

Energy Effects

We have analyzed this proposed rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a “significant energy action” under that order because it is not a “significant regulatory action” under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., specifications of materials, performance, design, or operation; test methods; sampling

procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This proposed rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

Environment

We have analyzed this proposed rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.ID, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded, under figure 2–1, paragraph (34)(h), of the Instruction. This rule involves implementation of regulations within 33 CFR Part 100 that apply to organized marine events on the navigable waters of the United States that may have potential for negative impact on the safety or other interest of waterway users and shore side activities in the event area. The category of water activities includes but is not limited to

sail boat regattas, boat parades, power boat racing, swimming events, crew racing, and sail board racing. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 100 as follows:

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233.

2. In § 100.501, add temporary line No. (c)25 in Table to § 100.501 to read as follows:

§ 100.501 Special Local Regulations; Marine Events in the Fifth Coast Guard District.

* * * * *

Table To § 100.501.—All coordinates listed in the Table to § 100.501 reference Datum NAD 1983.

COAST GUARD SECTOR HAMPTON ROADS—COTP ZONE

Number	Date	Event	Sponsor	Location
25	June 2, 2012	Yorktown Parade of Sail	York County Recreation Parks and Tourism.	Regulated area includes all waters of the York River bounded by the north and south shores of the York River and to the west by the Coleman Memorial Bridge and bounded to the east by a line drawn from the United States Coast Guard pier to Gaines Point in Gloucester, VA. All coordinates reference Datum NAD 1983.

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Dated: March 13, 2012.

Mark S. Ogle,

Captain, U.S. Coast Guard, Captain of the Port Hampton Roads.

[FR Doc. 2012–7513 Filed 3–28–12; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2011–0924; FRL–9653–9]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; Nonattainment New Source Review; Fine Particulate Matter (PM_{2.5})

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a State Implementation Plan (SIP) revisions submitted by the Commonwealth of Pennsylvania. These

revisions pertaining to Pennsylvania’s nonattainment New Source Review (NSR) program incorporate preconstruction permitting regulations for fine particulate matter (PM_{2.5}) into the Pennsylvania SIP. EPA is approving these revisions in accordance with the requirements of the Clean Air Act (CAA).

DATES: Written comments must be received on or before April 30, 2012.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA–R03–OAR–2011–0924 by one of the following methods:

- A. www.regulations.gov. Follow the on-line instructions for submitting comments.
- B. *Email:* cox.kathleen@epa.gov.

C. *Mail*: EPA-R03-OAR-2011-0924, Kathleen Cox, Associate Director, Office of Permits and Air Toxics, Mailcode 3AP10, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

D. *Hand Delivery*: At the previously-listed EPA Region III address. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA-R03-OAR-2011-0924. EPA's policy is that all comments received will be included in the public docket without change, and may be made available online at www.regulations.gov, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through www.regulations.gov or email. The www.regulations.gov Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through www.regulations.gov, your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the electronic docket are listed in the www.regulations.gov index. Although listed in the index, some information is not publicly available, i.e., 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 either electronically in www.regulations.gov or in hard copy during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street,

Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the Pennsylvania Department of Environmental Protection, Bureau of Air Quality Control, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105.

FOR FURTHER INFORMATION CONTACT: Gerallyn Duke, (215) 814-2084, or by email at duke.gerallyn@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document, whenever "we," "us," or "our" is used, we mean EPA. On September 23, 2011, the Pennsylvania Department of Environmental Protection (PADEP) submitted a formal revision to its State Implementation Plan (SIP).

I. Background

The SIP revision consists of amendments to 25 Pa. Code Chapter 121, "General Provisions;" and Chapter 127, "Construction, Modification, Reactivation and Operation of Sources." This SIP revision submitted by Pennsylvania will satisfy requirements that are set forth in the federal rule, "Implementation of the New Source Review (NSR) Program for Particulate Matter less than 2.5 Micrometers (PM_{2.5})" (NSR PM_{2.5} Rule), which was promulgated on May 16, 2008 (73 FR 28321).

A. Fine Particulate Matter and the NAAQS

Fine particles in the atmosphere are made up of a complex mixture of components. Common constituents include sulfate (SO₄); nitrate (NO₃); ammonium; elemental carbon; a great variety of organic compounds; and inorganic material (including metals, dust, sea salt, and other trace elements) generally referred to as "crustal" material, although it may contain material from other sources. Airborne particulate matter (PM) with a nominal aerodynamic diameter of 2.5 micrometers or less (a micrometer is one-millionth of a meter, and 2.5 micrometers is less than one-seventh the average width of a human hair) are considered to be "fine particles" and are also known as PM_{2.5}. "Primary" particles are emitted directly into the air as a solid or liquid particle (e.g., elemental carbon from diesel engines or fire activities, or condensable organic particles from gasoline engines). "Secondary" particles (e.g., sulfate and nitrate) form in the atmosphere as a result of various chemical reactions.

The health effects associated with exposure to PM_{2.5} include potential aggravation of respiratory and cardiovascular disease (i.e., lung

disease, decreased lung function asthma attacks and certain cardiovascular issues). Epidemiological studies have indicated a correlation between elevated PM_{2.5} levels and premature mortality. Groups considered especially sensitive to PM_{2.5} exposure include older adults, children, and individuals with heart and lung diseases. For more details regarding health effects and PM_{2.5} see EPA's Web site at <http://www.epa.gov/oar/particlepollution/> (see heading "Health and Welfare").

On July 18, 1997, EPA revised the NAAQS for PM to add new standards for fine particles, using PM_{2.5} as the indicator. Previously, EPA used PM₁₀ (inhalable particles smaller than or equal to 10 micrometers in diameter) as the indicator for the PM NAAQS. EPA established health-based (primary) annual and 24-hour standards for PM_{2.5}, setting an annual standard at a level of 15 micrograms per cubic meter (µg/m³) and a 24-hour standard at a level of 65 µg/m³ (62 FR 38652). At the time the 1997 primary standards were established, EPA also established welfare-based (secondary) standards identical to the primary standards. The secondary standards are designed to protect against major environmental effects of PM_{2.5}, such as visibility impairment, soiling, and materials damage. On October 17, 2006, EPA revised the primary and secondary NAAQS for PM_{2.5}. In that rulemaking, EPA reduced the 24-hour NAAQS for PM_{2.5} to 35 µg/m³ and retained the existing annual PM_{2.5} NAAQS of 15 µg/m³ (71 FR 61236).

B. Implementation of NSR Requirements for PM_{2.5}—the NSR PM_{2.5} Rule

After EPA promulgated the NAAQS for PM_{2.5} on October 23, 1997, the Agency issued a guidance document written by John Seitz entitled "Interim Implementation of New Source Review Requirements for PM_{2.5}" (Seitz memo). The Seitz memo was designed to help states implement NSR requirements pertaining to the new PM_{2.5} NAAQS in light of technical difficulties posed by PM_{2.5} at that time. Specifically, the Seitz memo states: "PM₁₀ may properly be used as a surrogate for PM_{2.5} in meeting NSR requirements until these difficulties are resolved."

EPA also issued a guidance document entitled "Implementation of New Source Review Requirements in PM_{2.5} Nonattainment Areas" (the "2005 PM_{2.5} Nonattainment NSR Guidance"), on April 5, 2005, the date that EPA's PM_{2.5} nonattainment area designations became effective for the 1997 NAAQS. This memorandum provided guidance on the implementation of the nonattainment

major NSR provisions in PM_{2.5} nonattainment areas in the interim period between the effective date of the PM_{2.5} nonattainment area designations (April 5, 2005) and EPA's promulgation of final PM_{2.5} nonattainment NSR regulations. Besides reaffirming the continuation of the PM₁₀ Surrogate Policy for PM_{2.5} attainment areas set forth in the Seitz memo, the 2005 PM_{2.5} nonattainment NSR Guidance recommended that until EPA promulgated the PM_{2.5} major NSR regulations, "States should use a PM₁₀ nonattainment major NSR program as a surrogate to address the requirements of nonattainment major NSR for the PM_{2.5} NAAQS."

On May 16, 2008, EPA finalized a rule (the NSR PM_{2.5} Rule) to implement the 1997 PM_{2.5} NAAQS, including changes to the NSR program (73 FR 28321). The 2008 NSR PM_{2.5} Rule revised the NSR program requirements to establish the framework for implementing preconstruction permit review for the PM_{2.5} NAAQS in both attainment and nonattainment areas. The 2008 NSR PM_{2.5} Rule required that major stationary sources seeking permits must directly satisfy the PM_{2.5} requirements, as of the effective date of the rule, rather than relying on PM₁₀ as a surrogate, with two exceptions. The first exception was a "grandfathering" provision in the Federal PSD program at 40 CFR 52.21(i)(1)(xi). This grandfathering provision applied to sources that had applied for, but had not yet received, a final and effective PSD permit before the July 15, 2008, effective date of the May 2008 final rule. The second exception was that states with SIP-approved PSD programs could continue to implement the Seitz Memo's PM₁₀ Surrogate Policy for up to three years (until May 2011) or until the individual revised state PSD programs for PM_{2.5} are approved by EPA, whichever came first. For additional information on the NSR PM_{2.5} Rule, see (73 FR 28321). On February 11, 2010, EPA proposed to repeal the grandfathering provision for PM_{2.5} contained in the federal PSD program at 40 CFR 52.21(i)(1)(xi) and to end early the PM₁₀ Surrogate Policy applicable in states that have a SIP approved PSD program (75 FR 6827). In support of this proposal, EPA explained that the PM_{2.5} implementation issues that led to the adoption of the PM₁₀ Surrogate Policy in 1997 have been largely resolved to a degree sufficient for sources and permitting authorities to conduct meaningful permit-related PM_{2.5} analyses. The repeal of the grandfathering rule was finalized on May 18, 2011 (76 FR 28646).

The 2008 NSR PM_{2.5} Rule also established the following NSR requirements to implement the PM_{2.5} NAAQS: (1) Require NSR permits to address directly emitted PM_{2.5} and precursor pollutants; (2) establish significant emission rates for direct PM_{2.5} and precursor pollutants (including sulfur dioxide (SO₂) and oxides of nitrogen NO_x); (3) establish PM_{2.5} emission offsets; and (4) require states to account for gases that condense to form particles (condensables) in PM_{2.5} emission limits.

Additionally, the 2008 final rule authorized states to adopt provisions in their nonattainment NSR rules that would allow major stationary sources and major modifications locating in areas designated nonattainment for PM_{2.5} to offset emissions increases of direct PM_{2.5} emissions or PM_{2.5} precursors with reductions of either direct PM_{2.5} emissions or PM_{2.5} precursors in accordance with offset ratios contained in the approved SIP for the applicable nonattainment area. The inclusion, in whole or in part, of the interpollutant offset provisions for PM_{2.5} is discretionary on the part of the states. In the preamble to the 2008 final rule, EPA included preferred or presumptive offset ratios, applicable to specific PM_{2.5} precursors that states may adopt in conjunction with the new interpollutant offset provisions for PM_{2.5}, and for which the state could rely on the EPA's technical work to demonstrate the adequacy of the ratios for use in any PM_{2.5} non attainment area. Alternatively, the preamble indicated that states may adopt their own ratios, subject to the EPA's approval, that would have to be substantiated by modeling or other technical demonstrations of the net air quality benefit for ambient PM_{2.5} concentrations. The preferred ratios were subsequently the subject of a petition for reconsideration, which the Administrator granted. EPA continues to support the basic policy that sources may offset increases in emissions of direct PM_{2.5} or of any PM_{2.5} precursor in a PM_{2.5} nonattainment area with actual emissions reductions in direct PM_{2.5} or PM_{2.5} precursors in accordance with offset ratios as approved in the SIP for the applicable nonattainment area. However, we no longer consider the preferred ratios set forth in the preamble to the 2008 final rule for PM_{2.5} NSR implementation to be presumptively approvable. Instead, any ratio involving PM_{2.5} precursors adopted by the state for use in the interpollutant offset program for PM_{2.5} nonattainment areas must be accompanied by a technical

demonstration that shows the net air quality benefits of such ratio for the PM_{2.5} nonattainment area in which it will be applied.

II. Summary of SIP Revision

The SIP revision submitted by Pennsylvania consists of amendments to the general provisions of 25 Pa. Code Chapters 121 and major nonattainment NSR permitting regulations of 25 Pa. Code Chapter 127. The revision fulfills the federal program requirements established by the EPA rulemaking actions discussed above for nonattainment areas. The amendments establish the major source threshold, significant emission rate and offset ratios for PM_{2.5}, establish nitrogen oxides (NO_x) and sulfur dioxide (SO₂) as precursors to PM_{2.5}, and establish interpollutant trading for offsets and NSR applicability to PM_{2.5} precursor pollutants, pursuant to the May 2008 NSR PM_{2.5} Rule. Pennsylvania's proposed SIP revision does not include the "grandfathering" and presumptively approvable interpollutant trading ratio provisions that have subsequently been repealed/reconsidered. Clarifying amendments, described below, for Chapter 127 are also made. Finally, minor editorial changes are included in the amendments.

Section 127.203a(a)(2) is amended to clarify that aggregation of de minimis emissions for PM_{2.5} and PM_{2.5} precursors is not required. Section 127.206(o) is amended to clarify that, except as provided in Section 127.210 (which addresses offset ratios), an emission reduction credit (ERC) created for a regulated criteria pollutant shall only be used for offsetting or netting an emission increase involving the same criteria pollutant unless approved by PADEP. Section 127.203(b)(1)(i) is amended to clarify that the owner or operator must use the existing provisions in Section 127.203(b)(2) or (3) for a determination of control technology requirements when the net emission increase is equal to or exceeds the applicable emissions rate that is significant.

The amendments add a definition of "PM_{2.5}." The amendments revise the definitions of existing terms "regulated NSR pollutant" and "significant" to include the requirements for PM_{2.5} to support the amendments to Chapter 127. Specifically, the existing term "significant" is revised to establish a threshold for PM_{2.5} and PM_{2.5} precursors at major modifications at existing sources and the existing term "regulated NSR pollutant" is revised to include PM_{2.5} and to identify precursors for PM_{2.5}. The amendments delete the term

“maximum allowable emissions” since the term is no longer used to support existing regulations in Pennsylvania and the term is not used in the federal rules, set forth in 40 CFR 51.165, for nonattainment New Source Review SIPs.

The amendments submitted by Pennsylvania for approval into the SIP were adopted by Pennsylvania on May 18, 2011 and became effective on September 3, 2011. They include revisions to certain definitions at 25 Pa. Code 121.1, as well as to Chapter 127, Subchapter E (nonattainment NSR). The following regulations under Chapter 127 are revised: Section 127.201 (General requirements), Section 127.201a (Measurements, abbreviations and acronyms), Section 127.202 (Effective date), Section 127.203 (Facilities subject to special permit requirements), Section 127.203a (Applicability determination), Section 127.204 (Emissions subject to this subchapter), Section 127.206 (ERC general requirements), and Section 127.210 (Offset ratios).

III. Proposed Action

EPA’s review of the revisions submitted by Pennsylvania for approval into the SIP finds them consistent with their federal counterparts. EPA is proposing to approve the Pennsylvania SIP revision to incorporate federal preconstruction permitting requirements for PM_{2.5} and PM_{2.5} precursors in nonattainment areas along with clarifying amendments, which was submitted on September 23, 2011. EPA is soliciting public comments on the issues discussed in this document. These comments will be considered before taking final action.

IV. Statutory and Executive Order Reviews

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 proposes to approve state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- Is not a “significant regulatory action” subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- 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 (Pub. L. 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 proposed rule pertaining to NSR requirements for PM_{2.5} 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.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

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

Dated: March 19, 2012.

W.C. Early,

Acting Regional Administrator, Region III.

[FR Doc. 2012–7573 Filed 3–28–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R06–OAR–2005–NM–0006; FRL–9653–5]

Approval and Promulgation of Implementation Plans; New Mexico; Construction Permit Fees

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve revisions which repeal and replace existing rules, and revisions to the applicable State Implementation Plan (SIP) for New Mexico submitted by the State of New Mexico on April 11, 2002, and April 25, 2005, which relate to construction permit fee requirement regulations. The repeal and replace and SIP revisions included in this action would address section 110(a)(2) Clean Air Act (the Act or CAA) requirements related to fees for reviewing and acting on specific air quality construction permit applications received by the New Mexico Environment Department (NMED or Department) and for implementing and enforcing the terms and conditions of the construction permit, excluding any court costs or other costs associated with an enforcement action. EPA has determined that these SIP revisions comply with the Clean Air Act and EPA regulations and are consistent with EPA policies. This action is being taken under section 110 of the Act.

DATES: Comments must be received on or before April 30, 2012.

ADDRESSES: Comments may be mailed to Ms. Ashley Mohr, Air Permits Section (6PD–R), Environmental Protection Agency, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202–2733. Comments may also be submitted electronically of through hand delivery/courier by following the detailed instructions in the **ADDRESSES** section of the direct final rule located in the rules section of this **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Ms. Ashley Mohr, Air Permits Section (6PD–R), Environmental Protection Agency, Region 6, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202–2733, telephone (214) 665–7289; fax number (214) 665–6762; email address mohr.ashley@epa.gov.

SUPPLEMENTARY INFORMATION: In the final rules section of this **Federal Register**, EPA is approving the State’s SIP submittal as a direct final rule without prior proposal because the