



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R09-OAR-2019-0564; FRL- 10006-63-Region 9]

Air Plan Approval; California; Mojave Desert Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking final action to approve revisions to the Mojave Desert Air Quality Management District (MDAQMD) portion of the California State Implementation Plan (SIP). These revisions concern emissions of volatile organic compounds (VOCs) from organic liquid and gasoline transfer and storage operations. We are approving local rules that regulate these emission sources under the Clean Air Act (CAA or the Act). We are also converting the conditional approval of the MDAQMD's reasonably available control technology (RACT) SIPs for the 1997 and 2008 ozone standards, as it applies to these rules, to a full approval.

DATES: This rule will be effective on [**Insert date 30 days after date of publication in the *Federal Register***].

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA-R09-OAR-2019-0564. All documents in the docket are listed on the <https://www.regulations.gov> web site. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information 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 through <https://www.regulations.gov>, or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional availability information. **FOR FURTHER INFORMATION CONTACT:** Rebecca Newhouse, EPA Region IX, 75 Hawthorne St., San Francisco, CA 94105. By phone: (415) 972-3004 or by email at newhouse.rebecca@epa.gov.

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

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I. Proposed Action

On November 20, 2019 (84 FR 64035), the EPA proposed to approve the following rules into the California SIP.

Local Agency	Rule #	Rule Title	Amended	Submitted
MDAQMD	461	Gasoline Transfer and Dispensing	01/22/2018	05/23/2018
MDAQMD	462	Organic Liquid Loading	01/22/2018	05/23/2018
MDAQMD	463	Storage of Organic Liquids	01/22/2018	05/23/2018

We proposed to approve these rules because we determined that they comply with the relevant CAA requirements. We also proposed to find that the rule revisions fulfill commitments made by the District and the California Air Resources Board (CARB) necessary for the EPA to convert the partial conditional approval of the District's RACT demonstrations for the 1997 8-hr ozone National Ambient Air Quality Standards (NAAQS) and the 2008 8-hr ozone NAAQS (also referred to as the 2006 and 2015 RACT SIPs) with respect to Rules 461, 462, and 463 (83 FR 5921, February 12, 2018), to a full approval. Our proposed action contains more information on the rules and our evaluation.

II. Public Comments and EPA Responses

The EPA's proposed action provided a 30-day public comment period. During the comment period, we received seventeen anonymous comments. Ten commenters supported EPA's proposal. Two commenters discussed the impacts of air pollution generally, and the importance of clean air and regulating emissions from gasoline in the Mojave Desert, without expressing either support or opposition to the EPA's proposal. We thank these commenters for their input.

The issues raised by the five remaining commenters are described below, followed by the EPA's response. One commenter asked why the EPA proposed to enforce the updated regulations only in the Mojave Desert, and not in the remainder of the United States, and two more wrote that although the proposed rule is a "great" revision to the Mojave AQMD rules, "the EPA needs to use their power of regulating emission sources under the Clean Air Act on a wider scope of the United States." The EPA notes that the Clean Air Act establishes a system of

cooperative federalism, in which the federal government sets air quality standards, and the states have the responsibility to develop a plan “which provides for implementation, maintenance, and enforcement” of such standards.¹ The states then submit these State Implementation Plans to the EPA. Under section 110(k)(3) of the Act, the EPA “shall approve such submittal as a whole if it meets all of the applicable requirements” of the Act. In this instance, the MDAQMD has modified its local rules, and CARB has submitted these changes as a State Implementation Plan revision. These rules are applicable only within the District. The EPA does not have the authority to expand the applicability of these rules beyond the boundaries of the MDAQMD. Because the EPA proposed to determine that the SIP submission meets the requirements of the Act applicable to a SIP revision, and these commenters have not suggested that the submittal does not meet the necessary requirements for approval, the comments have not changed the EPA’s view on the approvability of the submitted rules.

Another commenter wrote that “[w]hen environmental issues grow worse, it should not be an appropriate action to approve what is already in place rather than creating measures to improve state work against local pollutants.” The EPA notes that as ozone pollution worsens in a nonattainment area, the area can be reclassified, resulting in additional requirements becoming applicable under the Act.² In its proposal, the EPA proposed to find that the submitted rules met the stringency requirements currently applicable within the MDAQMD. The commenter has not suggested that the submission does not meet the requirements of the Act. Accordingly, the comment has not changed the EPA’s view on the approvability of the submitted rules. To the extent that the commenter suggests that the EPA should create its own pollution control

¹ 42 U.S.C. 7401(a).

² 42 U.S.C. 7511a.

measures, any such request is outside the scope of the current action.

One commenter expressed concerns about the impacts of pollution, and wrote that “organic compounds should be considered a pollution and the polluter should be charged with either a fine or a criminal offense.” In its proposal the EPA proposed to find that the submitted rules met the SIP criteria for stringency and enforceability. This means that the rules as submitted are as stringent as the Act requires, and can be effectively enforced in the event of a violation. Under the Act, a violation of a SIP rule can be enforced by the EPA, resulting in penalties, injunctive relief, and in some instances, criminal penalties.³ Members of the public may also bring citizen suits to enforce emission standards or limitations under the Act.⁴ Accordingly, the enforcement options mentioned by the commenter may be available to address those who violate the rule. To the extent that the commenter suggests that all emissions of organic compounds should lead to a fine or a criminal offense, the EPA does not agree. The EPA proposed to find that the submitted rules met the stringency requirements of the Act, including the requirement to implement RACT. The commenter has not indicated that the rules do not meet the requirements of the Act.

III. EPA Action

No comments were submitted that change our assessment of the rules as described in our proposed action. Therefore, as authorized in section 110(k)(3) of the Act, the EPA is fully approving these rules into the California SIP. The EPA is also converting the partial conditional approval of the District’s 2006 and 2015 RACT SIPs with respect to Rules 461, 462 and 463 into a full approval.

³ 42 U.S.C. 7413.

⁴ 42 U.S.C. 7604.

IV. 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 MDAQMD 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 through *www.regulations.gov* and at the EPA Region IX Office (please contact the person identified in the “**FOR FURTHER INFORMATION CONTACT**” section of this preamble for more information).

V. 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);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866;
- 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. 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, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: April 14, 2020.

John Busterud,
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)(156)(vii)(C), (c)(191)(i)(C)(2), (c)(198)(i)(E)(3), (c)(518)(i)(A)(3), (4), and (5) to read as follows:

§52.220 Identification of plan-in part.

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(c) * * *

(156) * * *

(vii) * * *

(C) Previously approved on January 15, 1987 in paragraph (c)(156)(vii)(A) of this section, and now deleted with replacement in the Mojave Desert Air Quality Management District in paragraph (c)(518)(i)(A)(5), Rule 463.

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(191) * * *

(i) ***

(C) ***

(2) Previously approved on May 3, 1995 in paragraph (c)(191)(i)(C)(1) of this section, and now deleted with replacement in the Mojave Desert Air Quality Management District in paragraph (c)(518)(i)(A)(5), Rule 463.

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(198) * * *

(i) * * *

(E) * * *

(3) Previously approved on May 3, 1995 in paragraph (c)(198)(i)(E)(1) of this section, and now deleted with replacement in paragraphs (c)(518)(i)(A)(3) and (4), respectively, Rules 461 and 462.

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(518) * * *

(i) * * *

(A) * * *

(3) Rule 461, “Gasoline Transfer and Dispensing,” amended on January 22, 2018.

(4) Rule 462, “Organic Liquid Loading,” amended on January 22, 2018.

(5) Rule 463, “Storage of Organic Liquids,” amended on January 22, 2018.

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§52.248 [Amended]

3. Section 52.248 is amended by removing and reserving paragraphs (d)(1)(i), (ii), and (iii).

[FR Doc. 2020-08290 Filed: 4/30/2020 8:45 am; Publication Date: 5/1/2020]