



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R01-OAR-2016-0441; A-1-FRL-9952-11-Region I]

Air Plan Approval; VT; Prevention of Significant Deterioration, PM_{2.5}

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving a State Implementation Plan (SIP) revision submitted by the State of Vermont. The revision sets the amount of PM_{2.5} increment sources are permitted to consume when obtaining a prevention of significant deterioration (PSD) preconstruction permit and requires PM_{2.5} emission offsets under certain circumstances. This action is being taken in accordance with the Clean Air Act.

DATES: This direct final rule will be effective **[Insert date 60 days from date of publication in the Federal Register]**, unless EPA receives adverse comments by **[Insert date 30 days from date of publication in the Federal Register]**. If adverse comments are received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R01-OAR-2016-0441 at <http://www.regulations.gov>, or via email to McDonnell.Ida@epa.gov. For comments submitted at [Regulations.gov](http://www.regulations.gov), follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from [Regulations.gov](http://www.regulations.gov). For either manner of submission, the EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or

other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (i.e. on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the “For Further Information Contact” section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <http://www2.epa.gov/dockets/commenting-epa-dockets>.

FOR FURTHER INFORMATION CONTACT: Ida E. McDonnell, Manager, Air Permits, Toxics, and Indoor Programs Unit, Office of Ecosystem Protection, U.S. Environmental Protection Agency, EPA New England Regional Office, 5 Post Office Square, Suite 100, (OEP05-2), Boston, MA 02109-3912, phone number (617) 918-1653, fax number (617) 918-0653, e-mail McDonnell.Ida@epa.gov.

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

Organization of this document. The following outline is provided to aid in locating information in this preamble.

- I. Background and Purpose
- II. Summary of State Submittal
- III. Final Action
- IV. Incorporation by Reference
- V. Statutory and Executive Order Reviews

I. Background and Purpose

On October 20, 2010, EPA issued the final rule on the “Prevention of Significant Deterioration (PSD) for Particulate Matter Less Than 2.5 Micrometers (PM_{2.5})—Increments, Significant Impact Levels (SILs) and Significant Monitoring Concentration (SMC)” (2010 PSD Rule). *See* 75 FR 64864. This rule established several components for making PSD permitting determinations for PM_{2.5}, including a system of “increments,” which is the mechanism used to estimate significant deterioration of ambient air quality for a pollutant. These increments are codified in 40 CFR 51.166(c) and 40 CFR 52.21(c).

II. Summary of State Submittal

On July 25, 2014, the VT DEC submitted a revision to its state implementation plan (SIP) primarily addressing permitting requirements for PM_{2.5} emissions. In a letter dated July 13, 2016, VT DEC withdrew some, but not all, of the revisions the State requested in its 2014 SIP submittal. The State withdrew these provisions for various reasons; either because more information would be needed before certain provisions could be approved by EPA into the SIP, one provision was erroneously submitted, or Vermont intends in the near future to revise certain provisions and resubmit them to EPA. On July 20, 2016, EPA’s Region I Administrator signed a direct final notice approving the remaining revisions except for revisions Vermont made to its Air Pollution Control Regulations (APCR), Table 2 (Prevention of Significant Deterioration (PSD) Increments) and Table 3 (Levels of Significant Impact).

Vermont revised Table 2 by adding increments for PM_{2.5} as well as some minor grammatical changes. Vermont revised Table 3 by changing the table’s title, removing the level of significant impact for Total Suspended Particles, and adding levels for PM_{2.5}. Tables 2 and 3 address

different aspects of permitting. Table 2 addresses the amount of a pollutant (increment consumption) a major new or modified source may contribute to the ambient air consistent with the CAA's requirements. Table 3 addresses situations in which Vermont's regulations would require emissions offsets, even for major new or modified sources that are subject to PSD preconstruction permitting requirements.

III. Final Action

EPA has found the PSD increment values added to Table 2 to be consistent with 40 CFR 51.166(c) and has also found that the increment values meet the anti-back sliding requirements of Section 110(l) of the Clean Air Act. Therefore, EPA is approving revised Table 2 into the Vermont SIP.

Vermont revised Table 3 by adding thresholds for PM_{2.5} for Class I, II, and III areas. Major new or modified sources subject to PSD permitting requirements must obtain emissions offsets if the listed thresholds would be exceeded in an area found not to be attaining the national ambient air quality standard. The thresholds in Table 3 for PM_{2.5} for Class II and Class III areas are consistent with the PM_{2.5} thresholds in 40 CFR 51.165(b)(2), while Vermont's thresholds for Class I areas are significantly more stringent than the federal regulation. Vermont also removed from Table 3 the threshold for Total Suspended Particles because EPA's regulations no longer contain a threshold for this pollutant. EPA currently sets the National Ambient Air Quality Standard for particulate matter as PM₁₀ and PM_{2.5} and no longer sets a standard for Total Suspended Particles. EPA has found both revisions to Table 3 to be consistent with 40 CFR 51.165(b)(2) and Section 110(l) of the Clean Air Act. Therefore, EPA is approving revised Table 3 into the Vermont SIP.

The EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should relevant adverse comments be filed. This rule will be effective **[Insert date 60 days after date of publication in the Federal Register]** without further notice unless the Agency receives relevant adverse comments by **[Insert date 30 days after date of publication in the Federal Register]**.

If the EPA receives such comments, then EPA will publish a notice withdrawing the final rule and informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period on the proposed rule. All parties interested in commenting on the proposed rule should do so at this time. If no such comments are received, the public is advised that this rule will be effective on **[Insert date 60 days after date of publication in the Federal Register]** and no further action will be taken on the proposed rule. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

IV. Incorporation by Reference

In this rule, the EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is finalizing the incorporation by reference of Vermont's Air Pollution Control Regulations described in the amendments to 40 CFR part 52 set forth below. The EPA has made, and will continue to make, these documents generally available electronically through <http://www.regulations.gov>.

V. Statutory and Executive Order Reviews

Under the Clean Air Act, 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 Clean Air Act. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);

- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Does not provide 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 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).

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).

Under section 307(b)(1) of the Clean Air Act, 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. Parties with objections to this direct final rule are encouraged to file a comment in response to the parallel notice of proposed rulemaking for this action published in the proposed rules section of this **Federal Register**, rather than file an immediate petition for judicial review of this direct final rule, so that EPA can withdraw this direct final rule and address the comment in the proposed rulemaking. This action 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, Particulate matter, Reporting and recordkeeping requirements.

Dated: August 8, 2016.

H. Curtis Spalding,
Regional Administrator,
EPA New England

Part 52 of chapter I, title 40 of the Code of Federal Regulations 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 UU – Vermont

2. In §52.2370(c), the table “EPA Approved Vermont Regulations” is amended by revising the state citation entries for Table 2 and Table 3 to read as follows:

§ 52.2370 Identification of plan.

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(c) * * *

EPA-Approved Vermont Regulations

State citation	Title/subject	State effective date	EPA approval date	Explanations
**	*	*	*	**
Table 2	Table 2 - PSD increments	7/5/2014	[Insert Federal Register date of publication date], [Insert Federal Register citation]	Added increment thresholds for PM _{2.5}

Table 3	Table 3 – Levels of significant impact	7/5/2014	[Insert <u>Federal Register</u> date of publication date], [Insert <u>Federal Register</u> citation]	Added levels for PM _{2.5} .
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[FR Doc. 2016-21881 Filed: 9/13/2016 8:45 am; Publication Date: 9/14/2016]