



**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

**[EPA-R03-OAR-2019-0469; FRL-10009-51-Region 3]**

**Approval and Promulgation of Air Quality Implementation Plans;**

**Pennsylvania; Regulatory Updates to Allegheny County Nonattainment New Source Review (NNSR) Permitting Requirements for 2012 Annual Fine Particulate Matter (PM<sub>2.5</sub>) National Ambient Air Quality Standard (NAAQS)**

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

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is approving a state implementation plan (SIP) revision by the Commonwealth of Pennsylvania, on behalf of the Allegheny County Health Department (ACHD), on May 23, 2019. The revision pertains to ACHD's amendments of the ACHD Rules and Regulations, Article XXI (Air Pollution Control) to implement Federal nonattainment new source review (NNSR) provisions for the 2012 annual fine particulate matter (PM<sub>2.5</sub>) national ambient air quality standard (NAAQS). EPA is approving these revisions to the Allegheny County portion of the Pennsylvania SIP in accordance with the requirements of the Clean Air Act (CAA).

**DATES:** This final rule is effective on **[insert date 30 days after date of publication in the Federal Register]**.

**ADDRESSES:** EPA has established a docket for this action under Docket ID Number EPA-R03-OAR-2019-0469. All documents in the docket are listed on the <https://www.regulations.gov> website. Although listed in the index, some information is not publicly available, e.g., confidential business information (CBI) or other information whose

disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available through <https://www.regulations.gov>, or please contact the person identified in the **For Further Information Contact** section for additional availability information.

**FOR FURTHER INFORMATION CONTACT:** Amy Johansen, Permits Branch (3AD10), Air & Radiation Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. The telephone number is (215) 814-2156. Ms. Johansen can also be reached via electronic mail at [johnasen.amy@epa.gov](mailto:johnasen.amy@epa.gov).

**SUPPLEMENTARY INFORMATION:**

**I. Background**

On March 5, 2020 (85 FR 12882), EPA published a notice of proposed rulemaking (NPRM) for Allegheny County, Pennsylvania. In the NPRM, EPA proposed approval of amendments to ACHD Rules and Regulations, Article XXI (Air Pollution Control), sections 2102.06 (Major Sources Locating in or Impacting a Nonattainment Area), and 2101.20 (Definitions), herein referred to as Revision 90A. Specifically, Revision 90A establishes that emissions of volatile organic compounds (VOC) and ammonia are precursors to PM<sub>2.5</sub> for new and modified major sources emitting PM<sub>2.5</sub> in Allegheny County, Pennsylvania; establishes a significant impact level for PM<sub>2.5</sub>; proposes emission offset ratios for emissions of VOC and ammonia as PM<sub>2.5</sub> precursors; and amends relevant definitions. The formal SIP revision was submitted by the Commonwealth of Pennsylvania, on behalf of ACHD, on May 23, 2019.

EPA has revised the NAAQS for PM<sub>2.5</sub> on multiple occasions, most recently in 2012. On December 14, 2012, the annual primary standard for PM<sub>2.5</sub> was lowered from 15 micrograms per

meter cubed ( $\mu\text{g}/\text{m}^3$ ) to  $12 \mu\text{g}/\text{m}^3$ . See 78 FR 3087 (January 15, 2013). The existing 24-hour standards (primary and secondary) were retained at  $35 \mu\text{g}/\text{m}^3$ , as was the annual secondary standard of  $15 \mu\text{g}/\text{m}^3$ . Upon promulgation of the 2012  $\text{PM}_{2.5}$  NAAQS, EPA formally classified all of Allegheny County, Pennsylvania as moderate nonattainment for the 2012 annual  $\text{PM}_{2.5}$  standard. See 80 FR 2206 (January 15, 2015).

For areas designated as nonattainment for one or more NAAQS, the SIP must include preconstruction permit requirements for new or modified major stationary sources of such nonattainment pollutant(s), commonly referred to as “Nonattainment New Source Review.” See CAA section 172(c)(5).

ACHD’s Revision 90A revises NNSR permit requirements for major sources of  $\text{PM}_{2.5}$ . Specifically, ACHD’s Article XXI has been amended to implement additional provisions pertaining to  $\text{PM}_{2.5}$  precursors, as promulgated in EPA’s rule entitled Fine Particulate Matter National Ambient Air Quality Standards: State Implementation Plan Requirements (2016 Implementation Rule). See 81 FR 58010 (August 24, 2016).

As required by EPA’s 2016 Implementation Rule, which implements the D.C. Circuit Court’s January 2013 decision in *NRDC v. EPA*,<sup>1</sup> areas classified as nonattainment for any  $\text{PM}_{2.5}$  NAAQS are required to comply with the provisions of CAA subpart 4 section 189(e) that require the control of major sources of  $\text{PM}_{10}$  precursors (and hence under the court decision,  $\text{PM}_{2.5}$  precursors) “except where the Administrator determines that such sources do not contribute significantly to  $\text{PM}_{10}$  levels which exceed the standard in the area.”<sup>2</sup> With respect the NNSR permitting requirements, the 2016 Implementation Rule therefore amended the definitions in 40 CFR 51.165(a)(1) for (1) “regulated NSR pollutant” with regard to  $\text{PM}_{2.5}$  precursors; (2) “major

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<sup>1</sup> 706 F.3d 428 (D.C. Cir. 2013).

<sup>2</sup> This requirement was codified in 40 CFR 51.165(a)(13). See 81 FR 58010 (August 24, 2016).

stationary source” with regard to major sources locating in PM<sub>2.5</sub> nonattainment areas classified as moderate and serious; and (3) “significant” with regard to emissions of PM<sub>2.5</sub> precursors.

## **II. Summary of SIP Revision and EPA Analysis**

### *A. Summary of SIP Revision*

Article XXI addresses NNSR permit requirements for major sources of PM<sub>2.5</sub>. ACHD’s Revision 90A has been amended to implement additional provisions pertaining to precursors, as promulgated in EPA’s final 2016 Implementation Rule.

### *B. EPA’s Proposed Action*

At proposal, EPA evaluated the revised portions of Article XXI to determine if the revisions meet current applicable requirements for a PM<sub>2.5</sub> NNSR permit program, as revised by EPA’s 2016 Implementation Rule. Section 2102.06 - (1) contains revisions to clarify that Article XXI applies to major polluting facilities that will emit PM<sub>2.5</sub> or its precursors in areas designated as nonattainment for PM<sub>2.5</sub>; (2) the definition of “major facility” has been updated to include a 70 tons per year (tpy) emissions threshold for PM<sub>2.5</sub> and all precursors to PM<sub>2.5</sub>; (3) the definition of “regulated NSR pollutant” has been updated to include sulfur dioxide (SO<sub>2</sub>), VOC, and ammonia as PM<sub>2.5</sub> precursors in all PM<sub>2.5</sub> nonattainment areas; (4) revisions were made to the definition of “significant” to include emission rates for PM<sub>2.5</sub> at 10 tpy and emission rates for PM<sub>2.5</sub> precursors as follows: 40 tpy of SO<sub>2</sub>, 40 tpy of VOC, 40 tpy of ammonia, and 40 tpy of nitrogen oxides (NO<sub>x</sub>); and (5) revisions were made to clarify that under Article XXI, “significance level(s)” shall mean “significant air quality impact” as defined under Article XXI. EPA proposed to find these revisions approvable and consistent applicable requirements for a PM<sub>2.5</sub> NNSR permit program, as revised by the 2016 Implementation Rule.

Section 2102.06(b)(3) - Emission Offsets, establishes offset ratios for VOC and ammonia at a

ratio of 1:1 for flue emissions and fugitive emissions in Allegheny County. EPA also proposed to find the addition of offset ratios to be approvable, as they match what is already in Article XXI for PM<sub>2.5</sub> and NO<sub>x</sub> and SO<sub>2</sub>. Further, Section 2101.20 – Definitions, was amended to add values to the table of “significant air quality impact” levels under 40 CFR 51.165(b)(2) for PM<sub>2.5</sub> at 0.2µg/m<sup>3</sup> for the annual averaging time and 1.2 µg/m<sup>3</sup> for the 24-hour averaging time. As ACHD’s annual averaging time is more stringent than what EPA requires in 40 CFR part 51.165(b)(2), EPA therefore proposed to find this more stringent requirement approvable. Other specific provisions of SIP Revision 90A and the rationale for EPA’s proposed action are explained in the NPRM and its associated technical support document (TSD) and will not be restated here.

### **III. Public Comments and EPA Responses**

EPA received two comments on the March 5, 2020 NPRM. See 85 FR 12882. A summary of the comments and EPA’s responses are discussed in this section of the preamble. A copy of the comments can be found in the docket for this rulemaking action.

*Comment 1:* The first comment stated that EPA should disapprove ACHD’s SIP submission because “it lacks the rules that other public entities are required to meet.” The comment also suggested that “because the commission operates in a more limited capacity and the rules for the governing body are less rigid, the law can be used to prevent Allegheny County from complying with SIP requirements.” The comment also noted that the commission in 2013 acknowledged that it had found a way to have regulators use the agency’s own rules to change a law (during a time period in which SIP went through changes across the nation).” The comment concluded by saying, “the agency never made a recommendation to cancel the vote.”

*Response 1:* The commenter has not identified any information to support its assertion that EPA

should disapprove ACHD's 2012 PM<sub>2.5</sub> NNSR SIP submission. In particular, the commenter failed to identify any rules the Allegheny County SIP lacks or how any provisions adopted by ACHD are inconsistent with the applicable regulatory requirements. The Administrative Procedures Act does not require that EPA change its decision based on unsupported "comments consisting of little more than assertions that in the opinions of the commenters the agency got it wrong," *International Fabricare Institute v. EPA*, 972 F.2d 384 (D.C. Cir. 1992). EPA's review of the 2012 PM<sub>2.5</sub> NNSR SIP submission, as explained in the NPRM and TSD for this rulemaking action, shows that Allegheny County is meeting the applicable requirements found in EPA's regulations, as revised by the 2016 Implementation Rule, and the CAA. To the extent the commenter is alleging concerns with respect to implementation of the SIP, the commenter again provides insufficient details regarding these issues. For example, the commenter does not identify with any specificity what 2013 action it believes is relevant or what vote was allegedly cancelled. More importantly, concerns regarding implementation are outside the scope of EPA's SIP review, which is focused under section 110(k) on whether the submission meets the applicable requirements of the CAA. *See, e.g., Montana Environmental Information Center v. Thomas*, 902 F.3d 971, 978-79 (9<sup>th</sup> Cir. 2018). SIP approval was not arbitrary and capricious where EPA reasonably interpreted submission as facially meeting the applicable requirements despite alleged implementation concerns. Accordingly, the commenter has not identified any basis for EPA to reconsider its approval of Revision 90A into the Allegheny County portion of the Pennsylvania SIP.

*Comment 2:* The second comment stated that EPA must not approve Revision 90A "because Ammonia (sic) is a harmful precursor that is not regulated by EPA." The comment further asserted that EPA does not have the "authority under the Clean Air Act of 1990 to regulate

Ammonia (sic) since it is not a NAAQS pollutant.” Lastly, the comment suggests that EPA should disregard this rulemaking action and move to make ammonia a criteria pollutant, as it is a “dangerous and extremely harmful pollutant.”

*Response 2:* EPA agrees with the commenter’s assertion that ammonia is a precursor pollutant that contributes to the formation of PM<sub>2.5</sub>. See *NRDC*, 706 F.3d at 435, n. 7 (“Ammonia is a precursor to fine particulate matter, making it a precursor to both PM<sub>2.5</sub> and PM<sub>10</sub>.”). However, EPA disagrees with the comment that it does not have the authority to regulate ammonia under the CAA. To the contrary, the D.C. Circuit Court’s *NRDC* decision held that areas classified as nonattainment for any PM<sub>2.5</sub> NAAQS are required to comply with the provisions of CAA subpart 4 section 189(e) that require the control of major stationary sources of precursors except where the Administrator determines that such sources do not contribute significantly to levels which exceed the standard in the area. The NNSR permit program for PM<sub>2.5</sub> thus presumptively applies to emissions of all precursors, including ammonia, as well as direct PM<sub>2.5</sub> emissions from major sources in Allegheny County.<sup>3</sup> This indicates that, contrary to the commenter’s assertion, the CAA does not limit EPA’s authority to only regulating the direct emissions of criteria pollutants for which NAAQS are promulgated. Rather, even though ammonia is not identified under the statute as a criteria pollutant, EPA is not only authorized, but required to regulate ammonia as a PM<sub>2.5</sub> precursor under section 189(e).

EPA’s review of SIP Revision 90A, as explained in the NPRM and TSD for this rulemaking action, shows that Allegheny County is meeting the applicable requirements found in EPA’s

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<sup>3</sup> The provisions of subpart 4, do not define the term “precursor” for purposes of PM<sub>2.5</sub>, nor does subpart 4 explicitly require the control of any specifically identified particulate matter precursor. The statutory definition of “air pollutant,” however, provides that the term “includes any precursors to the formation of any air pollutant, to the extent the Administrator has identified such precursor or precursors for the particular purpose for which the term “air pollutant” is used.” See CAA Section 302(g). EPA has identified the main precursor gases associated with PM<sub>2.5</sub> formation as SO<sub>2</sub>, NO<sub>x</sub>, VOC, and ammonia.

2016 Implementation Rule, which implements the *NRDC* decision, and the CAA. Therefore, EPA is finalizing its approval of Revision 90A.

#### **IV. Final Action**

EPA is approving amendments to ACHD Rules and Regulations, Article XXI (Air Pollution Control), sections 2102.06 (Major Sources Locating in or Impacting a Nonattainment Area), and 2101.20 (Definitions) as a revision to the Allegheny County portion of the Pennsylvania SIP.

#### **V. Incorporation by Reference**

In this document, EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is finalizing the incorporation by reference of ACHD's Article XXI, sections 2102.06, and 2101.20, as described in the amendments to 40 CFR part 52 set forth below. EPA has made, and will continue to make, these materials generally available through <https://www.regulations.gov> and at the EPA Region III Office (please contact the person identified in the **For Further Information Contact** section of this preamble for more information). Therefore, these materials have been approved by EPA for inclusion in the SIP, have been incorporated by reference by EPA into that plan, are fully federally enforceable under sections 110 and 113 of the CAA as of the effective date of the final rulemaking of EPA's approval, and will be incorporated by reference in the next update to the SIP compilation.<sup>4</sup>

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

##### *A. General Requirements*

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA 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

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<sup>4</sup> 62 FR 27968 (May 22, 1997).

that they meet the criteria of the CAA. 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 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 (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, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

*B. Submission to Congress and the Comptroller General*

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

*C. Petitions for Judicial Review*

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[insert date 60 days after date**

**of publication in the Federal Register]**. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action approving NNSR requirements under the 2012 PM<sub>2.5</sub> NAAQS may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

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

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: May 13, 2020.

Cosmo Servidio,  
Regional Administrator,  
Region III.

40 CFR part 52 is amended as follows:

#### **PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS**

1. The authority citation for part 52 continues to read as follows:

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

#### **Subpart NN—Pennsylvania**

2. In §52.2020, the table in paragraph (c)(2) is amended by:

- a. Under “Part A—General” by adding a twelfth entry for “2101.20”; and
- b. Under “Part B—Permits Generally” by revising entry “2102.06”.

The addition and revision read as follows:

§ 52.2020 Identification of plan.

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(c) \* \* \*

(2) \*\*\*

Article XX or XXI citation	Title/subject	State effective date	EPA approval date	Additional explanation/ § 52.2063 citation
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<b>Part A—General</b>				
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2101.20	Definitions	3/3/19	[insert date of publication in the Federal Register], [insert Federal Register citation]	Adding “Significant air quality impact” for PM <sub>2.5</sub> .
<b>Part B—Permits Generally</b>				
* * * * *				
2102.06	Major Sources Locating in or Impacting a Nonattainment Area	3/3/19	[insert date of publication in the Federal Register], [insert Federal Register citation]	Adding requirements for 2012 PM <sub>2.5</sub> NAAQS, as it relates to NNSR. Specifically, SO <sub>2</sub> , NO <sub>x</sub> , VOC, and ammonia are considered PM <sub>2.5</sub> precursors in Allegheny County, PA.  Previous approval was March 30, 2015. Docket No. EPA-R03-OAR- 2015-0636.
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[FR Doc. 2020-10693 Filed: 6/12/2020 8:45 am; Publication Date: 6/15/2020]