



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R03-OAR-2020-0416; FRL-10023-38-Region 3]

Air Plan Approval; Pennsylvania; Regulatory Updates to Nonattainment New Source Review (NNSR) Permitting Requirements for 2012 Fine Particulate Matter (PM_{2.5})

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 submitted by the Commonwealth of Pennsylvania, on March 10, 2020. This revision pertains to the Pennsylvania Department of Environmental Protection's (PADEP) amendments to 25 Pa. Code Chapters 121 (General Provisions) and 127 (Construction, Modification, Reactivation and Operation of Sources) to implement Federal nonattainment new source review (NNSR) provisions for the 2012 annual fine particulate matter (PM_{2.5}) national ambient air quality standard (NAAQS). EPA is approving these revisions to 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-2020-0416. 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 johansen.amy@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

On March 9, 2021 (86 FR 13511), EPA published a notice of proposed rulemaking (NPRM) for the Commonwealth of Pennsylvania. In the NPRM, EPA proposed approval of amendments to 25 Pa. Code Chapters 121 (General Provisions) and 127 (Construction, Modification, Reactivation and Operation of Sources) to implement Federal NNSR provisions for the 2012 PM_{2.5} NAAQS. Specifically, the SIP revision establishes that emissions of volatile organic compounds (VOC) and ammonia are precursors to PM_{2.5} for new and modified major sources emitting PM_{2.5} in nonattainment areas for PM_{2.5} in Pennsylvania;¹ establishes a significant impact level for PM_{2.5}; proposes emission offset ratios for emissions of VOC and ammonia as PM_{2.5} precursors; and amends relevant definitions. The formal SIP revision was submitted by PADEP on March 10, 2020.

EPA has revised the NAAQS for PM_{2.5} on multiple occasions, most recently in 2012. On December 14, 2012, the annual primary standard for PM_{2.5} was lowered from 15 micrograms per meter cubed (µg/m³) to 12 µg/m³. See 78 FR 3087 (January 15, 2013). The existing 24-hour standards (primary and secondary) were retained at 35 µg/m³, as was the annual secondary standard of 15 µg/m³. Upon promulgation of the 2012 PM_{2.5} NAAQS, EPA formally classified all of Delaware County and Lebanon County, Pennsylvania as moderate nonattainment for the

¹ Allegheny County, Pennsylvania sources are regulated under the Allegheny County Health Department's Article XXI, not PADEP 25 Pa. Code.

2012 annual PM_{2.5} standard. See 80 FR 2206 (January 15, 2015).² 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).

PADEP’s SIP revision revises NNSR permit requirements for major sources of PM_{2.5}. Specifically, PADEP’s 25 Pa. Code Chapters 121 and 127 have been amended to implement additional provisions pertaining to 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). 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*,³ areas classified as nonattainment for any PM_{2.5} NAAQS are required to comply with the parts of CAA subpart 4 section 189(e) that require the control of major sources of PM₁₀ precursors (and hence under the court decision, PM_{2.5} precursors) “except where the Administrator determines that such sources do not contribute significantly to PM₁₀ levels which exceed the standard in the area.”⁴ The 2016 Implementation Rule amended the definitions of (1) “regulated NSR pollutant” with regard to PM_{2.5} precursors; (2) “major stationary source” with regard to major sources of direct PM_{2.5} emissions and PM_{2.5} precursors locating in PM_{2.5} nonattainment areas classified as moderate and serious; and (3) “significant” with regard to emissions of direct PM_{2.5} and its precursors.

II. Summary of SIP Revision and EPA Analysis

A. Summary of SIP Revision

25 Pa. Code Chapters 121 and 127 address NNSR permit requirements for major sources of PM_{2.5}. PADEP’s SIP revision has been amended to implement additional provisions

² EPA subsequently issued Additional Air Quality Designations and Technical Amendment to Correct Inadvertent Error in Air Quality Designations for the 2012 Primary Annual Fine Particulate Matter (PM_{2.5}), which impacted Delaware and Lebanon counties. 80 FR 18535, 18549 (April 7, 2015).

³ 706 F.3d 428 (D.C. Cir. 2013).

⁴ This requirement was codified in 40 CFR 51.165(a)(13). See 81 FR 58010 (August 24, 2016).

pertaining to precursors, as promulgated in EPA's final 2016 Implementation Rule.

B. EPA's Proposed Action

At proposal, EPA evaluated the revised portions 25 Pa. Code Chapters 121 and 127 to determine if the revisions meet current applicable requirements for a PM_{2.5} NNSR permit program, as revised by EPA's 2016 Implementation Rule. 25 Pa. Code 121.1 - (1) contains revisions to clarify that 25 Pa. Code applies to major polluting facilities that will emit PM_{2.5} or its precursors in areas designated as nonattainment for PM_{2.5}; (2) the definition of "major facility" has been updated to include a 70 tons per year (tpy) emissions threshold for PM_{2.5} and all precursors to PM_{2.5} in a serious nonattainment area; (3) the definition of "regulated NSR pollutant" has been updated to include sulfur dioxide (SO₂), VOC, and ammonia in all PM_{2.5} nonattainment areas; (4) revisions were made to the definition of "significant" to include emission rates for PM_{2.5} at 10 tpy and emission rates for PM_{2.5} precursors as follows: 40 tpy of SO₂, 40 tpy of VOC, 40 tpy of ammonia, and 40 tpy of nitrogen oxides (NO_x). Section 127.202(a) – Effective date, was amended to establish that emission of VOC and ammonia will be regulated as PM_{2.5} precursors after the effective date of the adoption of the proposed rulemaking. EPA proposed to find these revisions approvable and consistent with applicable requirements for a PM_{2.5} NNSR permit program, as revised by the 2016 Implementation Rule.

Section 127.203(a) – Facilities subject to special permit requirements, was amended to add "significant air quality impact" levels for PM_{2.5} at 0.2 μg/m³ for the annual averaging time and 1.2 μg/m³ for the 24-hour averaging time. PADEP's annual averaging time is more stringent than what EPA requires in 40 CFR 51.165(b)(2), therefore, EPA finds this more stringent requirement approvable. Section 127.210(a) – Offset ratios, establishes offset ratios for VOC and ammonia at a ratio of 1:1 for flue emissions and fugitive emissions. EPA finds the addition of offset ratios to be approvable.

Other specific provisions of this SIP revision 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. No public comments were received on the NPRM.

III. Final Action

EPA is approving amendments to 25 Pa. Code Chapters 121 (General Provisions) and 127 (Construction, Modification, Reactivation and Operation of Sources), as a revision to the Pennsylvania SIP.

IV. 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 certain subsections of 25 Pa. Code Chapters 121 (General Provisions) and 127, (Construction, Modification, Reactivation and Operation of Sources), as described in the amendments to 40 CFR part 52 sets 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 rule of EPA's approval, and will be incorporated by reference in the next update to the SIP compilation.⁵

V. 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 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

⁵ 62 FR 27968 (May 22, 1997).

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 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_{2.5} 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, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: May 6, 2021

Diana Esher,
Acting Regional Administrator,
Region III

For the reasons stated in the preamble, the EPA amends 40 CFR part 52 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)(1) is amended by:

- a. Under “Chapter 121—General Provisions” by adding a fourth entry for “Section 121.1” after a third existing entry for “Section 121.1”;
- b. Under “Chapter 127—Construction, Modification, Reactivation, and Operation of Sources, Subchapter E” by revising the entries for “Section 127.202”, “Section 127.203a”, and “Section 127.210”.

The addition and revisions read as follows:

§ 52.2020 Identification of plan.

* * * * *

(c) ***

(1) ***

State citation	Title/subject	State effective date	EPA approval date	Additional explanation/ § 52.2063 citation
Title 25—Environmental Protection Article III—Air Resources				
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Chapter 121—General Provisions				
* * * * *				
Section 121.1	Definitions	12/21/19	[insert date of publication in the	Revised definitions for “major facility,” “regulated NSR

State citation	Title/subject	State effective date	EPA approval date	Additional explanation/ § 52.2063 citation
			Federal Register], [insert Federal Register citation]	pollutant,” and “significant” to address 2016 PM _{2.5} Implementation Rule requirements.
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Chapter 127—Construction, Modification, Reactivation, and Operation of Sources				
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Subchapter E—New Source Review				
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Section 127.202	Effective date	12/21/19	[insert date of publication in the Federal Register], [insert Federal Register citation]	Revised to include VOC and ammonia as PM _{2.5} precursors. Previous approval was July 13, 2012. Docket No. EPA-R03-OAR-2011-0924.
* * * * *				
Section 127.203a	Applicability determination	12/21/19	[insert date of publication in the Federal Register], [insert Federal Register citation]	Revised to include annual and 24-hour levels for “significant air quality impacts for PM _{2.5} .” Previous approval was July 13, 2012. Docket No. EPA-R03-OAR-2011-0924.
* * * * *				
Section 127.210	Offset ratios	12/21/19	[insert date of publication in the Federal Register], [insert Federal Register citation]	Revised to include PM _{2.5} offset ratios for both VOC and ammonia. Previous approval was July 13, 2012. Docket No. EPA-R03-OAR-2011-0924.
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