



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R09-OAR-2016-0727; FRL-9960-32-Region 9]

Limited Federal Implementation Plan; Prevention of Significant Deterioration

Requirements for Fine Particulate Matter (PM_{2.5}); California; North Coast Unified Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is finalizing a limited Federal Implementation Plan (FIP) under the Clean Air Act (CAA or Act) to apply to the North Coast Unified Air Quality Management District (North Coast Unified AQMD or District) in California. This limited FIP will implement provisions to regulate fine particulate matter (PM_{2.5}) under the CAA Prevention of Significant Deterioration (PSD) program within the District. The EPA previously issued two findings of failure to submit a State Implementation Plan (SIP) addressing these PSD requirements and also issued a partial disapproval action applicable to the North Coast Unified AQMD portion of the California SIP that triggered the duty under CAA section 110(c)(1) for the EPA to promulgate this limited FIP. Under this final rule, the EPA will be the CAA PSD permitting authority for any new or modified major sources subject to PSD review for PM_{2.5} or its precursors within the District.

DATES: This rule is effective on **[INSERT DATE 30 DAYS AFTER THE DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: The EPA has established Docket ID Number EPA-R09-OAR-2016-0727 for this action. All documents in the docket are listed in the *www.regulations.gov* index for this rulemaking. Although listed in the index, some information is not publicly available (e.g., CBI or other information whose disclosure is restricted by statute). Certain other material, such as copyrighted material, will be publicly available only in hard copy form. Publicly available docket materials are available either electronically at *www.regulations.gov* or in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, CA 94105 during normal business hours. For security purposes, please contact the person identified in the “FOR FURTHER INFORMATION CONTACT” section during normal business hours to view a hard copy of the docket.

FOR FURTHER INFORMATION CONTACT: Laura Yannayon, (415) 972-3534 or *yannayon.laura@epa.gov*.

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

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I. Proposed Action

On December 22, 2016 (81 FR 93872), the EPA proposed a limited FIP for the North Coast Unified AQMD in California, which would apply the EPA’s PSD regulatory program

under 40 CFR 52.21 specifically to sources in the District subject to PSD review for emissions of $PM_{2.5}$ or $PM_{2.5}$ precursors. CAA section 110(c)(1) requires the EPA Administrator to promulgate a FIP at any time within two years after the Administrator either finds that a state has failed to make a required SIP submission or disapproves a state's SIP in whole or in part, unless the state submits and the EPA approves a SIP that corrects the deficiency before the Administrator promulgates the FIP. In this case, as discussed in the EPA's proposal for this limited FIP action, the EPA is required to promulgate this FIP for sources subject to PSD review for emissions of $PM_{2.5}$ or $PM_{2.5}$ precursors in the North Coast Unified AQMD in order to address SIP deficiencies relating to the PSD requirements for such sources that EPA identified in earlier actions; California has not submitted revised rules that resolve these deficiencies and thus we have not approved a SIP submittal for the North Coast Unified AQMD to correct these deficiencies.

The requirement that the EPA promulgate this limited FIP for the North Coast Unified AQMD stems from several actions taken previously by the EPA in accordance with CAA requirements. In 2008, the EPA promulgated a rulemaking finalizing regulations to implement the New Source Review program for $PM_{2.5}$ ($PM_{2.5}$ NSR Rule).¹ The $PM_{2.5}$ NSR Rule required, among other things, that states develop SIPs addressing the PSD permitting requirements for the regulation of major stationary sources and major modifications of $PM_{2.5}$ emissions, including such sources emitting precursors of $PM_{2.5}$. In 2010, the EPA promulgated a rulemaking amending the PSD program regulations for $PM_{2.5}$ to add provisions governing the maximum allowable increases in ambient pollutant concentrations (increments), with which new major stationary sources and major modifications of $PM_{2.5}$ or $PM_{2.5}$ precursor emissions must

¹ Implementation of the New Source Review (NSR) Program for Particulate Matter Less than 2.5 Micrometers ($PM_{2.5}$), 73 FR 28321 (May 16, 2008).

demonstrate compliance as a condition of obtaining a PSD permit (PM_{2.5} Increments Rule).² The PM_{2.5} Increments Rule requires states to submit SIPs modifying their PSD permitting regulations to incorporate the PM_{2.5} increment provisions.

On January 15, 2013, the EPA issued a finding of failure to submit for the State of California in which it found that California had failed to make an infrastructure³ SIP submittal providing certain required basic program elements of CAA section 110(a)(2) that are necessary to implement the 2008 Ozone National Ambient Air Quality Standard (NAAQS).⁴ Relevant here, the EPA found that California had not submitted a SIP to address the PSD permitting requirements of CAA section 110(a)(2)(C), (D)(i)(II), and (J) for areas including the North Coast Unified AQMD. That finding resulted in a deadline of February 14, 2015, for the EPA to promulgate a FIP pursuant to CAA section 110(c)(1) to address the outstanding SIP elements unless, prior to that time, the State submitted, and the EPA approved, a SIP that corrected the identified deficiencies.⁵

On April 1, 2016, the EPA published a final rule partially approving and partially disapproving several CAA infrastructure SIP revisions submitted by the State of California related to the implementation, maintenance and enforcement of the NAAQS for ozone, PM_{2.5}, lead, nitrogen dioxide (NO₂), and sulfur dioxide (SO₂).⁶ We partially disapproved a portion of these infrastructure SIP submittals as they pertained to the North Coast Unified AQMD with respect to the PSD-related requirements of CAA sections 110(a)(2)(C), (D)(i)(II), and (J) for all

² Prevention of Significant Deterioration (PSD) for Particulate Matter Less than 2.5 Micrometers (PM_{2.5}) – Increments, Significant Impact Levels (SILs) and Significant Monitoring Concentrations (SMC), 75 FR 64864 (Oct. 20, 2010). The PM_{2.5} Increments Rule also promulgated several optional revisions to the PSD permitting program which are not addressed in this notice.

³ We refer to such SIP revision submittals as “infrastructure” SIPs because they are intended to address the basic structural SIP requirements for new or revised NAAQS.

⁴ 78 FR 2882, 2889.

⁵ See 78 FR at 2886.

⁶ 81 FR 18766.

of these NAAQS, in part because we found that the District's SIP-approved PSD program did not include requirements for the regulation of PM_{2.5} and PM_{2.5} precursors, condensable PM_{2.5}, or PSD increments for PM_{2.5}.⁷ This infrastructure SIP partial disapproval action also triggered a duty for the EPA to promulgate a FIP pursuant to CAA section 110(c)(1) to address the identified deficiencies related to the District's PSD program for PM_{2.5}, unless, prior to that time, the State submitted, and the EPA approved, a SIP that corrected the identified deficiencies.⁸ The State has not submitted a SIP revision that would correct the North Coast Unified AQMD's SIP deficiencies relating to the PSD program for PM_{2.5} and therefore EPA has not approved such a SIP revision. Thus, for these PM_{2.5} PSD requirements, the EPA remains subject to the duty to promulgate a FIP for the District that was triggered by our January 15, 2013 finding of failure to submit and our April 1, 2016 partial disapproval action for the infrastructure SIP requirements for the NAAQS discussed above.

On September 2, 2014, the EPA published a final rule finding that the North Coast Unified AQMD had failed to make a complete submittal to address new requirements for PM_{2.5} increments in its PSD program as required by implementing regulations that the EPA promulgated on October 20, 2010.⁹ That finding resulted in a duty and a deadline of October 2, 2016 for the EPA to promulgate a FIP pursuant to CAA section 110(c)(1) to address these outstanding SIP elements unless, prior to that time, the State submitted, and the EPA approved, a SIP that corrected the identified deficiencies. As noted above, the EPA has not approved a SIP

⁷ The EPA's April 1, 2016 partial disapproval action for infrastructure SIP requirements in CAA sections 110(a)(2)(C), (D)(i)(II), and (J) for the North Coast Unified AQMD was also based on the EPA's finding that the District's SIP-approved PSD program did not regulate oxides of nitrogen (NO_x) as an ozone precursor. 81 FR at 18773. However, we noted in that action that the EPA had already promulgated a limited FIP on August 8, 2011 to remedy that SIP deficiency, and thus our 2016 partial disapproval action did not trigger a new PSD FIP obligation related to NO_x as an ozone precursor. See 81 FR at 18773, 18775; see also 76 FR 48006 (Aug. 8, 2011).

⁸ See 81 FR at 18775-18776.

⁹ 79 FR 51913.

revision for California that would address the requirements for PM_{2.5} increments in the PSD program for the North Coast Unified AQMD, thus the EPA remains subject to the requirement that it promulgate a FIP to do so.

In sum, the EPA has not approved a PSD SIP revision for California that would address the District's PM_{2.5} PSD program SIP deficiencies identified in the January 15, 2013, September 2, 2014, and April 1, 2016 EPA actions discussed above. Accordingly, as authorized by CAA section 110(c)(1), the EPA proposed to promulgate a limited FIP for the North Coast Unified AQMD in order to address the identified deficiencies in the State's PSD program with respect to the regulation of major stationary sources and major modifications of sources subject to PSD review for emissions of PM_{2.5} or PM_{2.5} precursors.

II. Public Comments

The EPA's proposed FIP action provided a 30-day public comment period, which closed on January 23, 2017. The EPA also preliminarily scheduled a public hearing for January 13, 2017 to receive written and oral comments on our proposed action, which we stated would be held only if we received a written request for such a hearing by December 29, 2016. No one requested such a hearing during this period and therefore the hearing was canceled. During the public comment period, we received no comments on our proposed action.

III. EPA Action

Under CAA section 110(c)(1) and for the reasons discussed in our December 22, 2016 proposed rule and in the Proposed Action section of this notice, we are finalizing the limited PSD FIP for the North Coast Unified AQMD as proposed. CAA section 110(c)(1) requires the

Administrator to promulgate a FIP at any time within two years after the Administrator either finds that a state has failed to make a required submission or disapproves a state's SIP in whole or in part, unless the state submits and the EPA approves a SIP that corrects the deficiency before the Administrator promulgates a FIP. As indicated earlier in this notice, the EPA has not approved a PSD SIP revision for California to regulate PM_{2.5} and PM_{2.5} precursors in the North Coast Unified AQMD that would address the District's PM_{2.5} PSD program deficiencies identified in the January 15, 2013, September 2, 2014, and April 1, 2016 EPA actions discussed above. Accordingly, as authorized by CAA section 110(c)(1), the EPA is promulgating a limited FIP for the North Coast Unified AQMD in order to address the identified deficiencies in the State's PSD program with respect to the regulation of major stationary sources and major modifications of sources subject to PSD review for emissions of PM_{2.5} or PM_{2.5} precursors.

This limited FIP consists of the EPA regulations found in 40 CFR 52.21, including the PSD applicability provisions, with a limitation to assure that, strictly for purposes of this rulemaking, the FIP applies only to the regulation of PM_{2.5} and PM_{2.5} precursors. Accordingly, for the purposes of ensuring compliance with the PSD permitting requirements with respect to PM_{2.5} and PM_{2.5} precursors for sources within the North Coast Unified AQMD, the EPA will serve as the PSD permitting authority.

The EPA has previously promulgated limited CAA PSD FIPs for the North Coast Unified AQMD to implement the federal PSD permitting program under 40 CFR 52.21 for certain other sources and pollutants, including the PSD program as it regulates oxides of nitrogen (NO_x) as an ozone precursor, as discussed above; these limited FIPs remain in effect. See 40 CFR 52.270(b)(2). The EPA and the District have entered into partial delegation agreements pursuant to 40 CFR 52.21(u), dated January 8, 1993 and October 6, 2015, whereby the EPA has delegated

authority to the District to conduct PSD review for certain sources subject to these limited PSD FIPs. The District may similarly seek a partial delegation of authority from the EPA, pursuant to 40 CFR 52.21(u), to conduct PSD review for the sources regulated under this limited PSD FIP. For all other major emitting facilities and pollutants not covered by the limited PSD FIPs applicable to the District as specified in 40 CFR 52.270(b)(2), the North Coast Unified AQMD will continue to serve as the PSD permitting authority under its SIP-approved PSD program.

This limited FIP is narrow in scope, in that it will only address the PM_{2.5} PSD deficiencies for the District that were identified in our 2016 infrastructure SIP partial disapproval action. We note that such deficiencies include the deficiencies for PSD requirements for PM_{2.5} increments that were also the focus of the EPA's September 2, 2014 finding of failure to submit action. Today's final limited FIP action will satisfy the remaining FIP requirements for the North Coast Unified AQMD that were triggered by our January 15, 2013 finding of failure to submit relating to ozone infrastructure SIP requirements; our September 2, 2014 finding of failure to submit related to the District's PSD requirements for PM_{2.5} increments; and our April 1, 2016 partial disapproval action for the infrastructure SIP requirements for the NAAQS for ozone, PM_{2.5}, lead, NO₂, and SO₂. This limited FIP will be codified in 40 CFR 52.270(b)(2)(v).

This limited FIP will remain in place until California submits a SIP revision addressing the identified deficiencies relating to the District's PSD program for PM_{2.5} and we approve that SIP revision. The EPA is working with the North Coast Unified AQMD to develop District rules that would address these requirements.

IV. Statutory and Executive Order Reviews

Additional information about these statutes and Executive Orders can be found at <http://www2.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 therefore was not submitted to the Office of Management and Budget (OMB) for review.

B. Paperwork Reduction Act

This action does not impose any new information collection burden. The OMB has previously approved the information collection requirements contained in the existing regulations for PSD (e.g., 40 CFR 52.21) under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 et seq. and has assigned OMB control number 2060–0003. The OMB control numbers for the EPA’s regulations in 40 CFR are listed in 40 CFR part 9.

C. Regulatory Flexibility Act

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. The small entities subject to the requirements of this action are a single biomass generating facility, which is currently not operating. The Agency has determined that this single facility may experience an impact associated with the requirements of this action, but only in the event that the facility elects to significantly expand its operations. The EPA is not aware of any specific new sources that would be subject to regulation under this action in the future. We expect a negligible financial impact on any facilities subject to the requirements of this action because any such facility would be subject to substantially similar, and in some respects more stringent, regulatory requirements that are already in effect under state and federal law.

D. Unfunded Mandates Reform Act

This action does not contain an unfunded mandate of \$100 million or more as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. While the EPA’s action will lead to the application of federal PSD regulations for PM_{2.5} to sources within the North Coast Unified AQMD, general PSD requirements for major emitting facilities with emissions of other regulated NSR pollutants already apply within the District, and thus the incremental impact associated with application of the specific requirements of the PSD regulations for certain sources emitting PM_{2.5} or its precursors is expected to be relatively minor. In addition, there are few major emitting facilities currently located in the District that would be subject to the requirements of the FIP. The EPA is not aware of any specific new sources that would be subject to regulation under our narrow FIP in the future. Accordingly, the EPA has determined that this action does not contain an unfunded mandate of \$100 million or more as described in UMRA, 2 U.S.C. 1531–1538, and that it will not significantly or uniquely affect small governments.

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 and Consultation with Indian Tribal Governments

This action does not have tribal implications, as specified in Executive Order 13175. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes. The FIP is not applicable on any Indian

reservation land or in any other area where the 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. Thus, Executive Order 13175 does not apply to this rule.

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, as a limited FIP establishing PSD regulatory requirements for the PM_{2.5} NAAQS for certain sources located in the North Coast Unified AQMD, it implements a previously promulgated federal standard.

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

This rule 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

This rulemaking does not involve technical standards.

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

The EPA believes that this action does not have disproportionately high and adverse human health or environmental effects on minority populations, low-income populations and/or

indigenous peoples, as specified in Executive Order 12898 (59 FR 7629, February 16, 1994).

This action does not affect the level of protection provided to human health or the environment.

With this action, the EPA is only implementing the PSD permitting requirements mandated by the CAA in order to ensure compliance with the PM_{2.5} NAAQS and PM_{2.5} increments, which were promulgated in separate, prior rulemaking actions.

K. Congressional Review Act

This action is subject to the CRA, and the EPA will submit a rule report to each House of the Congress and to the Comptroller General of the United States. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

L. 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 rule 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 may not be challenged later in proceedings to enforce its requirements (see section CAA 307(b)(2)).

List of Subjects in 40 CFR Part 52

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

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

Dated: March 14, 2017.

E. Scott Pruitt,
Administrator.

Part 52, 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 F—California

2. Section 52.270 is amended by adding paragraph (b)(2)(v) to read as follows:

§52.270 Significant deterioration of air quality.

* * * * *

(b) * * *

(2) * * *

(v) Those projects that are major stationary sources or major modifications for emissions of PM_{2.5} or its precursors under §52.21, and those projects that are major stationary sources under §52.21 with the potential to emit PM_{2.5} or its precursors at a rate that would meet or exceed the rates specified at §52.21(b)(23)(i).

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