



## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R09-OAR-2021-0013; FRL-10019-66-Region 9]

#### **Air Plan Limited Approval, Limited Disapproval; Arizona; Arizona Department of Environmental Quality**

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

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing a limited approval and limited disapproval of a portion of a state implementation plan (SIP) submission made by the State of Arizona to address Moderate area nonattainment plan requirements for purposes of the 1987 24-hour national ambient air quality standards (NAAQS) for particulate matter less than 10 microns in diameter (PM<sub>10</sub>). The SIP submission includes an amended statute and certain state rules that govern emissions of particulate matter (PM) from agricultural activity.

**DATES:** 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 ID No. EPA-R09-OAR-2021-0013 at <http://www.regulations.gov>. For comments submitted at Regulations.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 the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <http://www.epa.gov/dockets/commenting-epa-dockets>. If you need assistance in a language other than English or if you are a person with disabilities who needs a reasonable accommodation at no cost to you, please contact the person identified in the FOR FURTHER INFORMATION CONTACT section.

**FOR FURTHER INFORMATION CONTACT:** Nancy Levin, EPA Region IX, 75 Hawthorne St., San Francisco, CA 94105. By phone: (415) 972-3848 or by email at [levin.nancy@epa.gov](mailto:levin.nancy@epa.gov).

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

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### **I. The State’s Submission**

#### *A. What did the State submit?*

The Arizona Department of Environmental Quality (ADEQ) made a SIP submission to address emissions of PM from certain emission sources located in the West Pinal County PM<sub>10</sub> nonattainment area of Arizona.<sup>1</sup> In this submission, the ADEQ seeks to revise the existing EPA-approved SIP for

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<sup>1</sup> On December 21, 2015, Arizona submitted the West Pinal County PM<sub>10</sub> Plan, intended to address the Moderate area nonattainment requirements, to the EPA as a revision to the Arizona SIP. The rules addressed in this proposed rule were included as part of Appendix G to this plan submission. We have previously acted on the additional rules contained in Appendix G (82 FR 20267, May 1, 2017), and have proposed action on the remainder of the submission in a separate *Federal Register* proposed rule. 86 FR 1347 (January 8, 2021).

Arizona by modifying an existing state statutory provision and adding related regulatory requirements specific to the West Pinal County PM<sub>10</sub> nonattainment area. Table 1 lists the statute and rules addressed in this proposed rule along with the date of submission and the effective dates of the respective elements of the SIP submission.

TABLE 1 – SUBMITTED STATUTE AND RULES

| <b>Arizona Revised Statutes (ARS)</b>    | <b>Statute Title</b>   | <b>Effective</b>          | <b>Submitted</b> |
|--|--|---------------------------|------------------|
| ARS section 49-457                       | Agricultural best management practices committee; members; powers; permits; enforcement; preemption; definitions | 12/31/15                  | 12/21/15         |
| <b>Arizona Administrative Code (AAC)</b> | <b>AAC Title</b>   | <b>Amended/ Effective</b> | <b>Submitted</b> |
| AAC R18-2-611                            | Definitions for R18-2-611.01 <sup>2</sup>  | 07/02/15                  | 12/21/15         |
| AAC R18-2-611.03                         | Agricultural PM General Permit for Animal Operations; Pinal County PM Nonattainment Area                         | 07/02/15                  | 12/21/15         |

On March 21, 2016, the EPA determined that the SIP revisions submitted by the ADEQ and listed in Table 1 met the completeness criteria in 40 CFR part 51, appendix V, which must be met before formal EPA review.

*B. Are there other versions of the statute and rules?*

We approved an earlier version of ARS section 49-457 into the SIP on June 29, 1999 (64 FR 34726). There are no previous versions of AAC R18-2-611 “Definitions for R18-2-611.01” or AAC R18-2-611.03 “Agricultural PM General Permit for Animal Operations; Pinal County PM Nonattainment Area” in the SIP.

We note that on October 11, 2001, we approved AAC R18–2–611, “Agricultural PM-10 General Permit; Maricopa PM10 Nonattainment Area” into the Arizona SIP, which applies to

<sup>2</sup> The title of the new rule R18-2-611 was mistakenly labeled as “Definitions for R18-2-611.01” in the submitted strikeout version of the rule. See page GVI-19. Since this new rule also applies to AAC R18-2-611.02 and R18-2-611.03, a correction to the title of the new AAC 18-2-611 was made in the codified version of the rule. See April 13, 2017 Email from N. Muilenberg, ADEQ to N. Levin, EPA, Re\_quick question on title for R18-2-611.pdf.

Maricopa County commercial farmers (crop operations). *See* 66 FR 51869 (October 11, 2001).

The December 21, 2015 submittal of rule AAC R18–2–611, “Definitions for R18–2–611.01” is a separate rule that applies to certain animal operations in Maricopa County and West Pinal County PM<sub>10</sub> nonattainment areas, among other areas, and was not submitted to replace the existing SIP-approved rule AAC R18-2-611, “Agricultural PM–10 General Permit; Maricopa PM10 Nonattainment Area.” If the EPA approves the new rule AAC R18-2-611, “Definitions for R18-2-611.01” into the Arizona SIP, there will be two different rules in the SIP with the same number, but they would be differentiated by their different titles and dates.

*C. What is the purpose of the submitted rules and statutory revisions?*

Emissions of PM, including PM<sub>10</sub>, contribute to effects that are harmful to human health and the environment, including premature mortality, aggravation of respiratory and cardiovascular disease, decreased lung function, visibility impairment, and damage to vegetation and ecosystems. The Clean Air Act (CAA or the Act) requires states to have SIPs that provide for attainment, maintenance, and enforcement of the PM<sub>10</sub> NAAQS, including the adoption and implementation of regulations to control PM emissions in designated PM<sub>10</sub> nonattainment areas. ADEQ’s submission addresses emissions from certain sources of PM<sub>10</sub> emissions through a statutory provision and several regulations.

First, this submission would revise the existing SIP-approved version of ARS section 49-457 by, among other things, expanding the definition of “regulated agricultural activities” to include activities of dairies, beef feedlots, poultry facilities, and swine facilities. It would also expand the definition of “regulated area” to apply to any PM<sub>10</sub> nonattainment areas designated by the EPA on or after June 1, 2009, which includes the West Pinal County PM<sub>10</sub> nonattainment area.<sup>3</sup> It would preempt “further regulation” of regulated agricultural activities by other jurisdictions (e.g., counties, cities, and towns).

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<sup>3</sup> This submission also expands the regulated area to any portion of area A that is located in a county with a population of two million or more persons. Area A is defined in ARS section 49-451.

Second, this submission would add new regulations to the Arizona SIP, applicable to the West Pinal County PM<sub>10</sub> nonattainment area. AAC R18-2-611.03 requires that commercial dairy operations, beef cattle feedlots, poultry facilities, and swine facilities implement best management practices (BMPs) to reduce PM<sub>10</sub> emissions from those sources. The new AAC R18-2-611 provides definitions for AAC R18-2-611.03 and other animal operations BMP rules.

The EPA's technical support documents (TSDs) have more information about the statute and rules.

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

### *A. How is the EPA evaluating the statute and rules?*

SIP rules must meet applicable substantive requirements, e.g., must be sufficiently stringent (see CAA sections 172(c)(1) and 189(a)(1)(C)), must be enforceable (see CAA section 110(a)(2)), must not interfere with applicable requirements concerning attainment and reasonable further progress or other CAA requirements (see CAA section 110(l)), and must not modify certain SIP control requirements in nonattainment areas without ensuring equivalent or greater emissions reductions (see CAA section 193).

States must adopt and implement reasonably available control measures (RACM), including reasonably available control technology (RACT), in Moderate PM<sub>10</sub> nonattainment areas (see CAA sections 172(c)(1) and 189(a)(1)(C)).<sup>4</sup> The EPA has addressed the State's nonattainment plan SIP submission for the West Central Pinal PM<sub>10</sub> area with respect to the RACM/RACT requirement in a separate proposed action.<sup>5</sup>

Guidance and policy documents that we use to evaluate control rules submitted for PM<sub>10</sub> nonattainment areas, including enforceability, revision/relaxation, and rule stringency requirements, include the following:

1. "State Implementation Plans; General Preamble for the Implementation of Title I of the

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<sup>4</sup> The West Pinal County PM<sub>10</sub> nonattainment area was classified as Moderate (40 CFR 81.303) on May 31, 2012 (77 FR 32024) and subsequently reclassified, by operation of law, to Serious on June 24, 2020 (85 FR 37756).

<sup>5</sup> 86 FR 1347 (January 8, 2021).

Clean Air Act Amendments of 1990," 57 FR 13498 (April 16, 1992); 57 FR 18070 (April 28, 1992).

2. "Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations," EPA, May 25, 1988 (the Bluebook, revised January 11, 1990).
3. "Guidance Document for Correcting Common VOC & Other Rule Deficiencies," EPA Region 9, August 21, 2001 (the Little Bluebook).
5. "State Implementation Plans for Serious PM-10 Nonattainment Areas, and Attainment Date Waivers for PM-10 Nonattainment Areas Generally; Addendum to the General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990," 59 FR 41998 (August 16, 1994).
6. "PM-10 Guideline Document," EPA 452/R-93-008, April 1993.
7. "Fugitive Dust Background Document and Technical Information Document for Best Available Control Measures," EPA 450/2-92-004, September 1992.

*B. Do the statute and rules meet the evaluation criteria?*

The revised statute and rules largely meet the evaluation criteria, with the exception of the specific deficiencies identified in section II.C below.

With respect to enforceability, AAC R18-2-611.03 states clear requirements, specifying that animal operators "shall implement" or "shall apply and maintain" BMPs.<sup>6</sup> The rule is clear about what is required of sources, and it establishes recordkeeping requirements requiring operators to demonstrate compliance with the agricultural BMP (AgBMP) requirements.<sup>7</sup> The rule also provides in paragraph N that "[t]he Director shall document noncompliance with this section before issuing a compliance order," and in paragraph O that "[a] commercial animal operator who is not in compliance with this Section is subject to the provisions in A.R.S. §49-457(I), (J), and (K)."

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<sup>6</sup> AAC R18-2-611.03 paragraphs A and B.

<sup>7</sup> Id. at paragraphs H and J.

Paragraphs I, J, and K of ARS section 49-457 provide a mechanism for the ADEQ director to revoke the agricultural general permit for an operator. These paragraphs set out a three-step process that the director may take if the director determines that a person who is engaged in a regulated activity is not in compliance with the agricultural PM general permit. First, for persons not previously subject to a compliance order, the director may issue an order requiring compliance with the general permit and specifying a period of not less than 60 days for the operator to submit a plan to the appropriate natural resource conservation district identifying the BMPs the operator will use to comply with the general permit. If noncompliance is repeated or continues, the director may issue a second order, requiring the submission of a plan to the ADEQ, within a specified period of time of not less than 60 days, specifying the BMPs the operator will use to comply with the general permit. Third, if the operator is still not complying with the terms of the agricultural general permit, the director may revoke the general permit with respect to that operator, and require that the operator obtain an individual permit, pursuant to ARS section 49-426.<sup>8</sup>

Because the provisions in paragraphs I, J, and K refer to the “director,” the EPA understands that these provisions relate only to authorities of the ADEQ director. Provided that the statute and rules do not preclude enforcement of a violation of the terms of an agricultural general permit outside of the provisions in these paragraphs, states may elect to provide a specific means and process by which the director may revoke the agricultural general permit with respect to a particular operator.

Based on our review of the submission and the State’s general enforcement authority, the EPA concludes that the procedure laid out in paragraphs I, J, and K does not inappropriately constrain the State’s own authority to enforce a violation of an agricultural general permit. The EPA notes that in addition to ARS section 49-457, the ADEQ has additional enforcement

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<sup>8</sup> Id. at paragraphs I, J, and K.

authorities, including those laid out in ARS sections 49-460, 49-461, 49-462, and 49-463.<sup>9</sup> These provisions provide the ADEQ with broad enforcement authority, including the authority to serve an order of abatement, or file a complaint in state court seeking penalties or injunctive relief against any person who “has violated or is in violation of any provision of this article, any rule adopted pursuant to this article or any requirement of a permit issued pursuant to this article.”<sup>10</sup> Because ARS section 49-457 is included in the same article as these broad enforcement authorities, the EPA interprets Arizona law as providing adequate authority to the ADEQ to enforce a violation of an agricultural general permit issued pursuant to ARS section 49-457 without invoking the procedures set out in paragraphs I, J, and K. The EPA is not aware of any provisions of state law to the contrary.

Accordingly, the EPA concludes that the submitted rules and statutory amendments contain clear and enforceable requirements, and that the State possesses adequate authority to enforce the requirements for the agricultural general permit as set out in the submitted rules. If approved into the SIP, the submitted rules will be enforceable by the EPA, and by citizens through section 304 of the Act. Moreover, the procedures laid out in paragraphs I, J, and K do not affect the ability of the EPA and the public to enforce violations of ARS section 49-457 and the submitted rules. The EPA interprets those provisions to be specifications on ADEQ’s exercise of its own enforcement discretion, setting out a procedure for revoking a permit, separate from the State’s general enforcement authority. Neither EPA nor citizen suit plaintiffs are required to follow the same three-step process if they seek to enforce in the event of alleged violations.

With respect to the criterion of stringency, because the rules and revised statute were submitted as part of a PM<sub>10</sub> Moderate area nonattainment plan, they are subject to the section 172(c)(1) RACM/RACT requirement. As discussed above, the EPA generally evaluates whether

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<sup>9</sup> Approved into the SIP on November 5, 2012 (77 FR 66398).

<sup>10</sup> Parallel provisions are included for enforcement at the County level. See ARS sections 49-510, 49-511, 49-512 and 49-513, also approved into the SIP on November 5, 2012 (77 FR 66398).

a state has met the RACM/RACT requirement for PM<sub>10</sub> in the context of its evaluation of the entire nonattainment plan SIP submission because the RACM/RACT analysis is interrelated with other nonattainment plan elements such as reasonable further progress and the modeled attainment demonstration. Accordingly, we are not evaluating the submitted statute and rules for RACM/RACT level stringency in this action since we have addressed the RACM/RACT requirement for the West Pinal County PM<sub>10</sub> nonattainment area in a separate proposal.<sup>11</sup>

With respect to the evaluation criterion regarding SIP revisions, section 110(l) of the CAA provides that “[t]he Administrator shall not approve a revision of a plan if the revision would interfere with any applicable requirement concerning attainment and reasonable further progress ... or any other applicable requirement of [the Act].” Approving the submitted statute and rules into the SIP would expand the applicability of ARS section 49-457 to additional parts of the State, including the West Pinal County PM<sub>10</sub> nonattainment area, and would add new BMP requirements to animal operations in Pinal County. These changes would strengthen the SIP by regulating a broader class of sources, in a larger portion of the State. However, the submitted statute and rules also contain deficiencies that would interfere with applicable requirements of the Act. These deficiencies are identified in the following section of this proposed rule and described in detail in the TSDs contained in the docket for this action.

*C. What are the deficiencies?*

The submitted provisions do not satisfy the requirements of section 110 and part D of title I of the Act and prevent full approval of the statutory revision and rules. We propose a limited disapproval of the statutory revision and rules based on the following deficiencies:

1. Subsection O of revised ARS section 49-457 may relax the SIP by preempting, as a matter of state law, more stringent existing SIP-approved rules. Although such preemption could not remove the preempted rules from the SIP without an EPA action under section 110(k) of the Act, the preemption of these rules as a matter of state law

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<sup>11</sup> 86 FR 1347 (January 8, 2021).

would render state authority for the preempted rules insufficient under section

110(a)(2).<sup>12</sup>

2. Section H of revised ARS section 49-457 exempts a person who is subject to an agricultural general permit from the permitting requirement in ARS section 49-426. The scope of the exemption in subsection H for Maricopa County is bounded by a rule that is not in the SIP (nor has it been submitted to the EPA for SIP approval). Specifically, AAC R18-2-611.01, the animal operations AgBMP rule for Maricopa County, is not in the SIP, and the exemption in subsection H is based on a source being subject to the permit that is established under this rule. This would allow changes to the scope of the exemption, and thus changes to the SIP, without the process required by section 110 of the Act.
3. The exemption in subsection H of revised ARS section 49-457 is not limited to minor sources and could exempt a major stationary source from CAA New Source Review (NSR) and title V permitting requirements.
4. The exemption in subsection H of revised ARS section 49-457 is overbroad because although it is triggered by the ability to emit PM<sub>10</sub>, the exemption itself is not clearly limited to requirements under the PM<sub>10</sub> NAAQS and could apply to other criteria pollutants as well.
5. The exemption in subsection H of revised ARS section 49-457 may exempt non-fugitive emissions from review under the ADEQ minor NSR program, without a showing that such exemption would be inconsequential to attainment and maintenance of the NAAQS.
6. Paragraph K of AAC R18-2-611.03 provides that a person may develop different PM-

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<sup>12</sup> In addition, the inclusion of this provision in the SIP may introduce some uncertainty in the regulated community regarding what requirements are applicable. The EPA does not understand the submitted revision to ARS section 49-457 as requesting to remove any potentially preempted rules from the SIP, or otherwise impacting the enforceability of such rules that are already SIP-approved. The EPA understands the provision as stating that certain provisions are preempted as a matter of state law. Accordingly, the EPA's proposed limited approval and limited disapproval of ARS section 49-457 would not remove any such rules from the SIP, "preempt" them in any way as a matter of federal law, or otherwise impact their federal enforceability. If the State wishes to remove particular requirements from the SIP, it should submit a request, pursuant to section 110 of the Act, requesting that specifically-identified provisions be removed.

reducing management practices than those contained in the rule, and may “submit such practices that are proven effective through on-operation demonstration trials to the [AgBMP] Committee.” The paragraph states that “new best management practices shall not become effective unless submitted as described in A.R.S. §49-457(L).” Subpart L of A.R.S. section 49-457 states that any approved modifications to the BMPs shall be submitted to the EPA as a revision to the SIP. Including this provision in the SIP would allow a new BMP to “become effective” in the SIP-approved rule simply upon submission of the modifications to the EPA and without the actual SIP revision required under CAA section 110. This constitutes inappropriate director’s discretion. A state may modify its rules and submit those to the EPA as potential revisions of the SIP, or it may provide that substantive changes to a SIP-approved rule become effective upon EPA approval into the SIP, but it may not effectively modify the SIP-approved rule by simply submitting the changes to the EPA for evaluation.

The deficiencies with the statute and rules are described in greater detail in the TSDs.

*D. EPA recommendations to further improve the statute and rules*

The TSDs describe additional revisions that we recommend if the State elects to modify the statute and rules to make them appropriate for full approval as part of the Arizona SIP.

*E. Proposed action and public comment*

Despite the deficiencies identified above, the EPA believes that the Arizona SIP would be strengthened by the addition of the statutory revision and rules. A limited approval of the provisions would place new control requirements on a category of sources that have a substantial emission impact in the West Pinal PM<sub>10</sub> nonattainment area. Although the statutory revision and rules also introduce problematic provisions regarding preemption and permitting exemptions, the EPA anticipates that the expansion of control requirements to this important class of sources will provide an emissions reduction benefit in excess of any emissions increase that may result from the preemption and permitting deficiencies. Therefore, as authorized by the grant of authority to

approve and disapprove SIP submissions contained in section 110(k)(3) of the Act, we are proposing a limited approval and limited disapproval of the State's nonattainment plan SIP submission with respect to the revision of the existing SIP approved version of ARS section 49-457 and the inclusion of new rules AAC R18-2-611 and R18-2-611.03 into the SIP.

The proposed limited approval and limited disapproval would put the entirety of the submitted statutory revision and rules in the SIP, including those provisions identified as deficient. It would simultaneously disapprove the deficiencies enumerated in section II.C. and would start sanction and Federal Implementation Plan (FIP) clocks for these deficiencies, as detailed below.

If we finalize a limited disapproval, CAA section 110(c) would require the EPA to promulgate a FIP no later than two years after the disapproval unless the State submits, and we approve, a subsequent SIP submission that corrects the deficiencies identified in the final action.

In addition, a final limited disapproval would trigger the offset sanction in CAA section 179(b)(2) 18 months after the effective date of a final limited disapproval, and the highway funding sanction in CAA section 179(b)(1) six months after the offset sanction is imposed. A sanction will not be imposed if the EPA determines that a subsequent SIP submission corrects the deficiencies identified in our final action before the applicable deadline.

We will accept comments from the public on the proposed limited approval and limited disapproval for the next 30 days.

### **III. Incorporation by Reference**

In this rule, the EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is proposing to incorporate by reference the rules and statute described in Table 1 of this preamble. The EPA has made, and will continue to make, these materials available through [www.regulations.gov](http://www.regulations.gov) and at the EPA Region IX Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more

information).

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

Additional information about these statutes and Executive orders can be found at <http://www.epa.gov/laws-regulations/laws-and-executive-orders>.

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

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

##### *B. Paperwork Reduction Act (PRA)*

This action does not impose an information collection burden under the PRA because this action does not impose additional requirements beyond those imposed by state law.

##### *C. Regulatory Flexibility Act (RFA)*

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. This action will not impose any requirements on small entities beyond those imposed by state law.

##### *D. Unfunded Mandates Reform Act (UMRA)*

This action does not contain any unfunded mandate as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. This action does not impose additional requirements beyond those imposed by state law. Accordingly, no additional costs to state, local, or tribal governments, or to the private sector, will result from this action.

##### *E. Executive Order 13132: Federalism*

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

##### *F. Executive Order 13175: Coordination with Indian Tribal Governments*

This action does not have tribal implications, as specified in Executive Order 13175, because the SIP is not approved to apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction, and will not impose substantial direct costs on tribal governments or preempt tribal law. Thus, Executive Order 13175 does not apply to this action.

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

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

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

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

*I. National Technology Transfer and Advancement Act (NTTAA)*

Section 12(d) of the NTTAA directs the EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. The EPA believes that this action is not subject to the requirements of section 12(d) of the NTTAA because application of those requirements would be inconsistent with the CAA.

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

The EPA lacks the discretionary authority to address environmental justice in this rulemaking.

Environmental protection, Air pollution control, Incorporation by reference,  
Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements.

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

Dated: February 16, 2021.

Deborah Jordan,  
Acting Regional Administrator,  
Region IX.

[FR Doc. 2021-03482 Filed: 2/25/2021 8:45 am; Publication Date: 2/26/2021]