



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R09-OAR-2016-0119; FRL-9948-26-Region 9]

Approval of California Air Plan Revisions, Modoc County Air Pollution Control District,

Permit Programs

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking direct final action to approve revisions to the Modoc County Air Pollution Control District (MCAPCD) portion of the California State Implementation Plan (SIP). These revisions concern MCAPCD's administrative and procedural requirements to obtain preconstruction permits that regulate emission sources under the Clean Air Act as amended in 1990 (CAA or the Act). We are approving local rules under the CAA.

DATES: This rule is effective on [**Insert date 60 days after the date of publication in the Federal Register**] without further notice, unless the EPA receives adverse comments by [**Insert date 30 days after the date of publication in the Federal Register**]. If we receive such comments, we will publish a timely withdrawal in the **Federal Register** to notify the public that this direct final rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R09-OAR-2016-0119 at <http://www.regulations.gov>, or via email to R9airpermits@epa.gov. For comments submitted at Regulations.gov, follow the online instructions for submitting comments. Once submitted,

comments cannot be edited or removed from 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>.

FOR FURTHER INFORMATION CONTACT: Ya-Ting (Sheila) Tsai, EPA Region IX, (415) 972-3328, Tsai.Ya-Ting@epa.gov.

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

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I. The State's Submittal

- A. *What rules did the State submit?*

Table 1 lists the rules under MCAPCD Regulation II, "Permit System" addressed by this action with the dates that they were adopted by the local air agency and submitted by the California Air Resources Board (CARB).

TABLE 1 - SUBMITTED RULES

Rule #	Rule Title	Adoption or Amendment Date	Submittal Date
2.3	Transfers	1/15/1989	12/31/1990
2.5	Expiration of Applications	1/15/1989	12/31/1990
2.7	Conditional Approval	1/15/1989	12/31/1990
2.10	Further Information	1/15/1989	12/31/1990

On February 28, 1991, the EPA determined that the submittal for the MCAPCD rules listed in Table 1 met the completeness criteria in 40 CFR Part 51 Appendix V, which must be met before formal EPA review.

- B. *Are there other versions of these rules?*

EPA approved the rules listed in Table 2 into the MCAPCD portion of the California SIP on the dates listed. When the rules listed in Table 1 are approved by EPA, those rules will take

the place of the existing SIP approved rules listed in Table 2.

Table 2 – SIP Approved Rules

Rule #	Rule Title	SIP Approval Date	Federal Register Citation
2.3	Transfer	09/22/1972	37 FR 19812
2.5	Cancellation of Applications	09/22/1972	37 FR 19812
2.7*	Provision of Sampling and Testing Facilities	09/22/1972	37 FR 19812
2.9*	Conditional Approval	09/22/1972	37 FR 19812

*Note: SIP approved Rule 2.7 - Provision of Sampling and Testing Facilities will be replaced by newly submitted Rule 2.10 Further Information. SIP approved Rule 2.9 - Conditional Approval will be replaced by submitted Rule 2.7 - Conditional Approval.

C. What is the purpose of the submitted rule revisions?

Section 110(a) of the CAA requires States to submit regulations that will assure attainment and maintenance of the National Ambient Quality Air Quality Standards (NAAQS). These rules were developed as part of the local agency's general programmatic requirement to implement the requirement commonly referred to as the minor or general New Source Review (NSR) program. The revisions contained in the submitted rules listed in Table 1 are mostly administrative in nature. Rule 2.3 prohibits the transfer of an Authority to Construct or Permit to Operate without written approval. Rule 2.5 provides the timeline for an Authority to Construct or an application for a Permit to Operate to expire and/or be extended. Rule 2.7 is renumbered from Rule 2.9 and provides additional enforceability by clarifying that equipment cannot be operated contrary to permit conditions specified in the permit. Rule 2.10 is a new rule that allows MCAPCD to require data, sampling, testing, and monitoring to determine a stationary source's emissions. There are no substantive relaxations to these rules.

The TSD, which is available in the docket for today's rulemaking, has more information

about these rules.

II. The EPA's Evaluation and Action

A. How is the EPA evaluating the rules?

SIP rules must be enforceable (see CAA section 110(a)(2)), must not interfere with applicable requirements concerning attainment and reasonable further progress or other CAA requirements (see CAA section 110(l)), and must not modify certain SIP control requirements in nonattainment areas without ensuring equivalent or greater emissions reductions (see CAA section 193). The submitted rules are revisions to existing SIP approved general NSR permit program requirements under 40 CFR 51.160-51.164. The revisions are primarily administrative in nature (reformatting, providing additional clarity and enforceability).

B. Do the rules meet the evaluation criteria?

We believe these rules are consistent with the relevant policy and guidance regarding enforceability and SIP relaxations. These changes are mostly administrative in nature and their approval will not interfere with any applicable requirement concerning attainment and reasonable further progress, or any other CAA application requirement.

The TSD, which is available in the docket for today's rulemaking, has more information on our evaluation.

C. Public comment and final action

As authorized in section 110(k)(3) of the Act, the EPA is fully approving the submitted rules because we believe they fulfill all relevant requirements. We do not think anyone will object to this approval, so we are finalizing it without proposing it in advance. However, in the Proposed Rules section of this **Federal Register**, we are simultaneously proposing approval of

the same submitted rules. If we receive adverse comments by [**Insert date 30 days after date of publication in the Federal Register**], we will publish a timely withdrawal in the **Federal Register** to notify the public that the direct final approval will not take effect and we will address the comments in a subsequent final action based on the proposal. If we do not receive timely adverse comments, the direct final approval will be effective without further notice on [**Insert date 60 days after date of publication in the Federal Register**]. This action will incorporate these rules into the federally enforceable SIP.

Please note that if the EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, the EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

III. Incorporation by Reference

In this rule, the EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is finalizing the incorporation by reference of the MCAPCD rules described in the amendments to 40 CFR part 52 set forth below. The EPA has made, and will continue to make, these documents available electronically through www.regulations.gov and in hard copy at U.S. Environmental Protection Agency Region IX (AIR-3), 75 Hawthorne Street, San Francisco, CA, 94105-3901.

IV. Statutory and Executive Order Reviews

Under the Clean Air Act, 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 Clean Air Act. 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 Clean Air Act; and

- does not provide the 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 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 (65 FR 67249, November 9, 2000).

The Congressional Review Act, 5 U.S.C. section 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 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).

Under section 307(b)(1) of the Clean Air Act, 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. Parties with objections to this direct final rule are encouraged to file a comment in response to the parallel notice of proposed rulemaking for this action published in the Proposed Rules section of today's Federal Register, rather than file an immediate petition for judicial review of this direct final rule, so that the EPA can withdraw this direct final rule and address the comment in the proposed rulemaking. 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, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements.

Dated: June 15, 2016

Alexis Strauss
Acting Regional Administrator,
Region IX.

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 52.220 is amended by adding paragraphs (c) (6) (xi) (D), and (c) (182) (i) (F) (5), (6), (7), and (8) to read as follows:

§52.220 Identification of plan.

* * * * *

(c) * * *

(6) * * *

(xi) * * *

(D) Previously approved September 22, 1972 in paragraph (c) (6) of this section and now deleted with replacement in paragraph (c) (182) (i) (F) (5), (6), (7), and (8), Rule 2.3 “Transfer,” Rule 2.5 “Cancellation of Application,” Rule 2.7 “Provision of Sampling and Testing Facilities,” and Rule 2.9 “Conditional Approval”.

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(182) * * *

(i) * * *

(F) * * *

(5) Regulation II, “Permit System,” Rule 2.3 “Transfers” amended on January 15, 1989.

(6) Regulation II, “Permit System,” Rule 2.5 “Expiration of Applications” amended on January 15, 1989.

(7) Regulation II, “Permit System,” Rule 2.7 “Conditional Approval” amended on January 15, 1989.

(8) Regulation II, “Permit System,” Rule 2.10 “Further Information” amended on January 15, 1989.

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