



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R09-OAR-2015-0257; FRL-9934-89-Region 9]

**Approval of Air Plans; California; Multiple Districts;
Prevention of Significant Deterioration**

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking final action under section 110 of the Clean Air Act (CAA or Act) to approve a State Implementation Plan (SIP) revision for five California air districts. The State of California (State) is required by the CAA to adopt and implement a SIP-approved Prevention of Significant Deterioration (PSD) permit program. This SIP revision incorporates PSD rules for five local California air districts into the California SIP to establish a PSD permit program for pre-construction review of certain new and modified major stationary sources in attainment and unclassifiable areas located within these districts. The local air districts with PSD rules that are the subject of this action are the Feather River Air Quality Management District (Feather River or FRAQMD), Great Basin Unified Air Pollution Control District (Great Basin or GBUAPCD), Butte County Air Quality Management District (Butte or BCAQMD), Santa Barbara County Air

Pollution Control District (Santa Barbara or SBAPCD), and San Luis Obispo County Air Pollution Control District (San Luis Obispo or SLOAPCD) - collectively, the Districts.

DATES: This rule is effective on [Insert date 30 days after date of publication in the **Federal Register**].

ADDRESSES: The EPA has established docket number EPA-R09-OAR-2015-0257 for this action. Generally, documents in the docket for this action are available electronically at www.regulations.gov and in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California. Some docket materials, however, may be publicly available only at the hard copy location (e.g., voluminous records, maps, copyrighted material), and some may not be publicly available in either location (e.g., confidential business information (CBI)). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Lisa Beckham, EPA Region IX, (415) 972-3811, beckham.lisa@epa.gov.

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

Table of Contents

I. Background

II. The EPA's Evaluation of the SIP Revision

- A. Summary of the EPA's Proposed Action
- B. Public Comments and the EPA's Responses
- C. What Action is the EPA Finalizing?

III. The EPA's Final Action

IV. Incorporation by Reference

V. Statutory and Executive Order Reviews

I. Background

Section 110(a) of the CAA requires states to adopt and submit regulations for the implementation, maintenance and enforcement of the primary and secondary NAAQS. Specifically, sections 110(a)(2)(C), 110(a)(2)(D)(i)(II), and 110(a)(2)(J) of the Act require such state plans to meet the applicable requirements of section 165 relating to a pre-construction permit program for the prevention of significant deterioration of air quality and visibility protection. The rules reviewed for this action are intended to implement a pre-construction PSD permit program as required by section 165 of the CAA for certain new and modified major stationary sources located in attainment and unclassifiable areas. Because the State does not currently have a SIP-approved PSD program within the Districts, the EPA is currently the PSD permitting authority within these Districts

under a Federal Implementation Plan (FIP). Approval of the Districts' PSD rules into the SIP will transfer PSD permitting authority from the EPA to the Districts. The EPA will then assume the role of overseeing the Districts' PSD permitting programs, as intended by the CAA.

For a more detailed discussion of the District's rules, please refer to our proposed approval. See 80 FR 44001 (July 24, 2015).

II. The EPA's Evaluation of the SIP Revision

A. Summary of the EPA's Proposed Action

On July 24, 2015 (80 FR 44001), the EPA proposed approval of the Districts' PSD rules into the California SIP. We proposed to approve these rules because we determined that they satisfied the applicable CAA requirements. Our proposed rule and related Technical Support document (TSD) contain more information about the basis for this rulemaking and our evaluation of the pertinent State SIP revision submittals.

B. Public Comments and the EPA's Responses

EPA's proposed approval action for this SIP revision provided a 30-day public comment period. We did not receive any comments on our proposed action.

C. What Action is the EPA Finalizing?

The EPA is finalizing a SIP revision for each District's portion of the California SIP, consistent with our proposed

approval action. The SIP revision will be codified in 40 CFR 52.220 by incorporating by reference the rules listed in Table 1. On June 1, 2015, the California Air Resources Board (CARB) requested the withdrawal from its earlier SIP submittals of the portion of each District PSD rule that incorporates by reference a particular federal PSD rule provision -- 40 CFR 52.21(b)(49)(v). As such, our approval of these local District rules does not include the rules' incorporation by reference of 40 CFR 52.21(b)(49)(v).

TABLE 1. SUBMITTED RULES

Local Agency	Rule #	Rule Title	Adopted	Submitted
FRAQMD	10.10	Prevention of Significant Deterioration	8/1/2011	4/22/2013
GBUAPCD	221	Prevention of Significant Deterioration (PSD) Permit Requirements for New Major Facilities or Major Modifications in Attainment or Unclassifiable Areas	9/5/2012	2/6/2013
BCAQMD	1107	Prevention of Significant Deterioration (PSD) Permits	6/28/2012	2/6/2013
SBAPCD	810	Federal Prevention of Significant Deterioration (PSD)	6/20/2013	2/10/2014
SLOAPCD	220	Federal Prevention of Significant Deterioration	1/22/2014	5/13/2014

In addition, letters from the Districts to the EPA providing certain clarifications regarding their PSD rules and

the requirements of 40 CFR 51.166 will be included as additional material in 40 CFR 52.220. We are also revising 40 CFR 52.270 to reflect that upon the effective date of this final rule, each District will have a SIP-approved PSD program and will no longer be subject to the FIP for the PSD program. This SIP revision provides a federally approved and enforceable mechanism for each of the Districts to issue pre-construction PSD permits for certain new and modified major stationary sources subject to PSD review within the relevant District.

As discussed in the EPA's proposal, with the exception of San Luis Obispo, the Districts requested approval to exercise their authority to administer the PSD program with respect to those sources located in the relevant District that have existing PSD permits issued by the EPA, including authority to conduct general administration of these existing permits, authority to process and issue any and all subsequent PSD permit actions relating to such permits (e.g., modifications, amendments, or revisions of any nature), and authority to enforce such permits. Pursuant to the criteria in section 110(a)(2)(E)(i) of the CAA, we have determined that the four Districts have the authority, personnel, and funding to implement the PSD program within the relevant District for existing EPA-issued permits and therefore are transferring authority for such permits to the four Districts concurrent with

the effective date of the EPA's approval of the Districts' PSD program into the SIP. The EPA intends to provide a copy of each such permit to the relevant District.

III. The EPA's Final Action

The EPA is approving five PSD rules submitted by CARB to establish a PSD permit program for pre-construction review of certain new and modified major stationary sources in attainment or unclassifiable areas. We are approving these rules as a revision to the California SIP pursuant to section 110(k)(3) of the Act. Specifically, we are approving the rules listed in Table 1, except for the portion of each rule that incorporates by reference 40 CFR 52.21(b)(49)(v), which was subsequently withdrawn from CARB's request for SIP approval, as explained in more detail in our proposal. See 80 FR at 44003-04. Our determination is based, in part, on the clarifications provided by the Districts related to the implementation of the PSD program, including the clarifications related to Significant Impact Levels (SILs) and the Significant Monitoring Concentrations (SMC) for PM_{2.5}, in letters dated November 13, 2014, November 25, 2014, December 16, 2014, December 18, 2014, April 8, 2015, and April 15, 2015. See 80 FR at 44002-03. We are including these clarification letters as additional material in 40 CFR 52.220.

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, with the exception of certain provisions incorporated into those rules as discussed in Section III. The EPA has made, and will continue to make, these documents generally available electronically through www.regulations.gov and/or in hard copy at the appropriate EPA office (see the **ADDRESSES** 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 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);

- 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. 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 from 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 CAA section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Greenhouse gases, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

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

Dated: September 9, 2015.

Jared Blumenfeld,
Regional Administrator,
Region IX

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended 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 paragraphs

(c) (428) (i) (E) and (F), (c) (428) (ii), (c) (429) (i) (D), (c) (429) (ii), (c) (441) (i) (F), (c) (441) (ii), (c) (442) (i) (H), and (c) (442) (ii) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(428) * * *

(i)***

(E) Great Basin Unified Air Pollution Control District.

(1) Rule 221, "Prevention of Significant Deterioration (PSD) Permit Requirements for New Major Facilities or Major Modifications in Attainment or Unclassifiable Areas," except for the incorporation by reference of 40 CFR 52.21(b)(49)(v) into sections C. and D3, adopted on September 5, 2012.

(F) Butte County Air Quality Management District.

(1) Rule 1107, "Prevention of Significant Deterioration (PSD) Permits," except for the incorporation by reference of 40 CFR 52.21(b)(49)(v) into sections 3 and 4.1, adopted on June 28, 2012.

(ii) *Additional materials.*

(A) Great Basin Unified Air Pollution Control District.

(1) Letter dated November 13, 2014 from Theodore D. Schade, Great Basin Unified Air Pollution Control District, to Gerardo Rios, United States Environmental Protection Agency Region 9, regarding clarifications of District Rule 221 and 40 CFR 51.166.

(2) Letter dated April 15, 2015, from Phillip L. Kiddoo, Great Basin Unified Air Pollution Control District, to Gerardo Rios, United States Environmental Protection Agency Region 9, regarding additional clarifications of District Rule 221 and 40 CFR 51.166.

(B) Butte County Air Quality Management District.

(1) Letter dated November 13, 2014, from W. James Wagoner, Butte County Air Quality Management District, to Gerardo Rios, United States Environmental Protection Agency Region 9, regarding clarifications of District Rule 1107 and 40 CFR 51.166.

(2) Letter dated April 8, 2015, from W. James Wagoner, Butte County Air Quality Management District, to Gerardo Rios, United States Environmental Protection Agency Region 9, regarding

additional clarifications of District Rule 1107 and 40 CFR 51.166.

(429) * * *

(i)***

(D) Feather River Air Quality Management District.

(1) Rule 10.10, "Prevention of Significant Deterioration," except for the incorporation by reference of 40 CFR 52.21(b)(49)(v) into sections B and F.1, adopted on August 1, 2011.

(ii) *Additional materials.*

(A) Feather River Air Quality Management District.

(1) Letter dated December 18, 2014 from Christopher D. Brown, Feather River Air Quality Management District, to Gerardo Rios, United States Environmental Protection Agency Region 9, regarding clarifications of District Rule 10.10 and 40 CFR 51.166.

* * * * *

(441) * * *

(i)***

(F) San Luis Obispo County Air Pollution Control District.

(1) Rule 220, "Federal Prevention of Significant Deterioration," except for the incorporation by reference of 40 CFR

52.21(b) (49) (v) into sections B and D.3., amended on January 22, 2014.

(ii) *Additional materials.*

(A) San Luis Obispo County Air Pollution Control District.

(1) Letter dated December 16, 2014 from Larry R. Allen, San Luis Obispo County Air Pollution Control District, to Gerardo Rios, United States Environmental Protection Agency Region 9, regarding clarifications of District Rule 220 and 40 CFR 51.166.

(442) * * *

(i) ***

(H) Santa Barbara County Air Pollution Control District.

(1) Rule 810, "Federal Prevention of Significant Deterioration (PSD)," except for the incorporation by reference of 40 CFR 52.21(b) (49) (v) into sections B and D.3., amended on June 20, 2013.

(ii) *Additional materials.*

(A) Santa Barbara County Air Pollution Control District.

(1) Letter dated November 25, 2014 from David Van Mullem, Santa Barbara County Air Pollution Control District, to Gerardo Rios, United States Environmental Protection Agency Region 9, regarding clarifications of District Rule 810 and 40 CFR 51.166.

* * * * *

3. Section 52.270 is amended by adding paragraphs (b) (11) through (15) to read as follows:

§ 52.270 Significant deterioration of air quality.

* * * * *

(b) * * *

(11) The PSD program for the Great Basin Unified Air Pollution Control District (GBUAPCD), as incorporated by reference in § 52.220(c) (428), is approved under Part C, Subpart 1, of the Clean Air Act. For PSD permits previously issued by EPA pursuant to §52.21 to sources located in the GBUAPCD, this approval includes the authority for the GBUAPCD to conduct general administration of these existing permits, authority to process and issue any and all subsequent permit actions relating to such permits, and authority to enforce such permits.

(12) The PSD program for the Butte County Air Quality Management District (BCAQMD), as incorporated by reference in § 52.220(c) (428), is approved under Part C, Subpart 1, of the Clean Air Act. For PSD permits previously issued by EPA pursuant to §52.21 to sources located in the BCAQMD, this approval includes the authority for the BCAQMD to conduct general administration of these existing permits, authority to process and issue any and all subsequent permit actions relating to such permits, and authority to enforce such permits.

(13) The PSD program for the Feather River Air Quality Management District (FRAQMD), as incorporated by reference in § 52.220(c)(429), is approved under Part C, Subpart 1, of the Clean Air Act. For PSD permits previously issued by EPA pursuant to § 52.21 to sources located in the FRAQMD, this approval includes the authority for the FRAQMD to conduct general administration of these existing permits, authority to process and issue any and all subsequent permit actions relating to such permits, and authority to enforce such permits.

(14) The PSD program for the San Luis Obispo County Air Pollution Control District (SLOAPCD), as incorporated by reference in § 52.220(c)(441), is approved under Part C, Subpart 1, of the Clean Air Act.

(15) The PSD program for the Santa Barbara County Air Pollution Control District (SBAPCD), as incorporated by reference in § 52.220(c)(442), is approved under Part C, Subpart 1, of the Clean Air Act. For PSD permits previously issued by EPA pursuant to § 52.21 to sources located in the SBAPCD, this approval includes the authority for the SBAPCD to conduct general administration of these existing permits, authority to process and issue any and all subsequent permit actions relating to such permits, and authority to enforce such permits.