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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R09-OAR-2022-0090; FRL-9528-01-R9]

Air Plan Approval; California; Feather River Air Quality Management District; Nonattainment New Source Review; 2015 Ozone Standard

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve a state implementation plan (SIP) revision submitted by the State of California addressing the nonattainment new source review (NNSR) requirements for the 2015 ozone National Ambient Air Quality Standards (NAAQS). This SIP revision addresses the Feather River Air Quality Management District ("District") portion of the California SIP. This action is being taken pursuant to the Clean Air Act (CAA or "Act") and its implementing regulations.

DATES: 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-2022-0090, 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*. 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: Amita Muralidharan, EPA Region IX, 75 Hawthorne St., San Francisco, CA 94105. By phone: (415) 947-4140 or by email at *muralidharan.amita@epa.gov.*

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

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I. Background and Purpose

On October 26, 2015, the EPA promulgated a revised ozone NAAQS of 0.070 parts per million (ppm).[1] Upon promulgation of a new or revised NAAQS, the CAA requires the EPA to designate as nonattainment any area that is violating the NAAQS based on the three most recent years of ambient air quality data. This action relates to the two portions of the District that were

[1] 80 FR 65292 (October 26, 2015).

designated nonattainment for the 2015 ozone NAAQS on June 4, 2018.[2] The southern portion of Sutter County, which is part of the Sacramento Metro nonattainment area (also referred to as Sacramento Federal Nonattainment Area or SFNA), was designated as "Moderate" nonattainment. The Sutter Buttes portion of Sutter County was designated as "Marginal" nonattainment. On October 28, 2021, the EPA issued a final rule reclassifying the Sacramento Metro nonattainment area as "Serious" for the 2015 ozone NAAQS.[3] However, because the District only certified their NNSR program satisfies the requirements for a Moderate area, this action is only proposing to approve the District's certification as it pertains to a Moderate ozone nonattainment area.

On December 6, 2018, the EPA issued a final rule entitled, "Implementation of the 2015 National Ambient Air Quality Standards for Ozone: Nonattainment Area State Implementation Plan Requirements," ("2015 SIP Requirements Rule") which establishes the requirements and deadlines that state, tribal, and local air quality management agencies must meet as they develop implementation plans for areas where ozone concentrations exceed the 2015 ozone NAAQS.[4] Based on the initial nonattainment designations for the 2015 ozone standards, the District was required to make a SIP revision addressing NNSR program requirements no later than August 3, 2021.[5] This requirement may be met by submitting a SIP revision consisting of a new or revised NNSR permit program, or an analysis demonstrating that the existing SIP-approved NNSR permit program meets the applicable 2015 ozone requirements and a letter certifying the analysis.

II. The State's Submittal

A. What did the State submit?

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[2] 83 FR 25776 (June 4, 2018).
[3] 86 FR 59648, 59651 (October 28, 2021).
[4] 83 FR 62998 (December 6, 2018). The SIP Requirements Rule addresses a range of nonattainment area SIP requirements for the 2015 ozone NAAQS, including requirements pertaining to attainment demonstrations, reasonable further progress (RFP), reasonably available control technology, reasonably available control measures, major new source review, emission inventories, and the timing of SIP submissions and of compliance with emission control measures in the SIP.
[5] 40 CFR 51.1314.

The submitted 2015 Ozone Certification letter addressed by this proposal was adopted by the District on June 7, 2021. It was submitted by the California Air Resources Board (CARB), the agency that serves as the governor's designee for California SIP submittals, on August 3, 2021.

CARB's August 3, 2021 submittal of the District's 2015 Ozone Certification letter was deemed by operation of law to meet the completeness criteria in 40 CFR part 51, Appendix V on February 3, 2021, which must be met before formal EPA review.

B. What is the purpose of the submitted certification letter?

The District's submittal is intended to satisfy the 2015 SIP Requirements Rule that requires States to make a SIP revision addressing NNSR. The District's portion of the California SIP contains its approved NNSR permit program as applicable to the southern portion of Sutter County, as well as the Sutter Buttes portion of Sutter County's Marginal nonattainment classification for the 2015 ozone NAAQS. The submitted certification letter provides a mechanism for the District to satisfy the 40 CFR 51.1314 submittal requirements based on its 2015 Moderate and Marginal ozone nonattainment designations. The EPA's analysis of how this SIP revision addresses the NNSR requirements for the 2015 ozone NAAQS is provided below.

III. Analysis of Nonattainment New Source Review Requirements

NNSR is a preconstruction review permit program that applies to new major stationary sources or major modifications at existing sources within a nonattainment area and is required under CAA sections 172(c)(5) and 173.

As mentioned in Section I of this notice, NNSR permit program requirements were adopted for the 2015 ozone NAAQS at 40 CFR 51.1314 as part of the 2015 SIP Requirements Rule.[6] The minimum SIP requirements for NNSR permitting programs for the 2015 ozone NAAQS are contained in 40 CFR 51.165. These NNSR program requirements include those promulgated in the 2015 SIP Requirements Rule implementing the 2015 ozone NAAQS. The

[6] 83 FR 62998 (December 6, 2018).

SIP for each ozone nonattainment area must contain NNSR provisions that: 1) set major source thresholds for nitrogen oxides (NO_X) and volatile organic compounds (VOC) pursuant to 40 CFR 51.165(a)(1)(iv)(A)(*1*)(*i*)-(*iv*) and (*2*); 2) classify physical changes as a major source if the change would constitute a major source by itself pursuant to 40 CFR 51.165(a)(1)(iv)(A)(*3*); 3) consider any significant net emissions increase of NO_X as a significant net emissions increase for ozone pursuant to 40 CFR 51.165(a)(1)(v)(E); 4) consider any increase of VOC emissions in Extreme ozone nonattainment areas as a significant net emissions increase and a major modification for ozone pursuant to 40 CFR 51.165(a)(1)(v)(F); 5) set significant emissions rates for VOC and NO_X as ozone precursors pursuant to 40 CFR 51.165(a)(1)(x)(A)-(C) and (E); 6) contain provisions for emissions reductions credits pursuant to 40 CFR 51.165(a)(3)(ii)(C)(*1*)-(*2*); 7) provide that the requirements applicable to VOC also apply to NO_X pursuant to 40 CFR 51.165(a)(8); 8) set offset ratios for VOC and NO_X pursuant to 40 CFR 51.165(a)(9)(ii)-(iv); and 9) require public participation procedures compliant with 40 CFR 51.165(i).

The District's SIP-approved NNSR program,[7] established in Rule 10.1, "New Source Review," of the District's Rules and Regulations, applies to the construction and modification of stationary sources, including major stationary sources in nonattainment areas under its jurisdiction. The District's submitted SIP revision includes a compliance demonstration consisting of a table listing each of the 2015 ozone NAAQS NNSR SIP requirements from 40 CFR 51.165 and a citation to the specific provision of the rule satisfying the requirement. The submittal also includes a certification by the District that the cited rule meets the federal NNSR requirements for the respective Marginal and Moderate ozone nonattainment designations. These documents, including our Summary of Evaluation[8] of the District's submittal, are available in the docket for this action.

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[7] 76 FR 44809 (July 27, 2011); 78 FR 58460 (September 24, 2013); 80 FR 60047 (October 5, 2015).
[8] Our review of the District's submittal is included in a Memorandum to Docket EPA-R09-OAR-2022-0090, titled "Feather River Air Quality Management District 2021 Ozone Certification Summary of Evaluation," dated November 17, 2023.

The EPA has reviewed the demonstration and cited program elements intended to meet the federal NNSR requirements for the 2015 ozone NAAQS and is proposing to approve the District's submittal because the current SIP-approved NSR program satisfies all the 2015 SIP Requirements Rule NNSR program requirements applicable to the southern portion of Sutter County as a Moderate ozone nonattainment area and the Sutter Buttes portion of Sutter County as a Marginal ozone nonattainment area.

IV. Proposed Action and Public Comment

The EPA is proposing to approve the SIP revision addressing the NNSR requirements for the 2015 ozone NAAQS for the District. In support of this proposed action, we have concluded that our approval of the submitted 2015 ozone certification for the District would comply with section 110(l) of the Act because the submittal will not interfere with continued attainment or maintenance of the NAAQS in the District. Similarly, we find that the submitted revision is approvable under section 193 of the Act because it does not modify any control requirement in effect before November 15, 1990, without ensuring equivalent or greater emission reductions. The EPA has concluded that the State's submission fulfills the 40 CFR 51.1314 revision requirement and meets the requirements of CAA sections 110, 172(c)(5), 173, 182(a)(2)(C), and 193, and the minimum SIP requirements of 40 CFR 51.165. If we finalize this action as proposed, our action will incorporate this certification into the federally enforceable SIP and be codified through revisions to 40 CFR 52.220 (Identification of plan – in part).

The EPA has made, and will continue to make, the State's submission and all other materials available electronically through *https://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). We will accept comments from the public on this proposal until **[Insert date 30 days after date of publication in the *Federal Register*]**.

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 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 14094 (88 FR 21879, April 11, 2023);
- 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 proposes to approve 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.

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.

Dated: January 16, 2024.

Martha Guzman Aceves,
Regional Administrator,
Region IX.

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