



## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R09-OAR-2017-0265; FRL-9969-18-Region 9]

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

#### Ambient Ozone Monitoring Requirements

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is finalizing approval of 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.

**DATES:** This rule is effective on [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** The EPA has established a docket for this action under Docket ID No. EPA-R09-OAR-2017-0265. All documents in the docket are listed on the <https://www.regulations.gov> web site.

Although listed in the index, some information is not publicly available, *e.g.*, Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available through <https://www.regulations.gov>, or please contact the person identified in the “**FOR FURTHER INFORMATION CONTACT**” section for additional availability information.

**FOR FURTHER INFORMATION CONTACT:** Rory Mays, Air Planning Office (AIR-2), EPA Region IX, (415) 972-3227, [mays.rory@epa.gov](mailto:mays.rory@epa.gov).

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

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### **I. Background**

On August 24, 2016, 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”).<sup>1</sup> On July 3, 2017, we proposed to approve the portions of the submission that address ambient ozone monitoring in the Bakersfield MSA pursuant to CAA section 110(a)(2)(B),<sup>2</sup> and refer to those portions herein as the “2016 Bakersfield Ozone Monitoring SIP.”<sup>3</sup> We proposed to approve this SIP submission because we determined that it complied with the relevant CAA requirements, as outlined below. Our proposed rule contains more information on the SIP submission and our evaluation. We provided a 30-day public comment period on the proposed rule, during which we received no comments.

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 a shorter period that the EPA may prescribe. The EPA refers to such SIP submissions as “infrastructure SIPs.” This final rule pertains to infrastructure SIP requirements for ambient air quality monitoring.

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<sup>1</sup> Letter from Richard W. Corey, Executive Officer, CARB to Alexis Strauss, Acting Regional Administrator, Region IX, EPA, August 24, 2016.

<sup>2</sup> 82 FR 30812 (July 3, 2017).

<sup>3</sup> 2016 CARB Staff Report, Section V.H (“Bakersfield Area Monitor”), p. 23 and Section VII (“Staff Recommendation”), p. 24.

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).<sup>4</sup> On March 12, 2008, the EPA revised the levels of the primary and secondary 8-hour ozone standards to 0.075 ppm.<sup>5</sup> Each of these NAAQS revisions triggered the requirement for states to submit infrastructure SIPs, including provisions for ambient ozone monitoring.

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. For the 1997 ozone and 2008 ozone NAAQS, the San Joaquin Valley nonattainment area includes several MSAs and one Combined Statistical Area.

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:<sup>6</sup> 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 Boulevard (*i.e.*, Air Quality System (AQS) ID: 06-029-5001), without EPA approval of an alternative maximum ozone concentration site.<sup>7</sup>

CARB had operated an ozone monitor at the Arvin-Bear Mountain Boulevard site for 20 years, and the highest ozone concentrations in the Bakersfield MSA generally occurred at this site or the Edison site (*i.e.*, AQS ID: 06-029-0007), which continues to operate. Upon notification in 2009 that the site lease would not be renewed, CARB established a replacement site at the Arvin-Di Giorgio

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<sup>4</sup> 62 FR 38856 (July 18, 1997).

<sup>5</sup> 73 FR 16436 (March 27, 2008).

<sup>6</sup> 81 FR 18766 at 18772 (April 1, 2016).

<sup>7</sup> 40 CFR part 58, Appendix D, 4.1(b) requires at least one site in each MSA to be designed to capture the maximum ozone concentration in that MSA.

elementary school (*i.e.*, 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.

Based on the 2016 Bakersfield Ozone Monitoring SIP, CARB's 2016 site relocation request,<sup>8</sup> and the EPA's 2016 approval of that relocation request (included in the SIP submission as Appendix C to the 2016 CARB Staff Report), the EPA concluded that the Arvin-Di Giorgio site provided the most similar concentrations from similar sources to the Arvin-Bear Mountain Boulevard 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.

## **II. Final Action**

The underlying basis of the EPA's 2014 disapproval has been adequately resolved via the approved site relocation for the maximum ozone concentration site in the Bakersfield MSA. Accordingly, the EPA is fully approving the 2016 Bakersfield Ozone Monitoring SIP for CAA section 110(a)(2)(B) for the 1997 ozone and 2008 ozone NAAQS, as authorized in section 110(k)(3) of the Act.

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.<sup>9</sup> 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

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<sup>8</sup> 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.

<sup>9</sup> 81 FR 47300 (July 21, 2016).

paragraphs from the California SIP that reflected the earlier disapproval. Thus, as an administrative matter, we are removing 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 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 relations, Ozone, Reporting and recordkeeping requirements.

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

Dated: September 26, 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)(496) to read as follows:

**§ 52.220 Identification of plan-in part.**

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(c) \* \* \*

(496) The following plan was submitted on August 24, 2016, by the Governor’s Designee.

(i) [Reserved]

(ii) *Additional materials.* (A) California Air Resources Board (CARB).

(1) CARB Resolution 16-8, dated July 21, 2016, adopting the “2016 Ozone State Implementation Plan for the San Joaquin Valley.”

(2) “Staff Report, ARB Review of the San Joaquin Valley 2016 Plan for the 2008 8-Hour Ozone Standard,” section V.H (“Bakersfield Area Monitor”) and Appendix C (“U.S. EPA Letter Regarding Arvin Site Relocation”), only.

**§ 52.223 [Amended]**

3. Section 52.223 is amended by removing and reserving paragraphs (i)(1), (i)(7), (l)(1), and (l)(7).

[FR Doc. 2017-21777 Filed: 10/10/2017 8:45 am; Publication Date: 10/11/2017]