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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R09-OAR-2019-0498; FRL-10015-31-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: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is finalizing revisions 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 approving 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”).

DATES: These rules 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-2019-0498. All documents in the docket are listed on the <https://www.regulations.gov> website. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information the disclosure of which 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. If you need assistance in a language other than English or if you are a person with disabilities who needs a reasonable accommodation at no cost to you, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

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

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

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I. Proposed Action

On July 20, 2020 (85 FR 43785), the EPA proposed to approve the following rules into the California SIP.

Table 1 Submitted Rules

District	Rule or regulation No.	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

¹ Each submittal was transmitted to the EPA via a letter from the California Air Resources Board (CARB) dated April 3, 2019.

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
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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.²

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 Districts' respective NNSR permit programs applicable to new and modified major sources located in areas designated nonattainment for any ozone NAAQS. These rules also contain the Districts' respective requirements for 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. We proposed to approve these rules into the California SIP because we determined that they comply with the relevant CAA requirements. 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 this period, we received two comments, which are included in the docket for this action. We do not consider these comments to be germane or relevant to this action, thus these comments are not

² 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.

adverse to this action. Moreover, the comments lack the required specificity to the proposed SIP revisions and the relevant CAA requirements, and do not address the specific regulations or provisions in question or recommend an action on the SIP submission different from what EPA proposed. Therefore, we are finalizing our action as proposed.

III. EPA Action

No comments were submitted that change our assessment of the rules as described in our proposed action. We continue to find that CCAPCD Rule 428 and MCAPCD Regulation XI satisfy the relevant requirements for a CAA NNSR program for ozone, as well as the associated visibility requirements for sources subject to review under such a program in accordance with 40 CFR 51.307. Therefore, as authorized in section 110(k)(3) and 301(a) of the Act, the EPA is finalizing approval of CCAPCD Rule 428 and MCAPCD Regulation XI. This action incorporates the submitted rules into the California SIP. In conjunction with the EPA's SIP approval of the Districts' respective visibility programs for sources subject to the NNSR program, this action also revises the scope of the visibility Federal Implementation Plan (FIP) at 40 CFR 52.28 in California so that this FIP no longer applies to sources located in the CCAPCD and MCAPCD that are subject to these District visibility programs, while clarifying that the FIP continues to apply in these and other areas within California to sources located on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction.

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 rules listed in Table 1 of this preamble. The EPA has made, and will continue to

make, these materials 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

Additional information about these statutes and Executive orders can be found at <http://www.epa.gov/laws-regulations/laws-and-executive-orders>.

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 CAA. 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 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 CAA; 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 CAA, 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

Administrative practice and procedure, Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: October 21, 2020.

John Busterud,
Regional Administrator,
Region IX.

For reasons set out in the preamble, EPA amends 40 CFR part 52, chapter I, to read 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 paragraph (c)(544) to read as follows:

§ 52.220 Identification of plan-in part.

* * * * *

(c) * * *

(544) The following regulations were submitted on April 5, 2019 by the Governor’s designee as an attachment to a letter dated April 3, 2019.

(i) *Incorporation by reference.*

(A) Calaveras County Air Pollution Control District.

(1) Rule 428, “NSR Requirements for New and Modified Major Sources in Nonattainment Areas,” adopted on March 12, 2019.

(2) [Reserved]

(B) Mariposa County Air Pollution Control District.

(1) Regulation XI, “NSR Requirements for New and Modified Major Sources in the Mariposa County Air Pollution Control District,” adopted on March 12, 2019.

(2) [Reserved]

(ii) [Reserved]

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3. Section 52.281 is amended by revising paragraph (d) to read as follows:

§ 52.281 Visibility protection.

* * * * *

(d) The provisions of §52.28 are hereby incorporated and made part of the applicable plan for the State of California, except for the air pollution control districts listed below. The provisions of §52.28 remain the applicable plan for any Indian reservation lands, and any other area of Indian country where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction, located within the State of California, including any such areas located in the air pollution control districts listed below.

- (1) Monterey County air pollution control district,
- (2) Sacramento County air pollution control district,
- (3) Calaveras County air pollution control district, and
- (4) Mariposa County air pollution control district.

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[FR Doc. 2020-23922 Filed: 11/18/2020 8:45 am; Publication Date: 11/19/2020]