A. *July 26, 2010 Submittal*

On July 26, 2010, Arkansas submitted revisions to the SIP that included changes to the Regulations of the Arkansas Plan of Implementation for Air Pollution Control enacted at Reg. 19, Chapters 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 13, 14, 15, and Appendix A. These revisions were adopted by the Arkansas Pollution Control & Ecology Commission on December 5, 2008, and became effective on January 25, 2009.

The EPA is proposing to take action only on the revisions to Chapter 4, Reg. 19.401, 19.407(C)(2)(a) and (b), and 19.417 contained in the July 26, 2010 submittal. The EPA has already taken action on other elements of this submittal as follows: 1) Regulation 19, Chapter 1,

approved by EPA on 4/3/2015 (See 80 FR 11573); 2) Regulation 19, Chapter 2, approved by EPA on 4/3/2015 (See 80 FR 11573); 3) Regulation 19, Chapter 5, approved by EPA on 4/3/2015 (See 80 FR 11573); 4) Regulation 19, Chapter 6, approved by EPA on 4/3/2015 (See 80 FR 11573); 5) Regulation 19, Chapter 7, approved by EPA on 4/3/2015 (See 80 FR 11573); 6) Regulation 19, Chapter 9, approved by EPA on 4/2/2013 (see 78 FR 19596); 7) Regulation 19, Chapter 10, approved by EPA on 4/3/2015 (See 80 FR 11573); 8) Regulation 19, Chapter 11, approved by EPA on 4/3/2015 (See 80 FR 11573); 9) Regulation 19, Chapter 13, approved by EPA on 4/3/2015 (See 80 FR 11573); 10) Regulation 19, Chapter 14, approved by EPA on 4/17/2014 (see 79 FR 21631); and 11) Regulation 19, Chapter 15, approved by EPA on 3/12/2012 (see 77 FR 14604). The EPA will address in a future action the remaining portions of the July 26, 2010 submittal, which are not directly related to the minor NSR permitting thresholds and *de minimis* levels.

B. March 24, 2017 Submittal

On March 24, 2017, Arkansas submitted revisions to the SIP that included changes to the Regulations of the Arkansas Plan of Implementation for Air Pollution Control enacted at Reg. 19, Chapters 1, 2, 3, 4, 5, 7, 9, 11, 13, 14, 15, Appendix A and Appendix B. These revisions were adopted by the Arkansas Pollution Control & Ecology Commission on February 26, 2016, and became effective on March 14, 2016.

The EPA is proposing to take action only on Chapter 4, Reg. 19.401 and 19.407(C)(2)(a) and (b). As necessary, the EPA will address the remaining portions of the March 24, 2017 submittal, which are not directly related to the minor NSR permitting thresholds and *de minimis* levels, as part of separate actions.

A summary of the EPA's evaluation of the submitted revisions and the basis for our proposed approval is included in this rulemaking. The accompanying Technical Support Document (TSD) includes a detailed evaluation of the submittals and our approval rationale. The TSD may be accessed online at www.regulations.gov, Docket No. EPA-R06-OAR-2017-0435. As previously discussed, the portions of July 26, 2010 and March 24, 2017 SIP submittals evaluated in this action are those related to the revised minor NSR permitting thresholds and *de minimis* levels. While the TSD does include a line-by-line evaluation of each revised section addressed in our proposed approval, the following section focuses on the revised permitting thresholds and *de minimis* levels and the EPA's evaluation associated with those revisions.

II. The EPA's Evaluation

A. Revisions to Minor NSR Permitting Thresholds and De Minimis Levels

The Arkansas SIP approved minor NSR program contains permitting thresholds and *de minimis* levels that are applicable to the state's minor NSR permitting program. Both the permitting thresholds and *de minimis* levels serve to exempt certain stationary sources or proposed changes at stationary sources from minor NSR permitting requirements. The permitting thresholds found in Reg. 19.401 serve to determine which stationary sources are required to obtain a minor NSR permit. Any sources with emissions equal to or greater than the specified permitting thresholds are required to obtain a permit. A *de minimis* change, as stated in Reg. 19.407(C), is a change at an existing source that will result in trivial environmental impacts and requires minimal judgement to establish permit requirements for the change. A *de minimis* change is not a title I modification, as stated in the Reg. 19, Chapter 2 definition for "title I modification." The *de minimis* levels found in Reg. 19.407(C)(2) are used to determine if a proposed change at an existing permitted source may qualify as a *de minimis* change under Reg.

19. Under the SIP approved Arkansas minor NSR program, a *de minimis* change is exempt from minor NSR permitting requirements, including public notice requirements, but remains subject to the remaining applicable minor NSR requirements contained in the NSR regulation. For example, in accordance with Reg. 19.407(C)(6) requirements a *de minimis* change must be reviewed and approved by ADEQ prior to implementation by a stationary source. To seek a *de minimis* change approval, the permitted source must submit an application to ADEQ to demonstrate that the proposed change qualifies as *de minimis* and, therefore, qualifies for exemption from minor NSR permitting requirements. ADEQ reviews the application to ensure that the proposed change is *de minimis* and does not include any of the following changes found in Reg. 19.407(C)(4) that do not meet the definition of *de minimis*: (1) any increase in the permitted emission rate without a corresponding physical change or change in the method of operation at the source; (2) any change which would result in a violation of the CAA; (3) any change seeking to change a case-by-case determination of an emission limitation established pursuant to Best Available Control Technology, §112(g), §112(i)(5), §112(j), or §111(d) of the CAA; (4) a change that would result in a violation of any provision of Reg. 19; (5) any change in a permit term, condition, or limit that a source has assumed to avoid an applicable requirement to which the source would otherwise be subject; (6) any significant change or relaxation to existing testing, monitoring, reporting, or recordkeeping requirements; or (7) any proposed change which requires more than minimal judgment to determine eligibility. In addition, multiple applications for *de minimis* changes that are concealing a larger modification would not be considered a *de minimis* change. As required by Reg. 19.405(A)(1), ADEQ also reviews the *de minimis* change applications submitted under Reg. 19, Chapter 4 to ensure that the proposed change at the stationary source will not result in the interference with attainment or maintenance of a NAAQS.

If ADEQ determines that the proposed change does not qualify as *de minimis*, the *de minimis* change application is denied and the source must seek authorization via the appropriate NSR permit modification with public notice and reconstruction requirements. Otherwise if the *de minimis* action is approved by ADEQ, the source can make the proposed change immediately following receipt of the *de minimis* change approval. Any revisions to the existing minor NSR permit that may be necessary as a result of a *de minimis* change will be incorporated by ADEQ as expeditiously as possible as a *de minimis* modification.

As previously stated, both the minor NSR permitting thresholds and *de minimis* levels approaches are approved into the current Arkansas SIP. As part of the submitted SIP revisions, Arkansas is proposing to revise the values for minor NSR permitting thresholds and *de minimis* levels for CO, NO_x, SO₂, VOC, and PM₁₀. In addition, Arkansas is proposing to add minor NSR permitting thresholds for PM_{2.5} and *de minimis* levels for PM and PM_{2.5}, which do not exist in the current SIP approved minor NSR permitting program. The following table summarizes the current and revised minor NSR permitting thresholds and *de minimis* levels.

Table 1 – Current SIP Approved and Revised Minor NSR Permitting Thresholds and *De Minimis* Levels

Pollutant	Minor NSR Permitting Thresholds (tpy)		Minor NSR <i>De Minimis</i> Levels (tpy)	
	Current SIP Approved Value	Revised Value	Current SIP Approved Value	Revised Value
CO	40	75	5	75
NO _x	25	40	5	40
SO ₂	25	40	5	40
VOC	25	40	20	40
PM	None	None	None	25
PM ₁₀	10	15	5	15
PM _{2.5}	None	10	None	10

As shown in the previous table, the revised permitting thresholds and *de minimis* levels are less stringent than the values contained in the current Arkansas SIP. Therefore, as part of our evaluation, we reviewed the proposed revisions, along with supporting information provided by Arkansas, to determine if the proposed revisions to the minor NSR permitting thresholds and *de minimis* levels will interfere with attainment, reasonable further progress or any other applicable requirements of the Act. That evaluation, in accordance with section 110(l) of the Clean Air Act, is discussed in the following section.

ADEQ does require, in accordance with Reg. 18.315, that facilities that are exempt from minor NSR permitting based on the revised permitting thresholds but have emissions greater than the previous SIP approved permitting thresholds register with the Department prior to operation, construction, or modification. In addition, the *de minimis* changes, which are exempt from minor NSR permitting requirements, are required to meet all remaining, applicable minor NSR provisions contained in Reg. 19, Chapter 4, including the requirements for ADEQ's technical review and determination that the proposed change will not interfere with the attainment or maintenance of a NAAQS.

B. Analysis under section 110(l) of the CAA

As part of our evaluation of the July 26, 2010 and March 24, 2017 submittals under section 110(l), we have examined: (1) the scope of impacts resulting from the proposed revisions, (2) the current status of ambient air quality in Arkansas, and (3) the impacts of the revised thresholds on ambient air quality via air monitoring and air modeling data.

As part of the July 26, 2010 SIP revision submittal, ADEQ determined that the number of currently permitted minor NSR facilities statewide that would not be required to be permitted under the revised minor NSR permitting thresholds was twenty (20). ADEQ also determined the

total permitted emissions of CO, NO_x, SO₂, VOC, and PM₁₀ from these 20 facilities and compared those permitted emissions with the statewide emission inventory on a pollutant-by-pollutant basis. On a percentage basis, the emissions that would be exempt from permitting at these 20 facilities based on the revised minor NSR permitting thresholds were 0.006% to 0.125% of the statewide emission totals. On July 27, 2017, ADEQ provided a supplement to the July 2010 and March 2017 SIP revision submittals, which included similar CO, NO_x, SO₂, VOC, and PM₁₀ emissions information for the *de minimis* changes approved for facilities in calendar year (CY) 2016. EPA reviewed the emissions information and determined that the emissions increases associated with the approved *de minimis* changes exempt from minor NSR permitting based on the revised *de minimis* levels were 0.0005% to 0.019% of the statewide emissions inventory. While this analysis was limited to the most recent calendar year, conservative scaling of the CY2016 emissions to account for the approximate 8 ½ years that the revised *de minimis* levels have been effective in the state regulations results in total emissions that are still much less than 1% of the total statewide emissions inventory. In addition, the analysis of the *de minimis* actions did not account for any emissions decreases that occurred as part of the approved *de minimis* changes. As shown in these analyses, the emissions exempted from minor NSR permitting requirements in Arkansas as a result of the revised minor NSR permitting thresholds and *de minimis* levels is limited in scope and makes up a small portion of the statewide emissions inventory.

On November 30, 2015, ADEQ provided supplemental information for the July 26, 2010 SIP revision submittal. The November 30, 2015 supplement included a monitoring trends analysis that examined statewide ambient air quality data since the adoption of the revised minor NSR permitting thresholds and *de minimis* levels in 2008 for CO, NO_x, SO₂, VOC, and PM₁₀.

This supplemental air monitoring trends report is available in the docket and may be accessed online at www.regulations.gov, Docket No. EPA-R06-OAR-2017-0435. With the exception of the ozone DVs at the Springdale, Arkansas monitor located in Washington County, the DVs remain unchanged or show downward trends since the 2008 adoption of the increased minor NSR permitting thresholds and *de minimis* levels. In the November 30, 2015 supplement, ADEQ did further evaluation of the Springdale monitor and determined that the increases in the monitored ozone DVs at this monitor are likely due to the increases in mobile emissions in the Fayetteville-Springdale-Rogers MSA as a result of rapid population growth in that area.¹ Based on the ambient monitoring trend analysis, it does not appear that the increased minor NSR permitting thresholds and *de minimis* levels have negatively impacted ambient air quality or interfered with the attainment of the NAAQS. In fact, for several pollutants the ambient air quality has shown continued improvements as manifested in the decreases in monitored DVs during this period, and currently Arkansas does not have any areas classified as nonattainment for any NAAQS.

In addition to evaluating the scope of sources/emissions exempted from minor NSR permitting requirements and the ambient air monitoring trends following the adoption of the increased permitting thresholds and *de minimis* levels, as described in the March 24, 2017 SIP submittal ADEQ also conducted air quality modeling to examine the impacts of emissions increases at the level of the revised minor NSR permitting thresholds and *de minimis* levels. The modeling analysis was a combined photochemical/dispersion modeling analysis using the Community Multiscale Air Quality (CMAQ) model and the AMS/EPA Regulatory Model Improvement Committee (AERMIC) model (AERMOD). ADEQ employed this combined

¹ ADEQ's November 30, 2015 supplement stated that the population of the Fayetteville-Springdale-Rogers MSA has grown by over 65,000 people in the 2007-2014 timeframe.

modeling approach in an effort to look at both regional and local scale impacts from emissions equal to the revised permitting thresholds and *de minimis* levels for VOC, NO_x, SO₂, CO, PM₁₀, and PM_{2.5}. An air quality modeling report detailing the modeling approaches and associated model results was submitted as part of the March 24, 2017 SIP revision submittal. This report is available in the docket and may be accessed online at www.regulations.gov, Docket No. EPA-R06-OAR-2017-0435. The CMAQ regional modeling was based on a previous statewide modeling effort conducted for the 2008 base year and the 2008/2015 future year scenarios. For the minor NSR thresholds analysis, the future year (2015) emissions inventory was modified to include eight hypothetical point sources that were distributed throughout the state's Air Quality Control Regions. In order to reflect a generic, representative source, the stack parameters for the hypothetical sources were set equal to median values based on the 2011 National Emissions Inventory for Arkansas sources. The emission rates for each of the hypothetical sources were set equal to the minor NSR permitting thresholds/*de minimis* levels. While the regional CMAQ modeling analysis did show increases in modeled concentrations resulting from the addition of the hypothetical sources, the modeled impacts do not show impacts that affect the attainment and maintenance of the NAAQS. To examine local or near-field impacts, additional modeling of the eight hypothetical sources was conducted using AERMOD. Similar to the regional modeling, these sources were modeled with emission rates equal to the minor NSR permitting thresholds/*de minimis* levels and stack parameters were set equal to median stack parameter based on the 2011 NEI data. The daily AERMOD-derived concentrations were added to the CMAQ-derived concentrations for the same location, using the CMAQ values as "background." The values determined for the statewide daily maximum impacts are expected to represent the near-field concentrations assuming worst-case impacts from threshold emission increases at a range of

locations throughout Arkansas. The modeled impacts from the near-field modeling analysis are much less than the NAAQS for all pollutants and averaging periods indicating that near-field impacts associated with emissions equal to the proposed minor NSR thresholds are not expected to result in NAAQS exceedances. As with the CMAQ-only regional modeling, the combined AERMOD/CMAQ modeling analysis does show increases in modeled concentrations throughout the state, and the associated future year DVs are also increased. However, the calculated future year DVs were all less than the associated NAAQS. In addition, most pollutants show decreased DVs in the future year case as compared with the current year DVs.

Based on our evaluation of the analyses conducted by ADEQ to support the proposed minor NSR permitting thresholds and *de minimis* levels, we find that the increases in these values are not expected to interfere with attainment or reasonable further progress or any other applicable requirement of the Act. The scope of affected sources, permit actions, and the associated emissions that would be exempt from minor NSR permitting requirements based on the revised permitting thresholds and *de minimis* levels is a very small fraction of the statewide emissions inventory. In addition, since implementing the increased permitted thresholds/*de minimis* levels in 2008 for CO, VOC, NO_x, SO₂, and PM₁₀, air quality in Arkansas has not been negatively impacted, and in many cases ambient concentrations have shown overall decreasing trends. We also find that the modeling analysis provided by ADEQ further supports the state's finding that sources with emissions less than the revised minor NSR permitting thresholds and *de minimis* levels are not anticipated to have impacts that would cause or contribute to an exceedance of the NAAQS. In addition, *de minimis* changes are still required to meet minor Source Review requirements contained in Reg. 19, Chapter 4 including a demonstration that the proposed modification will not interfere with the attainment or maintenance of a NAAQS on a

case-by-case basis. Therefore, the EPA's evaluation finds that the proposed revisions to the Arkansas SIP related to the revised minor NSR permitting thresholds and *de minimis* levels are consistent with the requirements found in Section 110(l) further supporting our proposed approval of the revisions included in the July 26, 2010 and March 24, 2017 submittals that are evaluated in this action.

III. Proposed Action

The EPA proposes approval of the identified sections of the revisions to the minor NSR permitting program as submitted as revisions to the Arkansas SIP on July 26, 2010, and March 24, 2017, including supplement information submitted on November 30, 2015, May 26, 2016, and July 27, 2017. The EPA has made a determination in accordance with the CAA and the EPA regulations at 40 CFR 51.160-51.165. Therefore, under section 110 and part C of the Act, and for the reasons presented above and in our accompanying TSD, the EPA proposes to approve the following revisions to the Arkansas SIP that submitted on July 26, 2010, and March 24, 2017:

- Revisions to Reg. 19.407 (submitted 07/26/2010 and 03/24/2017);
- Revisions to Reg. 19.407(C)(2)(a) and (b) (submitted 07/26/2010 and 03/24/2017); and
- Revisions to Reg. 19.417 (submitted 07/26/2010).

As previously stated, this proposed action does not remove or modify the existing federal and state requirements that each NSR permit action issued by ADEQ include an analysis completed by the Department and their determination that the proposed construction or modification authorized by the permit action will not interfere with attainment or maintenance of a national ambient air quality standard.

IV. Incorporation by Reference

In this action, we are proposing to include in a final rule regulatory text that includes incorporation by reference. In accordance with the requirements of 1 CFR 51.5, we are proposing to incorporate by reference revisions to the Arkansas regulations as described in the Proposed Action section above. We have made, and will continue to make, these documents generally available electronically through *www.regulations.gov* and/or in hard copy at the EPA Region 6 office.

V. 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, the 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), 13563 (76 FR 3821, January 21, 2011) and 13771 (82 FR 9339, February 2, 2017);
- 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 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).

In addition, 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, Carbon monoxide, Incorporation by reference, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

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

Dated: September 12, 2017.

Samuel Coleman,

Acting Regional Administrator, Region 6.

[FR Doc. 2017-19716 Filed: 9/15/2017 8:45 am; Publication Date: 9/18/2017]