



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R09-OAR-2017-0265; FRL-9964-44-Region 9]

Approval and Promulgation of Air Quality State Implementation Plans; California;

Ambient Ozone Monitoring Requirements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve a portion of a state implementation plan (SIP) submission from the State of California regarding Clean Air Act (CAA or “Act”) requirements for ambient ozone monitoring in the Bakersfield Metropolitan Statistical Area (MSA) for the 1997 ozone and 2008 ozone national ambient air quality standards (NAAQS or “standards”). The SIP submission is intended to revise a portion of the State’s “infrastructure” SIP that, more broadly, provides for implementation, maintenance, and enforcement of the standards. We are taking comments on this proposal and plan to follow with a final action.

DATES: Any comments must arrive by **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R09-OAR-2017-0265 at <http://www.regulations.gov>, or via email to Rory Mays at mays.rory@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: Rory Mays, Air Planning Office (AIR-2), EPA Region IX, (415) 972-3227, mays.rory@epa.gov.

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

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I. Background

Section 110(a)(1) of the CAA requires states to submit SIPs meeting the applicable requirements of section 110(a)(2) within three years after promulgation of a new or revised

NAAQS or within such shorter period as the EPA may prescribe. Section 110(a)(2) requires states to address structural SIP elements such as requirements for monitoring, basic program requirements, and legal authority that are designed to provide for implementation, maintenance, and enforcement of the NAAQS. The SIP submission required by these provisions is referred to as the infrastructure SIP. Section 110(a) imposes the obligation upon states to make a SIP submission to the EPA for a new or revised NAAQS, but the contents of individual state submissions may vary depending upon the facts and circumstances. This proposed rule pertains to infrastructure SIP requirements for ambient air quality monitoring.

Each of the NAAQS revisions applicable to this proposed rule triggered the requirement for states to submit infrastructure SIPs, including provisions for ambient ozone monitoring. On July 18, 1997, the EPA revised the form and levels of the primary and secondary ozone standards to an 8-hour average of 0.08 parts per million (ppm).¹ On March 12, 2008, the EPA revised the levels of the primary and secondary 8-hour ozone standards to 0.075 ppm.² The EPA has issued guidance on infrastructure SIP requirements for the 2008 ozone and other NAAQS that informs the states' development and the EPA's evaluation of ambient ozone monitoring.³

Section 110(a)(2)(B) of the CAA requires states to provide for the establishment and operation of ambient air quality monitoring to (i) monitor, compile, and analyze data, and (ii) make data available to the EPA Administrator upon request. The EPA's implementing regulations for ambient monitoring regulations for the various NAAQS are found in 40 CFR part

¹ 62 FR 38856 (July 18, 1997).

² 73 FR 16436 (March 27, 2008).

³ Memorandum from Stephen D. Page, Director, Office of Air Quality Planning and Standards, EPA, "Guidance on Infrastructure State Implementation Plan Elements under Clean Air Act Sections 110(a)(1) and 110(a)(2)," September 13, 2013.

58. Among the requirements for ozone monitoring, 40 CFR part 58, Appendix D, 4.1(b) requires that “within an [ozone] network, at least one [ozone] site for each MSA, or [Combined Statistical Area (CSA)] if multiple MSAs are involved, must be designated to record the maximum concentration for that particular metropolitan area” and 40 CFR 58.14(b) requires that “modifications to the [State and Local Air Monitoring Station (SLAMS)] network for reasons other than those resulting from the periodic network assessments ... must be reviewed and approved by the Regional Administrator.” The San Joaquin Valley nonattainment area for the 1997 ozone and 2008 ozone NAAQS includes several MSAs and one CSA. Generally, the highest ozone concentrations in the San Joaquin Valley have occurred in the central and southern portions of the nonattainment area, but in recent years, the highest ozone concentrations have occurred in the central portion of the valley (*i.e.*, within the Fresno CSA, which includes all of Fresno and Madera counties).

California made SIP submissions in 2007 and 2014 to, among other things, address the requirements of section 110(a)(2)(B) and the EPA’s implementing regulations for the 1997 ozone and 2008 ozone NAAQS. The EPA approved the submissions with respect to the ambient monitoring requirements with one exception:⁴ we partially disapproved the submissions for CAA section 110(a)(2)(B) with respect to the 1997 ozone and 2008 ozone NAAQS for the Bakersfield MSA, which includes all of Kern County. Our partial disapproval was based on the closure of the MSA’s maximum ozone concentration site located at Arvin-Bear Mountain Blvd. (Air Quality

⁴ 81 FR 18766 at 18772 (April 1, 2016). *See also*, “California Infrastructure SIP, Overarching Technical Support Document,” EPA, Region IX, September 2014, pp. 11-15.

System (AQS) ID: 06-029-5001),⁵ without EPA approval of an alternative maximum ozone concentration site.

The EPA's partial disapproval for ambient ozone monitoring established a deadline of May 2, 2018, for the EPA to promulgate a federal implementation plan (FIP) or for the State of California to submit, and the EPA to approve, an adequate SIP revision for this ozone monitoring deficiency for the 1997 ozone NAAQS.⁶ With respect to the 2008 ozone NAAQS, the EPA's partial disapproval explained that a prior FIP deadline of February 14, 2015, had been established by the EPA's 2013 finding that California and other states had failed to submit infrastructure SIPs for that NAAQS.⁷ Regarding a lawsuit filed by the Sierra Club, in May 2017 the U.S. District Court for the Northern District of California entered a partial consent decree directing the EPA to, among other things, sign a final rule approving a SIP revision, promulgate a FIP, or a combination thereof for CAA section 110(a)(2)(B) for the Bakersfield MSA for the 2008 ozone NAAQS by December 15, 2017.⁸ As discussed further in section II of this proposed rule, the EPA proposes that California has submitted a SIP revision that adequately resolves the underlying SIP deficiency with respect to monitoring in the Bakersfield MSA for both the 1997 and 2008 ozone NAAQS.

⁵ The EPA's Air Quality System (AQS) contains ambient air pollution data collected by federal, state, local, and tribal air pollution control agencies from thousands of monitors. More information is available at: <https://www.epa.gov/aqs>.

⁶ 81 FR 18766 at 18775 (April 1, 2016).

⁷ 78 FR 2882 (January 15, 2013).

⁸ Partial consent decree in *Sierra Club v. EPA*, Case No. 3:15-cv-04328-JD (U.S. District Court for the Northern District of California), filed May 23, 2017, pp. 4-6.

II. Ozone Monitoring Evaluation and Proposed Action

The California Air Resources Board (CARB) submitted the “Staff Report, [C]ARB Review of the San Joaquin Valley 2016 Plan for the 2008 8-Hour Ozone Standard” (“2016 CARB Staff Report”) on August 24, 2016.⁹ We found this submission to be complete on December 19, 2016.¹⁰ We are proposing action only on the portions of the submission that address ambient ozone monitoring in the Bakersfield MSA pursuant to CAA section 110(a)(2)(B), and refer to those portions herein as the “2016 Bakersfield Ozone Monitoring SIP.”¹¹ We find that this submission meets the procedural requirements for public participation under CAA section 110(a)(2) and 40 CFR 51.102.

The 2016 Bakersfield Ozone Monitoring SIP notes that states must meet federal monitoring regulations as part of the CAA infrastructure requirements and refers to the EPA’s disapproval of the State’s infrastructure SIP for ozone monitoring in the Bakersfield MSA.¹² CARB states that it had operated an ozone monitor at the Arvin-Bear Mountain Blvd. site for 20 years and that this site had recorded the highest ozone concentrations in the Bakersfield MSA. Upon notification in 2009 that the site lease would not be renewed, CARB established a replacement site at Arvin’s Di Giorgio elementary school (AQS ID: 06-029-5002). This ozone monitor site relocation had not been approved by the EPA at the time of the EPA’s 2014 partial disapproval of California’s 2007 and 2014 infrastructure SIPs. CARB states that the EPA has

⁹ Letter from Richard W. Corey, Executive Officer, CARB to Alexis Strauss, Acting Regional Administrator, Region IX, EPA, August 24, 2016.

¹⁰ Letter from Elizabeth Adams, Acting Director, Air Division, Region IX, EPA to Richard W. Corey, Executive Officer, CARB, December 19, 2016.

¹¹ 2016 CARB Staff Report, Section V.H (“Bakersfield Area Monitor”), p. 23 and Section VII (“Staff Recommendation”), p. 24.

¹² *Id.*

now approved the site relocation¹³ and includes a copy of the letter as Appendix C to the 2016 CARB Staff Report.

We have reviewed the statements CARB made in its 2016 Bakersfield Ozone Monitoring SIP, the EPA's 2016 approval letter, and CARB's 2016 site relocation request.¹⁴ Given the logistical constraints and factors considered by CARB, the EPA concluded that the Arvin Di Giorgio site provides the most similar concentrations from similar sources to the Arvin-Bear Mountain Blvd. site and fulfilled the federal regulatory requirement that such replacement site be nearby and have the same scale of representation. In addition, we found that CARB's site relocation, as approved by the EPA consistent with 40 CFR 58.14, met the substantive requirements for site relocation under 40 CFR part 58 Appendix D, including the requirement under section 4.1(b) to designate a site to record the maximum ozone concentration in the Bakersfield MSA.

Since the underlying basis of the EPA's 2014 disapproval has been adequately resolved (*i.e.*, approved site relocation for the maximum ozone concentration site in the Bakersfield MSA), we propose to approve the 2016 Bakersfield Ozone Monitoring SIP for CAA section 110(a)(2)(B) for the 1997 ozone and 2008 ozone NAAQS. We will accept comments from the public on these proposals for the next 30 days. The deadline and instructions for submission of

¹³ Letter from Meredith Kurpius, Manager, Air Quality Analysis Office, Region IX, EPA to K. Magliano, Chief, Air Quality Planning and Science Division, CARB, May 2, 2016.

¹⁴ Letter from K. Magliano, Chief, Air Quality Planning and Science Division, CARB to Meredith Kurpius, Manager, Air Quality Analysis Office, Region IX, EPA, April 29, 2016. This site relocation request noted that the Arvin-Bear Mountain Blvd. monitor operated for the 21 years and that the highest ozone concentrations in the Bakersfield MSA generally occurred at the Arvin-Bear Mountain Blvd. site or the neighboring Edison site (AQS ID 060290007). The ozone monitor at the Edison site continues to operate.

comments are provided in the “DATES” and “ADDRESSES” sections at the beginning of this preamble.

In addition, the EPA previously approved an ozone emergency episode plan from El Dorado County APCD as meeting the requirements of CAA section 110(a)(2)(G) for the 1997 ozone and 2008 ozone NAAQS.¹⁵ That action resolved a separate, partial disapproval from the EPA’s 2016 rulemaking on California’s 2007 and 2014 infrastructure SIPs. However, we inadvertently did not remove certain paragraphs from the California SIP that reflected the earlier disapproval. Thus, as an administrative matter, we intend to use this rulemaking to remove the obsolete paragraphs, specifically 40 CFR 52.223(i)(7) and 40 CFR 52.223(l)(7), from the California SIP.

III. 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 13563 (76 FR 3821, January 21, 2011);

¹⁵ 81 FR 47300 (July 21, 2016).

- 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 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, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements.

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

Dated: June 21, 2017

Alexis Strauss,
Acting Regional Administrator,
Region IX.

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