



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R09-OAR-2017-0028; FRL-9963-86-Region 9]

Approval of California Air Plan Revisions, Western Mojave Desert, Rate of Progress Demonstration

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving a state implementation plan revision submitted by the State of California to meet Clean Air Act requirements applicable to the Western Mojave Desert ozone nonattainment area. Specifically, the EPA is approving the initial six-year 15 percent rate of progress demonstration to address requirements for the 1997 8-hour ozone national ambient air quality standards.

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

ADDRESSES: The EPA has established docket number EPA-R09-OAR-2017-0028 for this action. Generally, documents in the docket for this action are available electronically at <http://www.regulations.gov> or in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California 94105-3901. While all documents in the docket are listed at <http://www.regulations.gov>, some information may be publicly available only at the hard copy location (*e.g.*, copyrighted material, large maps, multi-volume reports), and some may not be 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: Tom Kelly, Air Planning Office (AIR-2), EPA Region IX, (415) 972-3856, kelly.thomasp@epa.gov.

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

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I. Summary of Proposed Action

On March 9, 2017, the EPA proposed to approve, under section 110(k)(3) of the Clean Air Act (CAA or the Act), the initial six-year 15 percent rate of progress (ROP) demonstration to address requirements for the 1997 8-hour ozone national ambient air quality standards (NAAQS) for the Western Mojave Desert (WMD) nonattainment area. 82 FR 13086. This demonstration is contained in a state implementation plan (SIP) submittal from the California Air Resources Board entitled “Proposed Updates to the 1997 8-Hour Ozone Standard, State Implementation Plans: Coachella Valley and Western Mojave Desert 8-hour Ozone Nonattainment Areas” (“2014 SIP Update”).¹ As explained in the proposal, the ROP demonstration is an element of the reasonable further progress demonstration contained at Table C-2 of the 2014 SIP Update and discussed at page 10 of the 2014 SIP Update. It is supported by a detailed VOC emissions inventory at Table A-2 of the 2014 SIP Update.

¹ See “Proposed Updates to the 1997 8-Hour Ozone Standard, State Implementation Plans: Coachella Valley and Western Mojave Desert 8-hour Ozone Nonattainment Areas,” California Air Resources Board, September 22, 2014.

The WMD is classified as Severe-15 with an attainment date no later than June 15, 2019.² The relevant CAA requirements appear at Title I, Part D of the CAA, under which states must implement the primary and secondary 1997 8-hour ozone standards. For areas classified as Moderate or above—including the WMD—CAA section 182(b)(1) requires a SIP revision providing for ROP, defined as a one time, 15 percent actual VOC emission reduction during the six years following the baseline year 1990, for an average reduction of 3 percent per year. As discussed further in the March 9, 2017 proposal, although the EPA revoked the 1997 8-hour ozone NAAQS in 2015,³ the ROP demonstration requirement is a continuing applicable requirement for the WMD under the EPA's anti-backsliding rules that apply once a NAAQS has been revoked. Thus, the WMD remains subject to the requirement to make the ROP demonstration. *See* 40 CFR 51.1105(a)(1) and 51.1100(o)(4). In the proposal, the EPA proposed to find that the 2014 SIP Update fulfills the ROP demonstration requirement because it meets the requirements of CAA section 182(b)(1) and 40 CFR 51.1105(a)(1) and 51.1100(o)(4).⁴

II. Public Comments

The EPA's proposed action provided a 30-day public comment period. We received one comment, which was submitted anonymously. The comment did not address the EPA's proposed action and did not provide specific information relevant to the basis for EPA's proposed approval. We are not revising any portion of the proposed rule based on this comment.

III. Final Action

² 77 FR 26950 (May 8, 2012). The proposal for this action contains additional information about the WMD's classification. *See* 82 FR 13086, 13087.

³ 80 FR 12264 (March 6, 2015).

⁴ *See* 82 FR 13086, 13087-88. The EPA proposed to approve the ROP demonstration although the state did not demonstrate the necessary reductions within the six-year period set out in the CAA, because it showed that all necessary reductions were achieved in the earliest subsequent reporting period. *Id.* at 13088.

For the reasons discussed in our March 9, 2017 proposal and summarized above, the EPA is approving, under CAA section 110(k)(3), the ROP demonstration contained in the 2014 SIP Update as meeting the requirements of CAA section 182(b)(1) and 40 CFR 51.1105(a)(1) and 51.1100(o)(4).

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 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 Clean Air Act; 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 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 regulations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

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

Dated: May 31, 2017.

Alexis Strauss,
Acting 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 paragraph (c)(486)(ii)(A)(2) to read as read as follows:

§ 52.220 Identification of plan – in part.

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(c) * * *

(486) * * *

(ii) * * *

(A) * * *

(2) California Air Resources Board, Staff Report, Proposed Updates to the 1997 8-Hour Ozone Standard, State Implementation Plans; Coachella Valley and Western Mojave Desert, adopted on October 24, 2014: “Reasonable Further Progress Demonstration Update,” at p. 10 (excluding those portions that pertain to reasonable further progress targets after 2011); Table A-2 (excluding pp. A-10 through A-12, and those portions that pertain to reasonable further progress targets after 2011); Table C-2 (excluding those portions that pertain to reasonable further progress targets after 2011).

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[FR Doc. 2017-12966 Filed: 6/22/2017 8:45 am; Publication Date: 6/23/2017]