



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R09-OAR-2019-0498; FRL-10011-38-Region 9]

Air Quality Implementation Plan; California; Calaveras County Air Pollution Control

District and Mariposa County Air Pollution Control District; Stationary Source Permits

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve a revision to the Calaveras County Air Pollution Control District (CCAPCD) and the Mariposa County Air Pollution Control District (MCAPCD) portions of the California State Implementation Plan (SIP). In this action, we are proposing to approve two rules, one submitted by the CCAPCD and the other by the MCAPCD, governing the issuance of permits for stationary sources, focusing on the preconstruction review and permitting of major sources and major modifications under part D of title I of the Clean Air Act (CAA or “the Act”). We are taking comments on this proposal and a final action will follow.

DATES: Written comments must be received on or before **[Insert date 30 days after date of publication in the FEDERAL REGISTER]**.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R09-OAR-2019-0498 at <https://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 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 the disclosure of which 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 and multimedia submissions, and general guidance on making effective comments, please visit

<https://www2.epa.gov/dockets/commenting-epa-dockets>.

FOR FURTHER INFORMATION CONTACT: Maggie Waldon or Amber Batchelder, EPA Region IX, 75 Hawthorne St., San Francisco, CA 94105. By phone: (415) 972-3987 or (415) 947-4174, or by email at waldon.margaret@epa.gov or batchelder.amber@epa.gov.

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

Table of Contents

- I. The State’s Submittal
 - A. What rules did the State submit?
 - B. Are there other versions of these rules?
 - C. What is the purpose of the submitted rules?
 - II. The EPA’s Evaluation
 - A. What is the background for today’s proposal?
 - B. How is the EPA evaluating the rules?
 - C. Do the rules meet the evaluation criteria?
 - III. Proposed Action and Public Comment
 - IV. Incorporation by Reference
 - V. Statutory and Executive Order Reviews
- I. The State’s Submittal**

A. *What rules did the State submit?*

Table 1 lists the rules addressed by this proposal including the dates they were adopted by each District and submitted to the EPA by the California Air Resources Board (CARB or “the State”).

Table 1 Submitted Rules

District	Rule or Regulation #	Rule Title	Adopted	Submitted ¹
Calaveras County APCD	Rule 428	NSR Requirements for New and Modified Major Sources in Nonattainment Areas	03/12/19	04/05/19
Mariposa County APCD	Regulation XI	NSR Requirements for New and Modified Major Sources in the Mariposa County Air Pollution Control District	03/12/19	04/05/19

For areas designated nonattainment for one or more National Ambient Air Quality Standards (NAAQS), the applicable SIP must include preconstruction review and permitting requirements for new or modified major stationary sources of such nonattainment pollutant(s) under part D of title I of the Act, commonly referred to as Nonattainment New Source Review (NNSR). The rules listed in Table 1 contain the relevant District’s NNSR permit program applicable to new and modified major sources located in areas designated nonattainment for any ozone NAAQS.

The EPA issued final rules on February 3, 2017, and December 11, 2017, that found (among other things) that the CCAPCD and the MCAPCD had failed to submit to the EPA for SIP approval an NNSR program as required for areas designated nonattainment for the 2008

¹ Each submittal was transmitted to the EPA via a letter from CARB dated April 3, 2019.

Ozone NAAQS.² These findings of failure to submit triggered sanctions clocks, as per CAA section 179.

On April 12, 2019, the EPA determined that the California SIP submittals listed above in Table 1 met the completeness criteria in 40 CFR part 51, appendix V, which must be met before formal EPA review.³ The EPA's April 12, 2019 findings of completeness represented the EPA's determination that the NNSR-related deficiencies that formed the basis for the February 3, 2017 and December 11, 2017 findings of failure to submit had been corrected, and as a result, the associated sanctions and running of the sanctions clocks were permanently stopped.⁴ See 40 CFR 52.31(d)(5).

B. Are there other versions of these rules?

There are no previous versions of CCAPCD Rule 428 or MCAPCD Regulation XI in the California SIP.

C. What is the purpose of the submitted rules?

CCAPCD Rule 428 and MCAPCD Regulation XI are intended to address the CAA's statutory and regulatory requirements for NNSR permit programs for major sources emitting nonattainment air pollutants and their precursors.

II. The EPA's Evaluation

A. What is the background for today's proposal?

As federal ozone nonattainment areas, Calaveras and Mariposa Counties are required to have an approved NNSR program in the California SIP. Below, we provide the ozone

² See 82 FR 9158; 82 FR 58118.

³ See letter dated April 12, 2019 from Elizabeth J. Adams, US EPA Region 9, to Richard Corey, CARB, regarding the April 5, 2019 submittal of CCAPCD Rule 428; and letter dated April 12, 2019 from Elizabeth J. Adams, US EPA Region 9, to Richard Corey, CARB, regarding the April 5, 2019 submittal of MCAPCD Regulation XI.

⁴ See id.

designation history for each area, which forms the basis for each District's NNSR program needed to satisfy the NNSR requirements applicable to Moderate ozone nonattainment areas.

On July 18, 1997, the EPA issued a final rule revising the primary and secondary NAAQS for ozone to establish new 8-hour standards of 0.08 ppm.⁵ On April 30, 2004, the EPA issued a final rule designating Calaveras and Mariposa Counties as nonattainment for the 1997 8-hour ozone NAAQS, effective June 15, 2004.⁶ On May 14, 2012, Calaveras and Mariposa Counties were reclassified as Moderate nonattainment for the 1997 ozone NAAQS.⁷ On December 3, 2012, the EPA issued a final rule that determined that Calaveras and Mariposa Counties had attained the 1997 ozone NAAQS by the attainment date.⁸

On March 27, 2008, the EPA issued a final rule revising the NAAQS for ozone, reducing the standards to a level of 0.075 ppm.⁹ On May 21, 2012, the EPA issued a final rule designating Calaveras County and Mariposa County as nonattainment for the 2008 8-hour ozone NAAQS, with a Marginal classification.¹⁰ On May 4, 2016, the EPA issued a final rule that determined that Calaveras County had attained the 2008 ozone NAAQS by the attainment date, and that Mariposa County had not attained the 2008 ozone NAAQS by the attainment date and would therefore be reclassified as a Moderate nonattainment area.¹¹ On August 23, 2019, the EPA issued a final rule that determined that Mariposa County had attained the 2008 8-hour ozone NAAQS by the July 20, 2018 applicable attainment date.¹²

⁵ 40 CFR 50.10; see 62 FR 38856, 38894-38895.

⁶ 69 FR 23858, 23881, 23885.

⁷ 77 FR 28424; see also 77 FR 43521 (July 25, 2012).

⁸ 77 FR 71551.

⁹ 40 CFR 50.15; see 73 FR 16436, 16511.

¹⁰ 77 FR 30088, 30099, 30103.

¹¹ 81 FR 26697.

¹² 84 FR 44238.

On October 26, 2015, the EPA issued a final rule revising the NAAQS for ozone, reducing the standards to a level of 0.070 ppm.¹³ On June 4, 2018, the EPA issued a final rule designating Calaveras County and Mariposa County as nonattainment for the 2015 8-hour ozone NAAQS, with a Marginal classification.¹⁴

The designation of Calaveras and Mariposa Counties as federal ozone nonattainment areas triggered the requirement for each of these Districts to develop and submit an NNSR program to the EPA for approval into the California SIP.¹⁵ The Districts' NNSR programs must satisfy the NNSR requirements applicable to Moderate ozone nonattainment areas, as this is the highest ozone nonattainment classification to which each District is subject.¹⁶

On April 5, 2019, CARB submitted to the EPA for SIP approval, via correspondence dated April 3, 2019, CCAPCD Rule 428, "NSR Requirements for New and Modified Major Sources in Nonattainment Areas," and MCAPCD Regulation XI, "NSR Requirements for New and Modified Major Sources in the Mariposa County Air Pollution Control District," each of which had been adopted by the respective District on March 12, 2019.

B. How is the EPA evaluating the rules?

The EPA reviewed CCAPCD Rule 428 and MCAPCD Regulation XI for compliance with CAA requirements for: (1) stationary source preconstruction permitting programs as set forth in CAA part D, including CAA sections 172(c)(5) and 173; (2) the review and modification of major sources in accordance with 40 CFR 51.160-51.165 as applicable in a Moderate ozone

¹³ 40 CFR 50.19; see 80 FR 65292, 65452.

¹⁴ 40 CFR 81.305; see 83 FR 25776, 25786, 25788.

¹⁵ 40 CFR 51.1100(o)(14), 51.1105(a), 51.1114, 51.1314. We note that, as a result of the EPA's determination that an area has attained a NAAQS by the attainment date, those SIP elements related to attaining the NAAQS are suspended for so long as the area continues to attain the standard; however, the requirement for an NNSR program is not one of the SIP elements suspended as a result of such a determination. See, e.g., 40 CFR 51.1118.

¹⁶ 40 CFR 51.1105(a).

nonattainment area; (3) the review of new major stationary sources or major modifications in a designated nonattainment area that may have an impact on visibility in any mandatory Class I Federal area in accordance with 40 CFR 51.307; (4) SIPs in general as set forth in CAA sections 110(a)(2), including 110(a)(2)(A) and 110(a)(2)(E)(i);¹⁷ and (5) SIP revisions as set forth in CAA section 110(l)¹⁸ and 193.¹⁹ Our review evaluated the submittals for compliance with the NNSR requirements applicable to nonattainment areas designated Moderate, and ensured that the submittals addressed the NNSR requirements for the 1997, 2008 and 2015 ozone NAAQS.

C. Do the rules meet the evaluation criteria?

With respect to procedural requirements, CAA sections 110(a)(2) and 110(l) require that revisions to a SIP be adopted by the state after reasonable notice and public hearing. Based on our review of the public process documentation included in the April 5, 2019 submittal of CCAPCD Rule 428 and MCAPCD Regulation XI, we find that the CCAPCD and MCAPCD have provided sufficient evidence of public notice, opportunity for comment and a public hearing prior to adoption and submittal of these rules to the EPA.

With respect to the substantive requirements found in CAA sections 172(c)(5) and 173, and 40 CFR 51.160-51.165, we have evaluated CCAPCD Rule 428 and MCAPCD Regulation XI in accordance with the applicable CAA and regulatory requirements that apply to NNSR permit programs under part D of title I of the Act for all relevant ozone NAAQS, including the

¹⁷ CAA section 110(a)(2)(A) requires that regulations submitted to the EPA for SIP approval be clear and legally enforceable, and CAA section 110(a)(2)(E)(i) requires that states have adequate personnel, funding, and authority under state law to carry out their proposed SIP revisions.

¹⁸ CAA section 110(l) requires SIP revisions to be subject to reasonable notice and public hearing prior to adoption and submittal by states to EPA and prohibits EPA from approving any SIP revision that would interfere with any applicable requirement concerning attainment and reasonable further progress, or any other applicable requirement of the CAA.

¹⁹ CAA section 193 prohibits the modification of any SIP-approved control requirement in effect before November 15, 1990 in a nonattainment area, unless the modification ensures equivalent or greater emission reductions of the relevant pollutants.

2015 ozone NAAQS. We find that CCAPCD Rule 428 and MCAPCD Regulation XI satisfy these requirements as they apply to sources subject to NNSR permit program requirements for ozone nonattainment areas classified as Moderate. We have also determined that these rules satisfy the related visibility requirements in 40 CFR 51.307. In addition, we have determined that the Rule 428 and Regulation XI rules satisfy the requirement in CAA section 110(a)(2)(A) that regulations submitted to the EPA for SIP approval be clear and legally enforceable, and have determined that the submittals demonstrate in accordance with CAA section 110(a)(2)(E)(i) that the Districts have adequate personnel, funding, and authority under state law to carry out these proposed SIP revisions.

Our Technical Support Documents, which can be found in the docket for this rule, contain a more detailed discussion of our analysis of Rule 428 and Regulation XI.

III. Proposed Action and Public Comment

As authorized in section 110(k)(3) of the Act, the EPA is proposing to approve the submitted rules because they fulfill all relevant CAA requirements. We have concluded that our approval of the submitted rules would comply with the relevant provisions of CAA sections 110(a)(2), 110(l), 172(c)(5), 173, and 193, and 40 CFR 51.160-51.165 and 40 CFR 51.307.

In support of this proposed action, we have concluded that our action would comply with section 110(l) of the Act because approval of CCAPCD Rule 428 and MCAPCD Regulation XI will not interfere with any applicable requirement concerning attainment and reasonable further progress, or any other CAA applicable requirement. In addition, our approval of Rule 428 and Regulation XI will not relax any pre-November 15, 1990 requirement in the SIP, and therefore changes to the SIP resulting from this action ensure greater or equivalent emission reductions of

ozone and its precursors in the District; accordingly, we have concluded that our action is consistent with the requirements of CAA section 193.

If we finalize this action as proposed, our action will be codified through revisions to 40 CFR 52.220a (Identification of plan-in part).

We will accept comments from the public on this proposal until [**Insert date 30 days after date of publication in the FEDERAL REGISTER**].

IV. Incorporation by Reference

In this document, the EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is proposing to incorporate by reference the rules listed in Table 1 of this preamble. The EPA has made, and will continue to make, this document available electronically through <https://www.regulations.gov> and in hard copy 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 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 Act. Accordingly, this proposed 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 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 3, 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 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, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

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

Dated: July 1, 2020.

John Busterud,
Regional Administrator,
Region IX.

[FR Doc. 2020-14823 Filed: 7/17/2020 8:45 am; Publication Date: 7/20/2020]