



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R09-OAR-2017-0028; FRL-9958-81-Region 9]

Approval of California Air Plan Revisions, Western Mojave Desert, Rate of Progress Demonstration

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve a state implementation plan revision submitted by the State of California to meet Clean Air Act requirements applicable to the Western Mojave Desert (WMD) ozone nonattainment area. The EPA is proposing to approve the initial six-year 15 percent rate of progress demonstration to address requirements for the 1997 8-hour ozone national ambient air quality standards (NAAQS).

DATES: Any comments must arrive by [insert date 30 days after the date of publication in the Federal Register].

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R09-OAR-2017-0028 at <http://www.regulations.gov>, or via email to kelly.thomasp@epa.gov. For comments submitted at Regulations.gov, follow the online instructions for submitting comments. Once submitted, comments cannot be removed or edited 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: Tom Kelly, EPA Region IX, by phone at (415) 972-3856 or by email at kelly.thomasp@epa.gov.

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

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I. Background

Following promulgation of a new or revised NAAQS, the EPA is required by the Clean Air Act (CAA or “Act”) to designate areas throughout the nation as attaining or not attaining the NAAQS. In the “Final Rule To Implement the 8-Hour Ozone National Ambient Air Quality

Standard - Phase 1,” (“Phase 1 Rule”), we designated nonattainment areas for the 1997 8-hour ozone NAAQS. *See* 69 FR 23858 (April 30, 2004). The designations and classifications for the 1997 8-hour ozone NAAQS for California areas are codified at 40 CFR 81.305. In the Phase 1 Rule, the EPA classified the WMD as Moderate nonattainment for the 1997 8-hour ozone NAAQS, with an attainment date no later than June 15, 2010. *See* 69 FR 23858, 23884.

On February 14, 2008, the California Air Resources Board (CARB) requested that the EPA reclassify three California areas designated nonattainment for the 1997 8-hour ozone NAAQS.¹ For the WMD, CARB requested reclassification from Moderate to Severe-17.² On March 14, 2012, CARB submitted a clarification requesting that the EPA reclassify the WMD from Moderate to Severe-15.³ Consistent with section 181(b)(3) of the CAA, we granted the State’s request and reclassified the WMD area from Moderate to Severe-15 nonattainment for the 1997 8-hour ozone NAAQS, with an attainment date of no later than June 15, 2019. *See* 77 FR 26950 (May 8, 2012).

The WMD is located in northeast Los Angeles County and southwest San Bernardino County. For a precise description of the geographic boundaries of the area, see 40 CFR 81.305.

The Los Angeles County portion of the WMD area is under the jurisdiction of the Antelope Valley Air Quality Management District (AVAQMD), and the San Bernardino County portion of

¹ *See* letter dated February 14, 2008, from James N. Goldstene, Executive Officer, CARB, to Wayne Nastri, Regional Administrator, EPA Region 9. In addition to the WMD, CARB requested that the EPA reclassify the Ventura County and Sacramento Metro ozone nonattainment areas under CAA section 181(b)(3) to higher classifications for the 1997 8-hour ozone NAAQS. Pursuant to this request, the EPA reclassified the Ventura County area from Moderate to Serious nonattainment effective June 19, 2008, 73 FR 29073 (May 20, 2008), and reclassified the Sacramento Metro area from Serious to Severe-15 nonattainment effective June 4, 2010, 75 FR 24409 (May 5, 2010).

² CARB subsequently submitted a SIP revision for this area to address the attainment demonstration and related requirements for severe-17 ozone nonattainment areas. *See* July 22, 2008, letter and enclosures from James N. Goldstene, Executive Officer, CARB, to Wayne Nastri, Regional Administrator, U.S. Environmental Protection Agency, Region 9.

³ *See* letter dated March 14, 2012, from James N. Goldstene, Executive Director, CARB, to Jared Blumenfeld, Regional Administrator, EPA Region 9.

the area is under the jurisdiction of the Mojave Desert Air Quality Management District (MDAQMD). The districts and State are responsible for adopting and submitting plans to attain the 1997 8-hour ozone NAAQS for their areas. Designation of an area as nonattainment starts the process for a state to develop and submit to the EPA a state implementation plan (SIP) providing for attainment of the NAAQS under title 1, part D of the CAA. For the 1997 8-hour ozone NAAQS areas designated as nonattainment effective June 15, 2004, this attainment SIP was due by June 15, 2007. *See* CAA section 172(b) and 40 CFR 51.908(a) and 51.910.

II. The State’s SIP Submittal

A. Documents Comprising the SIP Submittal

California has made several SIP submittals to address the CAA planning requirements for attaining the 1997 8-hour ozone NAAQS in the WMD. In today’s proposal, we are proposing to take action only on the 15 percent volatile organic compound (VOC) rate of progress (ROP) determination for the WMD. This demonstration is contained in the 2014 CARB staff report entitled “Proposed Updates to the 1997 8-Hour Ozone Standard, State Implementation Plans: Coachella Valley and Western Mojave Desert 8-hour Ozone Nonattainment Areas” (“2014 SIP Update”).⁴

B. CAA Procedural and Administrative Requirements for SIP Submittals

Sections 110(a)(1) and (2) and 110(l) of the CAA require a state to provide reasonable public notice and opportunity for public hearing prior to the adoption and submittal of a SIP or

⁴ CARB, Staff Report, “Proposed Updates to the 1997 8-Hour Ozone Standard, State Implementation Plans: Coachella Valley and Western Mojave Desert 8-hour Ozone Nonattainment Areas,” September 22, 2014. Other elements of CARB’s SIP submittal include: AVAQMD, “Federal 8-Hour Ozone Attainment Plan (Western Mojave Desert Non-attainment Area),” May 20, 2008; MDAQMD, “Federal 8-Hour Ozone Attainment Plan (Western Mojave Desert Non-attainment Area),” June 9, 2008; CARB, “2007 State Strategy for the California State Implementation Plan,” April 26, 2007, and Appendices A–G, Release Date May 7, 2007. *See* letter from Richard Corey, Executive Officer CARB, to Jared Blumenfeld, Regional Administrator, US. EPA dated November 6, 2014, with enclosures.

SIP revision. To meet this requirement, every SIP submittal should include evidence that adequate public notice was given and an opportunity for a public hearing was provided, consistent with the EPA's implementing regulations in 40 CFR 51.102.

For the 2014 SIP Update, CARB provided a public comment period from September 22, 2014, to October 24, 2014, and held a public hearing, on October 24, 2014. CARB formally adopted the 2014 SIP Update in Board Resolution 14-29 on October 24, 2014. Therefore, we find the submittals meet the procedural requirements of CAA sections 110(a) and 110(l).

Section 110(k)(1)(B) of the CAA requires that the EPA determine whether a SIP submittal is complete within 60 days of receipt. This section also provides that any plan that the EPA has not affirmatively determined to be complete or incomplete will become complete six months after the date of submittal by operation of law. The EPA's SIP completeness criteria are found at 40 CFR part 51, Appendix V. The 2014 SIP Update was submitted to the EPA on November 6, 2014, and became complete by operation of law on May 6, 2015.

III. The EPA's Evaluation and Action

A. Requirements for the ROP Demonstration

For areas classified as Moderate or above, CAA section 182(b)(1) requires a SIP revision providing for ROP, defined as a one time, 15 percent actual VOC emission reduction during the six years following the baseline year 1990, for an average reduction of 3 percent per year. For areas designated Serious nonattainment or above, no further action is necessary if the area fulfilled its ROP requirement for the 1-hour NAAQS (from 1990–1996). As the EPA explained in the 1997 Ozone Implementation Rule,⁵ for areas that did not meet the 15 percent VOC ROP reduction for the 1-hour ozone NAAQS, a state may notify the EPA that it wishes to rely on a

⁵ 69 FR 23980 (October 27, 2004).

previously submitted SIP (for the 1-hour ozone NAAQS), or it may elect to submit a new or revised SIP addressing the 15 percent VOC ROP reduction (for the 1997 8-hour ozone NAAQS). The ROP demonstration requirement is a continuing applicable requirement for the WMD under the EPA's anti-backsliding rules that apply once a NAAQS has been revoked. *See* 40 CFR 51.1105(a)(1) and 51.1100(o)(4).

The CAA outlines and EPA guidance details the method for calculating the requirements for the 1990–1996 period. Section 182(b)(1) requires that reductions: (1) be in addition to those needed to offset any growth in emissions between the base year and the milestone year; (2) exclude emission reductions from four prescribed federal programs (*i.e.*, the federal motor vehicle control program, the federal Reid vapor pressure (RVP) requirements, any RACT corrections previously specified by the EPA, and any inspection and maintenance (I/M) program corrections necessary to meet the basic I/M level); and (3) be calculated from an “adjusted” baseline relative to the year for which the reduction is applicable.

The adjusted base year inventory excludes emission reductions from fleet turnover between 1990 and 1996 and from federal RVP regulations that were promulgated by November 15, 1990, or required under section 211(h) of the Act. The effect of these adjustments is that states are not able to take credit for emissions reductions that would result from fleet turnover of current federal standard cars and trucks, or from already existing federal fuel regulations. However, the SIP can take full credit for the benefits of any new (*i.e.*, post-1990) vehicle emissions standards, as well as any other new federal or state motor vehicle or fuel program that will be implemented in the nonattainment area, such as Tier 1 exhaust standards, new evaporative emissions standards, reformulated gasoline, enhanced I/M, California low emissions

vehicle program, and transportation control measures.

The Southeast Desert, which includes the WMD, has attained the 1-hour ozone NAAQS,⁶ but we have not approved a 15 percent ROP plan for the 1-hour ozone NAAQS in the area. Per 40 CFR 51.1118, our determination that the area attained the 1-hour ozone NAAQS means that the Reasonable Further Progress (RFP) requirement (including the 15 percent ROP requirement for VOCs) no longer applies to the 1-hour ozone NAAQS for the Southeast Desert area. The ROP demonstration requirement remains in effect for the 1997 8-hour ozone NAAQS, and the WMD must therefore demonstrate a six-year, 15 percent VOC ROP reduction.

B. The ROP Demonstration in the 2014 SIP Update

The 2014 SIP Update incorporates the 15 percent VOC ROP demonstration as an element of the RFP demonstration, contained in Appendix C and discussed on page 10. For today’s notice, we are acting only on the ROP emissions demonstration. Table C-2 in the 2014 SIP Update was used to create Table 1 below. The revised 15 percent ROP demonstration compares milestone year average summer weekday emissions of VOC⁷ with a 2002 base year inventory. Based on the progress of the VOC emissions reductions from 2002 to 2008, the State concluded that the WMD did not meet the ROP demonstration requirement in 2008, but found that it met the requirement in the subsequent reporting milestone, in 2011. *See* 2014 SIP Update at 10.

Table 1. 15 Percent Rate of Progress Demonstration for VOC Emissions in the WMD^a	
VOC Emissions	VOC Emissions (tpd)

⁶ *See* 80 FR 20166 (April 15, 2015).

⁷ The 2014 SIP Update uses the term Reactive Organic Gasses, or ROG, instead of VOC. These terms are essentially synonymous. For simplicity, we use the term VOC in this notice to mean either VOC or ROG.

1. 2002 baseline inventory	71.5
2. 2008 remaining emissions	63.1
3. 2008 goal (remaining emissions after 15% ROP Reduction required from 2002 baseline)	58.2
4. ROP reduction achieved by 2008 (Compare Line 3 to Line 2)?	No
5. 2011 remaining emissions	56.1
6. ROP reduction achieved by 2011 (compare Line 5 to Line 2)?	Yes

^a Source: 2014 SIP Update, Table C-2.

C. The EPA’s Evaluation of the ROP Demonstration and Proposed Action

The 2014 SIP Update demonstrates that the WMD achieved the 15 percent reduction in VOC emissions required by CAA section 182(b)(1). Although the state did not demonstrate these reductions within the six-year period set out in this section, it has shown that all necessary reductions were achieved in the earliest subsequent reporting period. The EPA has previously approved ROP demonstrations with a demonstration date more than six years from a baseline year.⁸ We therefore propose to approve the ROP demonstration for the WMD.

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 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);

⁸ See, e.g., 65 FR 31485 (May 18, 2000). This approach was upheld in *Sierra Club v. EPA*, 252 F.3d 943 (8th Cir. 2001).

- 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 disproportionate human health or environmental effects with practical, appropriate, 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).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Ozone, Volatile organic compounds.

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

Dated: January 13, 2017.

Deborah Jordan,
Acting Regional Administrator,
Region IX.

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