



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R09-OAR-2016-0727; FRL-9957-13-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: Proposed rule.

SUMMARY: In this rulemaking, the Environmental Protection Agency (EPA) is proposing 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 would 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. If we finalize this action as proposed, 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: Any comments must arrive by **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. If a public hearing is held, the public

comment period will automatically be extended and will close on February 13, 2017.

Public Hearing: If any party contacts us in writing by [**INSERT DATE 7 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER**] to request that a public hearing be held, we will hold a public hearing on January 13, 2017 at 9:00 am. Please see the **ADDRESSES** and **SUPPLEMENTARY INFORMATION** sections of this notice for additional information on the public hearing and how to determine whether the comment period has been extended.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA-R09-OAR-2016-0727 at <http://www.regulations.gov>, or via email to r9airpermits@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>.

Docket: 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 persons identified in the “FOR FURTHER INFORMATION CONTACT” section during normal business hours to view a hard copy of the docket.

Public Hearing: A public hearing, if requested, will be held in EPA Region IX’s Conference Center, located at 75 Hawthorne St., San Francisco, CA 94105. Please refer to the **SUPPLEMENTARY INFORMATION** section for additional information on the public hearing.

FOR FURTHER INFORMATION CONTACT:

Public hearing and comment period: Thien Khoi Nguyen, (415) 947-4120 or *nguyen.thien@epa.gov*.

Technical information: 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.

Public Hearing: If you wish to request a public hearing and present testimony at the hearing, you must make your request in writing to Ms. Nguyen of EPA Region IX on or before **[INSERT DATE 7 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. Ms. Nguyen’s contact information is found in **FOR FURTHER INFORMATION CONTACT**

section. If no requests for a public hearing are received by close of business on **[INSERT DATE 7 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**, a hearing will *not* be held; please contact Ms. Nguyen or check the EPA's Public Notice website at <https://www.epa.gov/publicnotices> to verify if the hearing will actually be held and whether the comment period will be automatically extended.

At the hearing, the hearing officer may limit oral testimony to 5 minutes per person. The hearing will be limited to the subject matter of this proposal, the scope of which is discussed below. The EPA will not respond to comments during the public hearing. When we publish our final action we will provide a written response to all written or oral comments received on the proposal. Any member of the public may provide written or oral comments pertaining to our proposal at the hearing. Note that any written comments and supporting information submitted during the comment period will be considered with the same weight as any oral comments presented at the public hearing. Interested parties may also submit written comments, as discussed elsewhere in this notice.

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- I. Background**

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

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).

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} and PM_{2.5} precursor emissions must 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) 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

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.

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 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 EPA has not approved a SIP revision for California to date that would address the North Coast Unified AQMD's SIP deficiencies relating to the PSD program for PM_{2.5}. 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

⁶ 81 FR 18766.

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.

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 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.

II. Proposed Action

In this rulemaking, the EPA is promulgating a limited FIP to apply the EPA's PSD regulatory program under 40 CFR 52.21 to sources subject to PSD review for emissions of PM_{2.5} or PM_{2.5} precursors in the North Coast Unified AQMD. 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 proposing 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

⁹ 79 FR 51913.

and major modifications of sources subject to PSD review for emissions of PM_{2.5} or PM_{2.5} precursors.

The limited FIP proposed in this action 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 would serve as the PSD permitting authority.

We note that 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 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.¹⁰ 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 proposed 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}

¹⁰ If the EPA takes final action to promulgate this limited PSD FIP for PM_{2.5} and PM_{2.5} precursors, 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.

increments that were also the focus of the EPA's September 2, 2014 finding of failure to submit action.

If finalized, today's proposed limited FIP action would 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. The proposed FIP will be codified in 40 CFR 52.270(b)(2)(v).

If finalized, 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 soliciting public comments on this proposal and will accept comments until the date noted in the "DATE" section above.

III. 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. Although this rule could lead to federal permitting requirements for a handful of sources in the North Coast Unified AQMD, the EPA believes that in such an event, there will not be a significant economic impact on the potentially affected sources and that any such impacts would not affect a substantial number of sources, regardless of size.

In this action, the EPA is proposing a narrow FIP that would apply federal PSD regulations for certain new or modified major stationary sources with emissions of PM_{2.5} or its precursors 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, 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 proposed narrow FIP in the future. For these reasons, the EPA anticipates that any additional burden imposed as a result of this proposed FIP would be minimal and would affect few, if any, sources. Accordingly, the EPA does not believe that such a FIP would have a significant economic impact on sources in the District, regardless of size.

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 proposed 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 proposed 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 proposed 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. 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 proposing to implement 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 rulemakings.

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: December 14, 2016.

Deborah Jordan,
Acting Regional Administrator,
Region IX.

For the reasons set forth in the preamble, the EPA proposes to amend 40 CFR part 52 as follows:

PART 52--[AMENDED]

1. The authority citation for part 52 continues to read as follows:

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

SUBPART F – CALIFORNIA

2. Amend §52.270 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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[FR Doc. 2016-30768 Filed: 12/21/2016 8:45 am; Publication Date: 12/22/2016]