



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R09-OAR-2019-0318; FRL-10009-28-Region 9]

Clean Air Plans; 2006 Fine Particulate Matter Nonattainment Area Requirements; San Joaquin Valley, California

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA or “Agency”) proposes to approve through parallel processing a state implementation plan (SIP) revision submitted by the State of California to meet Clean Air Act (CAA or “Act”) requirements for the 2006 fine particulate matter (PM_{2.5}) national ambient air quality standards (NAAQS or “standards”) in the San Joaquin Valley Serious nonattainment area. Specifically, the EPA proposes to approve through parallel processing the “Revision to the California State Implementation Plan for PM_{2.5} Standards in the San Joaquin Valley” (“PM_{2.5} Prior Commitment Revision” or “Revision”). We also propose to find that the State has complied with this commitment.

DATES: Any comments must arrive by **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R09-OAR-2019-0318, at <https://www.regulations.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. 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 <https://www.epa.gov/dockets/commenting-epa-dockets>.

FOR FURTHER INFORMATION CONTACT: Rory Mays, Air Planning Office (AIR-2), EPA Region IX, (415) 972-3227, mays.rory@epa.gov.

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

Table of Contents

I. Background

II. Completeness Review of the PM_{2.5} Prior Commitment Revision

III. Review of the PM_{2.5} Prior Commitment Revision

IV. Review of Whether the State has Met the Proposed Revised Commitment

V. Summary of Proposed Actions and Request for Public Comment

VI. Statutory and Executive Order Reviews

I. Background

On October 17, 2006, the EPA strengthened the 24-hour (daily) NAAQS for particles less than or equal to 2.5 micrometers (μm) in diameter (PM_{2.5}) by lowering the level from 65 micrograms (μg) per cubic meter (m^3) to 35 $\mu\text{g}/\text{m}^3$.¹ The 24-hour standards are based on a three-year average of 98th percentile 24-hour PM_{2.5} concentrations. The EPA established these

¹ 71 *Federal Register* (FR) 61144 (October 17, 2006) and 40 CFR 50.13.

standards after considering substantial evidence from numerous health studies demonstrating that serious health effects are associated with exposures to PM_{2.5} concentrations above these levels.

Following promulgation of a new or revised NAAQS, the EPA is required under CAA section 107(d) to designate areas throughout the nation as attaining or not attaining the NAAQS. Effective December 14, 2009, the EPA finalized initial air quality designations for the 2006 PM_{2.5} NAAQS, using air quality monitoring data for the three-year periods of 2005-2007 and 2006-2008.² The EPA designated the San Joaquin Valley as a nonattainment area for the 2006 24-hour PM_{2.5} NAAQS.³ On June 2, 2014, the EPA classified the San Joaquin Valley as a Moderate nonattainment area for these NAAQS, thereby establishing December 31, 2015, as the latest permissible attainment date for the area under section 188(c)(1) of the CAA.⁴ Effective February 19, 2016, the EPA reclassified the San Joaquin Valley as a Serious nonattainment area for these NAAQS based on a determination that the area could not practicably attain the NAAQS by the December 31, 2015 Moderate area attainment date.⁵

On August 31, 2016, the EPA approved the State's demonstration that it was impracticable for the San Joaquin Valley to attain the 2006 24-hour PM_{2.5} NAAQS by the December 31, 2015 Moderate area attainment date and related plan elements addressing the Moderate area requirements for the 2006 24-hour PM_{2.5} NAAQS.⁶ As part of that action, the EPA approved enforceable commitments by the SJVUAPCD⁷ to take specific actions with respect to identified control measures (“rulemaking commitments”) and to achieve specific

² 74 FR 58688 (November 13, 2009).

³ Id. (codified at 40 CFR 81.305).

⁴ 79 FR 31566 (June 2, 2014).

⁵ 81 FR 2993 (January 20, 2016).

⁶ 81 FR 59876 (August 31, 2016).

⁷ The District works cooperatively with the California Air Resources Board (CARB) in preparing attainment plans.

amounts of direct PM_{2.5} emission reductions from these or substitute measures (“aggregate tonnage commitment”) by 2017.

Upon reclassification as a Serious PM_{2.5} nonattainment area, the San Joaquin Valley became subject to a new statutory attainment date no later than the end of the tenth calendar year following designation (i.e., December 31, 2019). CAA section 188(e) authorizes the EPA to extend the attainment date for a Serious area by up to five years if several statutory conditions are met, including the condition that the State has complied with all requirements and commitments applicable to the area in its implementation plan.

On March 27, 2020, the EPA proposed action on portions of two SIP submissions submitted by CARB to address the Serious nonattainment area plan requirements for the 2006 24-hour PM_{2.5} NAAQS in the San Joaquin Valley.⁸ Specifically, the EPA proposed to act on those portions of the following two SIP submissions that pertain to the 2006 24-hour PM_{2.5} NAAQS: the “2018 Plan for the 1997, 2006, and 2012 PM_{2.5} Standards,” adopted by the SJVUAPCD on November 15, 2018, and by CARB on January 24, 2019 (“2018 PM_{2.5} Plan”); and the “San Joaquin Valley Supplement to the 2016 State Strategy for the State Implementation Plan,” adopted by CARB on October 25, 2018 (“Valley State SIP Strategy”). We refer to the relevant portions of these SIP submissions collectively as the “SJV PM_{2.5} Plan” or “Plan.” The SJV PM_{2.5} Plan addresses the Serious area attainment plan requirements for the 2006 24-hour PM_{2.5} NAAQS in the San Joaquin Valley and includes a request under CAA section 188(e) for an extension of the Serious area attainment date for the area for these NAAQS.

As part of that action, the EPA proposed to grant the State’s request for extension of the Serious area attainment date from December 31, 2019, to December 31, 2024, based on a

⁸ 85 FR 17382 (March 27, 2020); the public comment period closed on April 27, 2020.

proposed conclusion that the State has satisfied the requirements for such extensions in section 188(e) of the Act. The EPA noted, however, that the Agency might reconsider this proposal or deny California's request to extend the attainment date if new information or public comments were to cause the EPA to conclude that the requested extension would not be consistent with the requirements of the Act.⁹ Among other things, the EPA proposed to find that the San Joaquin Valley Unified Air Pollution Control District (SJVUAPCD or "District") had satisfied its prior rulemaking commitments and its aggregate tonnage commitment in the 2012 PM_{2.5} Plan and Supplement.¹⁰

With respect to the District's aggregate tonnage commitment to achieve 1.9 tpd of direct PM_{2.5} by 2017, the District stated in the 2018 PM_{2.5} Plan that its commitment had been achieved through amendments to Rule 4901 ("Wood Burning Fireplaces and Wood Burning Heaters"), which it adopted in 2014.¹¹ Similarly, in a letter to the EPA, CARB pointed to an analysis of emissions reductions in the 2014 Rule 4901 Staff Report as demonstrating compliance with the commitment to achieve 1.9 tpd of emissions reductions.¹² Based on this analysis, the EPA proposed to find that the District has complied with the aggregate commitment in the 2012 PM_{2.5} Plan to achieve total emission reductions of 1.9 tpd of direct PM_{2.5} by 2017.¹³

However, the EPA also noted that the 2018 PM_{2.5} Plan included updated emissions inventories for the residential wood burning source category, which differed from previous

⁹ 85 FR 17382, 17419.

¹⁰ Id. at 17407-17409.

¹¹ 2018 PM_{2.5} Plan, Ch. 6, 6-5 to 6-6.

¹² Letter dated February 4, 2020 from Kurt Karperos, Kurt Karperos, Deputy Executive Officer, CARB, to Elizabeth Adams, Air and Radiation Division Director, EPA Region IX, 2-3.

¹³ 88 FR 17382, 17409.

inventory estimates and showed a 0.86 tpd reduction in winter season direct PM_{2.5} emissions from wood burning devices between 2013 and 2017.¹⁴ We explained that:

This difference between the emission reductions projected in the 2014 Rule 4901 Staff Report and the emission reductions reflected in the inventories in Appendix C of the 2018 PM_{2.5} Plan appears to be due to an update to emissions inventory methods in 2015-2016. The updated methodology indicates that emissions from this source category are lower than emissions as calculated by the methodology used to develop the emissions inventory in the 2012 PM_{2.5} Plan. The updated methodology is based on a 2014 survey of San Joaquin Valley residents, which provided more representative data regarding fuel usage rates and the number of wood burning devices in use in the District.¹⁵

In light of the differences between the inventories used as a basis for the commitment and the inventories in the 2018 PM_{2.5} Plan, the EPA sought comment as to whether the State and District had met the commitment to achieve total emission reductions of 1.9 tpd of direct PM_{2.5} 2017. In response to the proposed finding and request for comment, CARB developed the PM_{2.5} Prior Commitment Revision. The purpose of this revision is to revise the State's aggregate commitment in the 2012 PM_{2.5} Plan to reflect the updated inventories submitted in the 2018 PM_{2.5} Plan.

II. Completeness Review of the PM_{2.5} Prior Commitment Revision

On April 24, 2020, CARB submitted the PM_{2.5} Prior Commitment Revision for parallel processing.¹⁶ Parallel processing refers to a process that utilizes concurrent state and federal proposed rulemaking actions.¹⁷ Generally, the state submits a copy of the proposed regulation or other revisions to the EPA before conducting its public hearing and completing its public

¹⁴ 85 FR 17382, 17409. See also 2018 PM_{2.5} Plan, App. C, C-257 and letter dated August 12, 2019, from Richard W. Corey, Executive Officer, CARB, to Mike Stoker, Regional Administrator, EPA Region IX, transmitting "Attachment: Supplemental Information and Clarifications to 2017 Quantitative Milestones."

¹⁵ 85 FR 17382, 17409 (internal citations omitted).

¹⁶ Letter dated April 24, 2020 from Kurt Karperos, Deputy Executive Officer, CARB, to John W. Busterud Regional Administrator, EPA Region IX.

¹⁷ 40 CFR part 51, appendix V, section 2.3.

comment process under state law. The EPA reviews this proposed state action and prepares a notice of proposed rulemaking under federal law. In some cases, the EPA publishes its notice of proposed rulemaking in the Federal Register during the same time frame that the state is holding its own public hearing and public comment process. The state and the EPA then provide for concurrent public comment periods on both the state action and federal action on the initial SIP submission from the state. If, after completing its public comment process and after the EPA's public comment process has run, the state materially changes its final SIP submission to EPA from the initial proposed submission, the EPA evaluates those changes and decides whether to publish another notice of proposed rulemaking in light of those changes or to proceed to taking final action on its proposed action and describe the state's changes in its final rulemaking action. Any final rulemaking action by the EPA will occur only after the state formally adopts and submits its final submission to the EPA.

Section 110(k)(1)(B) of the CAA requires the EPA to determine whether a SIP submission is complete within 60 days of receipt. This section also provides that if the EPA has not affirmatively determined a SIP submission to be complete or incomplete, it will become complete by operation of law six months after the date of submission. The EPA's SIP completeness criteria are found in 40 CFR part 51, Appendix V. The EPA has reviewed the PM_{2.5} Prior Commitment Revision and finds that it fulfills the completeness criteria of Appendix V, with the exception of the requirements of paragraphs 2.1(e)-2.1(h), which do not apply to plans submitted for parallel processing.

CAA sections 110(a)(1) and (2) and 110(l) require each state to provide reasonable public notice and opportunity for public hearing prior to the adoption and submission of a SIP submission to the EPA. To meet this requirement, a state's SIP submission must include

evidence that the state provided adequate public notice and an opportunity for a public hearing, consistent with the EPA's implementing regulations in 40 CFR 51.102. However, because the PM_{2.5} Prior Commitment Revision was submitted for parallel processing, it is exempt from this requirement at the time of initial submission to the EPA, pursuant to 40 CFR Part 51 Appendix V Section 2.3.1. CARB and the District are required to meet these procedural criteria during the parallel processing period, and prior to adopting and submitting the final SIP submission to the EPA. The EPA will evaluate whether the final submission meets these requirements at the time of any final action on the PM_{2.5} Prior Commitment Revision.

III. Review of the PM_{2.5} Prior Commitment Revision

In the PM_{2.5} Prior Commitment Revision, CARB seeks to revise the 2012 PM_{2.5} Plan commitment to achieve 24-hour average, aggregate emission reductions of 1.9 tpd by 2017 by replacing it with a commitment to achieve 24-hour average, aggregate emission reductions of 0.86 tpd by 2017 based on the emissions inventories developed for and used in the 2018 PM_{2.5} Plan.¹⁸ CARB states that the updated inventory reflects real decreases in residential wood burning emissions and relies on its clarifying letter of February 4, 2020, to the EPA that described how CARB updated such emissions estimates as part of its routine emissions inventory improvement process using the latest data.¹⁹

¹⁸ PM_{2.5} Prior Commitment Revision, 4-5. Neither the 2012 PM_{2.5} Plan nor the PM_{2.5} Prior Commitment Revision expressly states whether this commitment is based on an annual or winter-season average. Because the emissions inventories on which CARB proposes to base the revised commitment are winter-season averages, we interpret the revised commitment of 0.86 tpd to be a winter-season average. We consider this to be an appropriate basis for the commitment because ambient PM_{2.5} concentrations are typically highest during the winter season (defined as November through April).

¹⁹ PM_{2.5} Prior Commitment Revision, 5 and Appendix A (copy of letter dated February 4, 2020 from Kurt Karperos, Deputy Executive Director, CARB to Elizabeth Adams, Director, Air and Radiation Division, EPA Region IX). See also 85 FR 17832, 17408-17409.

Section 110(l) of the CAA prohibits the EPA from approving a SIP revision if the revision would interfere with any applicable requirement concerning attainment and reasonable further progress (RFP) or any other applicable requirement of the CAA.²⁰ In this instance, the emissions reductions associated with the 2012 PM_{2.5} Plan aggregate commitment were not required to occur until *after* the Moderate area attainment deadline and were therefore not part of the control strategy at issue in that action.²¹ Accordingly, the EPA approved this commitment in order to strengthen the SIP, rather than to meet any CAA requirement. For this reason, the revision of this commitment from 1.9 tpd to 0.86 tpd would not interfere with any applicable requirement of the CAA. We therefore propose to find that approval of the PM_{2.5} Prior Commitment Revision would comply with CAA section 110(l).

IV. Review of Whether the State has Met the Proposed Revised Commitment

As noted above, the more recent inventories that CARB and the District presented in the 2018 PM_{2.5} Plan indicate a 0.86 tpd reduction in winter season direct PM_{2.5} emissions from wood burning devices between 2013 and 2017.²² In the PM_{2.5} Prior Commitment Revision, CARB explains that this reduction “does not include any reductions from incentives.”²³ In other words, the 0.86 tpd reduction resulted directly from the 2014 revision to Rule 4901 and therefore complies with the State’s commitment in the 2012 PM_{2.5} Plan, as revised by the PM_{2.5} Prior Commitment Revision, “to adopt and implement specific rules and measures” to achieve aggregate winter season direct PM_{2.5} emissions reductions of 0.86 tpd. Accordingly, we propose

²⁰ 42 U.S.C. 7410(l).

²¹ See 81 FR 59876, 59893, footnote 140.

²² 2018 PM_{2.5} Plan, App. C, C-257.

²³ PM_{2.5} Prior Commitment Revision, 5.

that the State has met the 0.86 tpd commitment by implementation of the 2014 amendment to Rule 4901 through 2017.

V. Summary of Proposed Actions and Request for Public Comment

For the reasons discussed in this proposed rule, under CAA section 110(k)(3), the EPA proposes to approve, as a revision to the California SIP, the PM_{2.5} Prior Commitment Revision. We also propose to find that District has complied with its revised aggregate commitment of 0.86 tpd of direct PM_{2.5} emissions reductions by 2017.

The EPA is soliciting public comments on the issues discussed in this document. We will accept comments from the public on this proposal for the next 30 days.

VI. Statutory and Executive Order Reviews

Under the CAA, 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 proposed action merely proposes to approve state plans as meeting federal requirements and does not impose additional requirements beyond those imposed by state law.

For these reasons, this proposed 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 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 proposed 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, Ammonia, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur dioxide, Volatile organic compounds.

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

Dated: May 1, 2020.

John Busterud,
Regional Administrator,
Region IX.

[FR Doc. 2020-09731 Filed: 5/11/2020 8:45 am; Publication Date: 5/12/2020]