



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R09-OAR-2023-0076; FRL-10663-02-R9]

Air Plan Revisions; California; San Joaquin Valley Unified Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking final action to approve a revision to the San Joaquin Valley Unified Air Pollution Control District (SJVUAPCD) portion of the California State Implementation Plan (SIP). This revision concerns emissions of particulate matter (PM) from wood burning devices. We are approving a local measure that regulates these emission sources under the Clean Air Act (CAA or the Act).

DATES: This rule is effective [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-2023-0076. 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 (CBI) 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. If you need assistance in a language other than English or if you are a person with a disability 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: Elijah Gordon, EPA Region IX, 75

Hawthorne St., San Francisco, CA 94105. By phone: (415) 972-3158 or by email at

gordon.elijah@epa.gov.

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

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I. Proposed Action

On April 14, 2023 (88 FR 22978), the EPA proposed to approve the following measure into the California SIP.

TABLE 1 – SUBMITTED MEASURE

Local Agency	Resolution #	Measure Title	Adopted	Submitted
SJVUAPCD	21-11-7	Burn Cleaner Fireplace and Woodstove Change-out Incentive Measure (“Burn Cleaner Incentive Measure”)	11/18/2021	03/17/2022

We proposed to approve this measure because we determined that it complies with the relevant CAA requirements. Our proposed action contains more information on the measure 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 three public comments. The first two comments fail to identify any issue that is germane to our action on the measure and are outside the scope of this rulemaking. One of these comments included offensive content and was therefore not posted to the public docket. The other comment discusses wildfires and vehicle emissions. Our response to the third comment from Sheraz Gill, Deputy Air Pollution Control Officer (APCO) of SJVUAPCD, is

below.

Comment: After providing a summary of the measure, the commenter expresses concerns that, although the measure meets all four integrity elements necessary for an incentive measure to be fully approvable into the SIP, the EPA has chosen to not give SIP emission reduction credit. The commenter states “... the District is concerned with EPA’s proposed approval not including emission reduction credit for this measure, as the program has achieved and will continue to achieve significant emissions reductions in the San Joaquin Valley.” The commenter recommends that the EPA include in our final approval of this measure SIP credit for the specific emission reductions quantified.

Response: As explained in our proposal, SJVUAPCD regulates a PM_{2.5} nonattainment area classified as Serious for the 1997 (24-hour 65 µg/m³ and annual 15 µg/m³ limit), 2006 (24-hour 35 µg/m³ limit), and 2012 (annual 12 µg/m³ limit) PM_{2.5} National Ambient Air Quality Standards (NAAQS). The District adopted the 2018 Plan for the 1997, 2006, and 2012 PM_{2.5} NAAQS (2018 PM_{2.5} Plan) in November 2018 to help bring the District into attainment for these NAAQS.¹ The 2018 PM_{2.5} Plan includes aggregate emissions reduction commitments by the SJVUAPCD to achieve an additional 1.30 tons per day (tpd), annual average, direct PM_{2.5} emission reductions by 2024 and 2025 for the 35 µg/m³ 2006 24-hour PM_{2.5} NAAQS and 12 µg/m³ 2012 annual PM_{2.5} NAAQS, respectively. The Burn Cleaner Incentive Measure was intended to fulfill a portion of these aggregate emission reduction commitments, by achieving 0.33 tpd of direct PM_{2.5} emission reductions by 2024 and 2025, on an annual average basis.

However, as noted in our Technical Support Document (TSD), the Ninth Circuit vacated and remanded a portion of the EPA’s approval of the 2006 24-hour PM_{2.5} NAAQS portions of the 2018 PM_{2.5} Plan on April 13, 2022.² Therefore, further work is needed to evaluate the emissions reductions necessary to attain the 2006 NAAQS by 2024. Additionally, on October 27,

¹ 2018 PM_{2.5} Plan, ES-8.

² *Medical Advocates for Healthy Air v. EPA*, Case No. 20-72780, Dkt. #58-1 (9th Cir., April 13, 2022).

2022, CARB withdrew the portions of the 2018 PM_{2.5} Plan pertaining to the Serious area plan requirements for the 2012 annual PM_{2.5} NAAQS.³ As a result, the State will need to submit a new attainment plan for the 2012 PM_{2.5} NAAQS. Therefore, the EPA will evaluate emission reductions associated with Burn Cleaner Incentive Measure in the context of future attainment plan actions for the 2006 and 2012 PM_{2.5} NAAQS.

III. EPA Action

No comments were submitted that change our assessment of the measure as described in our proposed action. Therefore, as authorized in section 110(k)(3) of the Act, the EPA is fully approving this measure into the California SIP.

As stated within the EPA's proposed action, we are codifying this measure as additional material in the Code of Federal Regulations, rather than through incorporation by reference, because, under its terms, the measure contains commitments enforceable only against the District and because the measure is not a substantive rule of general applicability.

IV. 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 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 14094 (88 FR 21879, April 11, 2023);

³ Letter from Steven Cliff, Executive Officer, CARB, to Martha Guzman, Regional Administrator, EPA Region IX, dated October 27, 2022.

- 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 subject to Executive Order 13045 (62 FR 19885, April 23, 1997) because it approves a state program;
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001); and
- 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.

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).

Executive Order 12898 (Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations, 59 FR 7629, Feb. 16, 1994) directs Federal agencies to identify and address “disproportionately high and adverse human health or environmental effects” of their actions on minority populations and low-income populations to the greatest extent practicable and permitted by law. The EPA defines environmental justice (EJ) as “the fair

treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies.” The EPA further defines the term fair treatment to mean that “no group of people should bear a disproportionate burden of environmental harms and risks, including those resulting from the negative environmental consequences of industrial, governmental, and commercial operations or programs and policies.”

The State did not evaluate environmental justice considerations as part of its SIP submittal; the CAA and applicable implementing regulations neither prohibit nor require such an evaluation. The EPA did not perform an EJ analysis and did not consider EJ in this action. Due to the nature of the action being taken here, this action is expected to have a neutral to positive impact on the air quality of the affected area. Consideration of EJ is not required as part of this action, and there is no information in the record inconsistent with the stated goal of EO 12898 of achieving environmental justice for people of color, low-income populations, and Indigenous peoples.

This action is subject to the Congressional Review Act, and the EPA will submit a rule report to each House of the Congress and to the Comptroller General of the United States. 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, Particulate matter, Reporting and recordkeeping requirements.

Dated: **November 20, 2023.**

Martha Guzman Aceves,
Regional Administrator,
Region IX.

For the reasons stated in the preamble, the Environmental Protection Agency amends part 52, chapter I, title 40 of the Code of Federal Regulations 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)(606) to read as follows:

§52.220 Identification of plan – in part.

* * * * *

(c) * * *

(606) The following materials were submitted on March 17, 2022, by the Governor's designee as an attachment to a letter dated March 16, 2022.

(i) [Reserved]

(ii) *Additional materials.* (A) San Joaquin Valley Unified Air Pollution Control District.

(1) San Joaquin Valley Unified Air Pollution Control District Resolution No. 21-11-7, In the Matter of: State Implementation Credit for Residential Wood Burning Device Change-Out Incentive Measure, adopted on November 18, 2021.

(2) [Reserved]

(B) [Reserved]

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