



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R09-OAR-2016-0305; FRL-9952-81-Region 9]

Approval of California Air Plan Revisions, Ventura County Air Pollution Control District;

Prevention of Significant Deterioration

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve revisions to the Ventura County Air Pollution Control District (VCAPCD or District) portion of the California State Implementation Plan (SIP). The State of California (State) is required under the Clean Air Act (CAA or Act) to adopt and implement a SIP-approved Prevention of Significant Deterioration (PSD) permit program. These proposed SIP revisions would incorporate a PSD rule for the VCAPCD into the SIP to establish a PSD permit program for pre-construction review of certain new and modified major stationary sources in attainment and unclassifiable areas within the District. We are taking public comments on this proposal and plan to follow with a final action following consideration of the public comments received.

DATES: Any comments must arrive by [**Insert date 30 days after the date of publication in the Federal Register**].

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R09-OAR-2016-0305 at <http://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 edited or removed 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 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 <http://www2.epa.gov/dockets/commenting-epa-dockets>.

FOR FURTHER INFORMATION CONTACT: Ya-Ting (Sheila) Tsai, EPA Region IX, (415) 972-3328, Tsai.Ya-Ting@epa.gov.

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

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I. The State's Submittal

A. *What rules did the State submit?*

Table 1 lists the rules addressed by this proposal with the dates on which they were revised or repealed by the local air agency and the dates of the corresponding SIP submittals to the EPA by the California Air Resources Board (CARB). Through these submittals, CARB is requesting revisions to the SIP to incorporate the PSD program for the VCAPCD into the SIP. The CARB's submittal of March 11, 2016 requested the EPA's approval of VCAPCD Rule 26.13 into the SIP, and its submittal dated August 23, 2011 requested that the EPA remove VCAPCD Rule 26.10 from the SIP.

TABLE 1 - SUBMITTED RULE ACTIONS

Rule #	Rule Title	Action	Action Date	Submitted Date
26.10	New Source Review – Prevention of Significant Deterioration	Repealed	6/28/2011	8/23/2011
26.13	New Source Review – Prevention of Significant Deterioration (PSD)	Revised	11/10/2015	3/11/2016

On April 19, 2016, the EPA determined that the March 11, 2016 CARB submittal requesting approval of VCAPCD Rule 26.13 into the SIP met the completeness criteria in 40

CFR Part 51 Appendix V, which must be met before formal EPA review. On February 23, 2012, the CARB submittal requesting the removal of VCAPCD Rule 26.10 from the SIP was deemed by operation of law to meet the completeness criteria in 40 CFR Part 51 Appendix V.

B. *Are there other versions of these rules?*

The EPA approved Rule 26.10, New Source Review – Prevention of Significant Deterioration into the VCAPCD portion of the California SIP on December 7, 2000 (65 FR 76567); however, the EPA’s approval of this rule was not an approval of a PSD program for the VCAPCD. Rather, VCAPCD Rule 26.10 simply confirmed that new major sources and major modifications within the District must comply with the applicable requirements for federal PSD permitting in 40 CFR 52.21, and provided that any such source must obtain separate permits from the District and the EPA.

On June 28, 2011, VCAPCD adopted Rule 26.13, New Source Review – Prevention of Significant Deterioration (PSD) with the intent to assume PSD permitting responsibility for sources located in Ventura County upon the EPA’s SIP approval of the rule. On the same date, the VCAPCD repealed local PSD Rule 26.10 for purposes of State and local law. In a letter dated August 4, 2011, the VCAPCD submitted a request to CARB that Rule 26.13 be added to the Ventura County portion of the SIP and that Rule 26.10 be removed from the SIP. On August 23, 2011, CARB submitted a proposed SIP revision to the EPA requesting the approval of Rule 26.13 into the SIP and the removal of Rule 26.10 from the SIP.

However, EPA staff subsequently determined that the version of Rule 26.13 adopted by the District on June 28, 2011 contained certain deficiencies and could benefit from clarifying changes, and notified the District about these deficiencies. To address these deficiencies, the

VCAPCD adopted revisions to Rule 26.13 on November 10, 2015, and CARB submitted the revised version of this rule to the EPA for SIP approval on March 11, 2016. Accordingly, the EPA's proposed action addresses the current version of Rule 26.13, as revised on November 10, 2015 and submitted to the EPA on March 11, 2016. If the EPA approves Rule 26.13, the EPA will add revised Rule 26.13 to the SIP and Rule 26.10 will be removed from the SIP.

C. *What is the purpose of the submitted rule actions?*

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. VCAPCD Rule 26.13 is 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 within the District. Because the State does not currently have a SIP-approved PSD program within the VCAPCD, the EPA is currently the PSD permitting authority within the VCAPCD, and implements the federal PSD program under 40 CFR 52.21, as Rule 26.10 reiterates. Approval of VCAPCD Rule 26.13 into the SIP, and removal of Rule 26.10 from the SIP, will transfer PSD permitting authority from the EPA to the VCAPCD. The EPA would then assume the role of overseeing the VCAPCD's PSD permitting program, as intended by the CAA.

II. The EPA's Evaluation and Action

A. *How is the EPA evaluating the rule actions?*

SIP rules must be enforceable (see CAA section 110(a)(2)), must not interfere with applicable requirements concerning attainment and reasonable further progress or other CAA requirements (see CAA section 110(1)), and must not modify certain SIP control requirements in nonattainment areas without ensuring equivalent or greater emissions reductions (see CAA section 193). Other relevant statutory and regulatory provisions for our review of the submitted rule include CAA section 165 and section 51.166 of title 40 of the Code of Federal Regulations (40 CFR 51.166). CAA section 165 requires states to adopt a pre-construction permitting program for certain new and modified major stationary sources located in attainment areas and unclassifiable areas. 40 CFR 51.166 establishes the specific requirements for SIP-approved PSD permit programs that must be met to satisfy the requirements of section 165 of the CAA.

B. *Do the rules meet the evaluation criteria?*

With some exclusions and revisions, VCAPCD Rule 26.13, as submitted by the CARB in March 2016, incorporated by reference the EPA's federal PSD program requirements at 40 CFR 52.21, as of September 1, 2015. We generally consider the EPA's PSD permit program requirements at 40 CFR 52.21 to be consistent with the criteria for SIP-approved PSD permit programs in 40 CFR 51.166. However, we conducted a review of VCAPCD Rule 26.13 to ensure that all requirements of 40 CFR 51.166 were met by this District rule. Our detailed evaluation is available as an attachment to the technical support document (TSD) for this proposed rulemaking action. We also reviewed the revisions that the District made to the provisions of 40 CFR 52.21 that were incorporated by reference into the rule, such as revising certain terms and definitions to reflect that the District, rather than the EPA, will be the PSD permitting authority following SIP approval of the District's PSD rule. We also determined that the removal of Rule 26.10 from the

SIP would be appropriate concurrent with approval of Rule 26.13 into the SIP, because the applicable PSD requirements for federal PSD permitting in 40 CFR 52.21 referenced in Rule 26.10 would no longer apply once the EPA approves VCAPCD's Rule 26.13 into the SIP. Based on our review of Rule 26.13 and the underlying statutory and regulatory requirements governing this action, we are proposing to find the SIP revision for the District's PSD rules acceptable under CAA sections 110(a), 110(l) and 165 and 40 CFR 51.166.

The EPA's TSD for this rulemaking action has more information about Rule 26.13, including our evaluation and recommendation to approve it into the SIP.

C. Transfer of existing permits issued by the EPA and program implementation.

The VCAPCD requested approval to exercise its authority to administer the PSD program with respect to those sources located in Ventura County that have existing PSD permits issued by the EPA. This would include 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.

Consistent with section 110(a)(2)(E)(i) of the Act, the SIP submittal and additional information provided by the District make clear that that VCAPCD has the authority under state statute and rule to administer the PSD permit program, including but not limited to the authority to administer, process and issue any and all permit decisions, and enforce PSD permit requirements within the District. This applies to PSD permits that the District will issue and to existing PSD permits issued by the EPA that are to be transferred to the District upon the effective date of the EPA's approval of the PSD SIP submittal.

We have also determined that the District has adequate personnel and funding to administer the PSD program.

D. *Public comment and proposed action.*

As authorized in section 110(k)(3) of the Act, the EPA proposes to fully approve District Rule 26.13 into the Ventura County portion of the SIP because we believe it fulfills all relevant CAA requirements. We also propose to remove District Rule 26.10 from the SIP concurrent with our final approval of Rule 26.13, for the reasons discussed above. If we take final action to approve Rule 26.13, our final action will incorporate Rule 26.13 into the federally enforceable SIP and remove Rule 26.10 from the SIP.

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

III. Incorporation by Reference

In this rule, 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 VCAPCD Rule 26.13 as described in Table 1 of this notice. The EPA has made, and will continue to make, this document available electronically through www.regulations.gov and in hard copy at U.S. Environmental Protection Agency Region IX (AIR-3), 75 Hawthorne Street, San Francisco, CA, 94105-3901.

IV. 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 Order 12866 (58 FR 51735, October 4, 1993);
- 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 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, Carbon monoxide, Greenhouse gases, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

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

Dated: September 14, 2016.

Alexis Strauss,
Acting Regional Administrator,
Region IX.