



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R06-OAR-2016-0450; FRL-9953-94-Region 6]

Approval and Promulgation of Implementation Plans; Louisiana; Prevention of Significant Deterioration Significant Monitoring Concentration for Fine Particulates

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving two revisions to the Louisiana State Implementation Plan (SIP) that revise the Louisiana Prevention of Significant Deterioration (PSD) permitting program to establish the significant monitoring concentration (SMC) for fine particles (PM_{2.5}) at a zero microgram per cubic meter (0 µg/m³) threshold level consistent with federal permitting requirements. The EPA is approving this action under section 110 and part C of the Clean Air Act (CAA or Act).

DATES: This rule is effective on **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]** without further notice, unless the EPA receives relevant adverse comment by **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. If the EPA receives such comment, the EPA will publish a timely withdrawal in the **Federal Register** informing the public that this rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket No. EPA-R06-OAR-2016-0450, at <http://www.regulations.gov> or via email to wiley.adina@epa.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 Adina Wiley, (214) 665-2115, wiley.adina@epa.gov. 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>.

Docket: The index to the docket for this action is available electronically at www.regulations.gov and in hard copy at EPA Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas. While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (e.g., copyrighted material), and some may not be publicly available at either location (e.g., CBI).

FOR FURTHER INFORMATION CONTACT: Adina Wiley, 214-665-2115, wiley.adina@epa.gov. To inspect the hard copy materials, please schedule an appointment with Ms. Adina Wiley or Mr. Bill Deese at 214-665-7253.

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

I. Background

A. CAA and SIPs

Section 110 of the CAA requires states to develop and submit to the EPA a SIP to ensure that state air quality meets National Ambient Air Quality Standards. These ambient standards currently address six criteria pollutants: carbon monoxide, nitrogen dioxide, ozone, lead, particulate matter, and sulfur dioxide. Each federally-approved SIP protects air quality primarily by addressing air pollution at its point of origin through air pollution regulations and control strategies. The EPA approved SIP regulations and control strategies are federally enforceable.

B. Prior Federal Action

Under Section 165(a) of the CAA, a major source may not commence construction unless the source has been issued a permit and has satisfied certain requirements. Among those requirements, the permit applicant must demonstrate that emissions from construction or operation of the facility will not cause, or contribute to, air pollution in excess of any increment, NAAQS, or any other applicable emission standard or standard of performance. This statutory requirement has been incorporated into federal regulations at 40 CFR 51.166(k)(1). Moreover, to support this analysis, PSD permit applications must be supported by air quality monitoring data representing air quality in the area affected by the proposed source for the 1-year period preceding receipt of the application. This statutory requirement has been incorporated into federal regulations at 40 CFR 51.166(m)(ii)-(iv).

In 2010, the EPA promulgated regulations for SIPs concerning PSD permitting for PM_{2.5} which included two voluntary screening tools: significant impact levels (SILs) and SMC. 75 FR 64864 (October 20, 2010). The SILs are screening tools that states and local permitting authorities with PSD SIPs apply in the issuance of a PSD permit to demonstrate that the proposed source's allowable emissions will not cause or contribute to a violation of the NAAQS or increment. The SMC is a screening technique that has been used to exempt sources from the

requirement in the CAA to collect preconstruction monitoring data for up to 1 year before submitting a permit application in order to help determine existing ambient air quality. 78 FR 73699 (December 9, 2013).

Sierra Club filed a petition for review of the PSD regulations containing the PM_{2.5} SILs and SMC with the United States Court of Appeals for the District of Columbia Circuit (the Court). On January 22, 2013, the Court issued an opinion granting a request from the EPA to vacate and remand to the EPA portions of the October 20, 2010, PSD regulations establishing the PM_{2.5} SIL and further vacating the portions of the PSD regulations establishing a PM_{2.5} SMC. *See, Sierra Club v. EPA*, 706 F.3d 428 (D.C. Cir. 2013).

In response to the Court's decision, the EPA amended its regulations to remove the affected PM_{2.5} SIL regulations from the federal regulations and to replace the existing PM_{2.5} SMC value with a "zero" threshold. 78 FR 73698 (December 9, 2013). In that rulemaking, the EPA removed the regulatory text related to the affected PM_{2.5} SILs at sections 51.166(k)(2) and 52.21(k)(2). Although the Court vacated the PM_{2.5} SMC provisions in 40 CFR 51.166(i)(5)(i)(c) and 52.21(i)(5)(i)(c), the EPA did not remove the affected regulatory text, but instead revised the concentration for the PM_{2.5} SMC listed in sections 51.166(i)(5)(i)(c) and 52.21(i)(5)(i)(c) to zero micrograms per cubic meter (0 µg/m³). Because 40 CFR 51.166(i)(5)(iii) and 40 CFR 52.21(i)(5)(iii) establish an exemption from air monitoring requirements for any pollutant "not listed in paragraph (i)(5)(i)," the EPA explained that it would not be appropriate to remove the reference to PM_{2.5} in paragraph (i)(5)(i). Were the EPA to completely remove PM_{2.5} from the list of pollutants in sections 51.166(i)(5)(i)(c) and 52.21(i)(5)(i)(c) of the PSD regulations, PM_{2.5} would no longer be a listed pollutant and the paragraph (iii) provision could be interpreted as giving reviewing authorities the discretion to exempt permit applicants from the requirement to

conduct monitoring for PM_{2.5}, in contravention of the Court's decision and the CAA. Instead, the EPA revised the concentration listed in sections 51.166(i)(5)(i)(c) and 52.21(i)(5)(i)(c) to zero micrograms per cubic meter (0 µg/m³). This means that there is no air quality impact level below which a reviewing authority has the discretion to exempt a source from the PM_{2.5} monitoring requirements at 40 CFR 52.21(m).

C. Louisiana's Submittals

On February 27, 2013, Louisiana submitted revisions to its PSD SIP at LAC 33:III.509 that adopted provisions substantively identical to the EPA PSD SIP's requirement for PM_{2.5} PSD SMC. 40 CFR 51.166(i)(5)(i). The February 27, 2013, submittal included other revisions to the Louisiana SIP that have been separately approved by the EPA on November 5, 2015. See 80 FR 68451. On July 22, 2016, Louisiana submitted revisions to its PSD SIP at LAC 33:III.509 to revise the previously adopted and submitted PM_{2.5} SMC at LAC 33:III.509(I)(5)(a). Louisiana has not adopted or submitted provisions addressing the PM_{2.5} SIL.

II. The EPA's Evaluation

Our analysis, available in our Technical Support Document (TSD) in the rulemaking docket, finds that the State of Louisiana adopted and submitted on February 27, 2013, revisions to the Louisiana SIP that were substantively consistent with the voluntary exemptions from PSD monitoring at 40 CFR 51.166(i)(5)(i) promulgated on October 20, 2010. Subsequent to the submittal of these provisions, the Court vacated and remanded these provisions to the EPA. On December 9, 2013, we promulgated revisions to the PSD SIP rules that replaced the existing PM_{2.5} SMC value with a zero micrograms per cubic meter (0 µg/m³) threshold level at 40 CFR 51.166.

To address the EPA's December 9, 2013, rulemaking, the State of Louisiana submitted further revisions to the Louisiana PSD program on July 22, 2016, setting the PM_{2.5} SMC to zero; effectively removing any exemption from pre- and post- construction monitoring under the Louisiana PSD SIP.

Our evaluation of the Louisiana PSD program finds that the adoption and revision of the PSD PM_{2.5} SMC at a zero threshold value is consistent with federal PSD permitting provisions for PSD SMCs. We further find that the Louisiana PSD program does not provide an exemption from the PSD pre- and post-construction monitoring requirements for emissions of PM_{2.5} that are SIP-approved at LAC 33:III.509(M) as consistent with federal PSD permitting provisions.

III. Final Action

We are approving revisions to the Louisiana PSD program into the Louisiana SIP that establish the PSD PM_{2.5} SMC and set the SMC to zero micrograms per cubic meter (0 µg/m³) consistent with federal PSD permitting requirements and the CAA. Specifically, the EPA is approving the following revisions to the Louisiana PSD SIP:

- New provisions at LAC 33:III.509(I)(5)(a) adopted on December 20, 2012 and submitted on February 27, 2013, establishing the PM_{2.5} SMC;
- Revisions to LAC 33:III.509(I)(5)(a), adopted on March 20, 2016 and submitted on July 22, 2016 setting the PM_{2.5} SMC to 0 µg/m³.

The EPA is publishing this rule without prior proposal because we view this as a non-controversial amendment and anticipate no adverse comments. However, in the proposed rules section of this **Federal Register** publication, we are publishing a separate document that will serve as the proposal to approve the SIP revision if relevant adverse comments are received. This rule will be effective on **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN**

THE FEDERAL REGISTER] without further notice unless we receive relevant adverse comment by **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. If we receive relevant adverse comments, we will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. We will address all public comments in a subsequent final rule based on the proposed rule. We will not institute a second comment period on this action. Any parties interested in commenting must do so now. Please note that if we receive relevant adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, we 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, we are finalizing regulatory text that includes incorporation by reference. In accordance with the requirements of 1 CFR 51.5, we are finalizing the incorporation by reference of the revisions to the Louisiana regulations as described in the Final Action section above. We have made, and will continue to make, these documents generally available electronically through *www.regulations.gov* and/or in hard copy at the EPA Region 6 office.

V. Statutory and Executive Order Reviews

Under the CAA, 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, the 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 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, 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. The EPA will submit a report containing this rule 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 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 307(b)(2).)

List of Subjects in 40 CFR Part 52

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

Dated: October 21, 2016.

Ron Curry,
Regional Administrator, Region 6.

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 T – Louisiana

2. In §52.970(c), the table titled “EPA Approved Louisiana Regulations in the Louisiana SIP” is amended by revising the entry for Section 509 to read as follows:

§52.970 Identification of plan.

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EPA APPROVED LOUISIANA REGULATIONS IN THE LOUISIANA SIP

State citation	Title/subject	State approval date	EPA approval date	Comments
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Chapter 5 – Permit Procedures				
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Section 509	Prevention of Significant Deterioration	03/20/2016	[Insert date of publication in the Federal Register], [Insert Federal Register citation]	SIP does not include provisions for permitting of GHGs as effective on 04/20/2011 at LAC 33:III.509(B) definition of “carbon dioxide equivalent emissions”, “greenhouse gases”, “major stationary source”, and “significant”.
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