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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52

[EPA-R09-OAR-2020-0534; FRL-10020-36-Region 9]

Approval and Promulgation of Air Quality State Implementation Plans; California; Plumas County; Moderate Area Plan for the 2012 PM_{2.5} NAAQS

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking final action to approve a state implementation plan (SIP) revision submitted by the State of California to address Clean Air Act (CAA or “Act”) requirements for the 2012 annual fine particulate matter (PM_{2.5}) national ambient air quality standard (NAAQS or “standard”) in the Plumas County Moderate PM_{2.5} nonattainment area (“Portola nonattainment area”). The submitted SIP revision is the State’s “Proposed Portola PM_{2.5} Plan Contingency Measure SIP Submittal” (“PM_{2.5} Plan Revision”), which includes a revised City of Portola ordinance regulating PM_{2.5} emission sources and the State’s demonstration that this submission meets the Moderate area contingency measure requirement for the 2012 annual PM_{2.5} NAAQS in the Portola nonattainment area. The EPA is also taking final action to approve the contingency measure element of the Moderate area attainment plan for the Portola nonattainment area, as revised and supplemented by the PM_{2.5} Plan Revision.

DATES: This rule is effective on April 2, 2021.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA-R09-OAR-2020-0534. All documents in the docket are listed on the <https://www.regulations.gov> website. 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. If you need assistance in a language other than English or if you are a person with disabilities who needs a reasonable accommodation at no cost to you, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: John Ungvarsky, Air Planning Office (AIR-2), EPA Region IX, 75 Hawthorne Street, San Francisco, CA 94105, (415) 972-3963 or ungvarsky.john@epa.gov.

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

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I. Background

On January 15, 2013, the EPA strengthened the primary annual NAAQS for particulate matter with a diameter of 2.5 microns or less by lowering the level from 15.0 micrograms per cubic meter ($\mu\text{g}/\text{m}^3$) to 12.0 $\mu\text{g}/\text{m}^3$ (“2012 PM_{2.5} NAAQS”).¹ The EPA established this standard after considering substantial evidence from numerous health studies demonstrating that serious health effects are associated with exposures to PM_{2.5} concentrations above these levels.

Epidemiological studies have shown statistically significant correlations between elevated levels of PM_{2.5} (particulate matter with a diameter of 2.5 microns or less) and premature mortality. Other important health effects associated with PM_{2.5} exposure include aggravation of respiratory and cardiovascular disease, changes in lung function, and increased respiratory symptoms. Individuals particularly sensitive to PM_{2.5} exposure include older adults, people with heart and lung disease, and children.² PM_{2.5} can be emitted directly into the atmosphere as a solid or liquid particle (“primary PM_{2.5}” or “direct PM_{2.5}”) or can be formed in the atmosphere as a result of various chemical reactions among precursor pollutants such as nitrogen oxides, sulfur oxides, volatile organic compounds, and ammonia (“secondary PM_{2.5}”).³

¹ 78 FR 3086 and 40 CFR 50.18. Unless otherwise noted, all references to the PM_{2.5} NAAQS in this notice are to the 2012 annual NAAQS of 12.0 $\mu\text{g}/\text{m}^3$ codified at 40 CFR 50.18.

² 78 FR 3086, 3088 (January 15, 2013).

³ EPA, Air Quality Criteria for Particulate Matter, No. EPA/600/P-99/002aF and EPA/600/P-99/002bF, October 2004.

Following promulgation of a new or revised NAAQS, the EPA is required by CAA section 107(d) to designate areas throughout the nation as attaining or not attaining the NAAQS. The EPA designated and classified the Portola nonattainment area as “Moderate” nonattainment for the 2012 annual PM_{2.5} standards based on ambient monitoring data that showed the area was above 12.0 $\mu\text{g}/\text{m}^3$ for the 2011–2013 monitoring period.⁴ For the 2011–2013 period, the annual PM_{2.5} design value for the Portola nonattainment area was 12.8 $\mu\text{g}/\text{m}^3$ based on monitored readings at the 161 Nevada Street and 420 Gulling Street monitors.⁵

The Portola nonattainment area includes the City of Portola (“Portola”), which has a population of approximately 2,100 and is located at an elevation of 4,890 feet in an intermountain basin isolated by rugged mountains. For a precise description of the geographic boundaries of the Portola nonattainment area, see 40 CFR 81.305.

The local air district with primary responsibility for developing a plan to attain the 2012 annual PM_{2.5} NAAQS in this area is the Northern Sierra Air Quality Management District (NSAQMD or “District”). The District worked with the California Air Resources Board (CARB) in preparing the PM_{2.5} Plan Revision. Under state law, authority for regulating sources under state jurisdiction in the Portola nonattainment area is split between the District, which has responsibility for regulating stationary and most area sources, and CARB, which has responsibility for regulating most mobile sources.

On February 28, 2017, California submitted the “Portola Fine Particulate Matter (PM_{2.5}) Attainment Plan” (“Portola PM_{2.5} Plan”) to address the CAA’s Moderate area requirements for the 2012 annual PM_{2.5} NAAQS in the Portola nonattainment area. On March 25, 2019, the EPA fully approved the Portola PM_{2.5} Plan, except for the contingency measure element.⁶ As part of the attainment control strategy, the Portola PM_{2.5} Plan relies on “Ordinance No. 344: An Ordinance of the City of Portola, County of Plumas Amending Chapter 15.10 of the City of Portola Municipal Code Providing for Regulation of Wood Stoves and Fireplaces” (“City Ordinance No. 344”) to achieve direct PM_{2.5} emission reductions necessary for attainment by

⁴ 80 FR 2206 (January 15, 2015).

⁵ From 2000 through early 2013, the Portola PM_{2.5} monitoring site was located at 161 Nevada Street. In 2013, the site was relocated to 420 Gulling Street.

⁶ 84 FR 11208.

the December 31, 2021 attainment date. The EPA approved City Ordinance No. 344 into the SIP on March 5, 2018.⁷ The attainment control strategy in the Portola PM_{2.5} Plan also relies on an enforceable state commitment to implement an incentive grant program called the “Greater Portola Woodstove Change-out Program 2016” (“Wood Stove Program”) during the 2016 to 2021 period to fund the replacement of uncertified wood stoves with newer, EPA-certified devices and to educate residents on proper ways to store and burn wood. The EPA approved the Wood Stove Program into the SIP on April 2, 2018.⁸

On October 28, 2020, CARB submitted “Ordinance No. 359: An Ordinance of the City of Portola, County of Plumas Amending Chapter 15.10 of the City of Portola Municipal Code Providing for Regulation of Wood Stoves and Fireplaces and the Prohibition of the Open Burning of Yard Waste” (“City Ordinance No. 359”), together with a document entitled “Proposed Portola PM_{2.5} Plan Contingency Measure SIP Submittal,” October 16, 2020 (hereafter “CARB Staff Report”), to the EPA with a request for approval into the SIP through the EPA’s parallel processing procedures in 40 CFR part 51, appendix V, section 2.3.⁹ We refer to this submission of City Ordinance No. 359 and the CARB Staff Report together as the “Proposed PM_{2.5} Plan Revision.” The Proposed PM_{2.5} Plan Revision contains, among other things, a contingency measure in City Ordinance No. 359 that revises and supplements the contingency measure element of the Portola PM_{2.5} Plan.¹⁰

On December 3, 2020, the EPA proposed to approve the Proposed PM_{2.5} Plan Revision, through parallel processing, and to approve the contingency measure element of the Portola PM_{2.5} Plan, as revised and supplemented by the Proposed PM_{2.5} Plan Revision.¹¹ Specifically, the EPA proposed to find that the contingency measure element of the Portola PM_{2.5} Plan, as revised and supplemented by the Proposed PM_{2.5} Plan Revision, would satisfy the requirements for contingency measures in CAA section 172(c)(9) and 40 CFR 51.1014 for

purposes of the 2012 PM_{2.5} NAAQS in the Portola nonattainment area. Our proposed approval was contingent upon the State’s submission of the final, adopted PM_{2.5} Plan Revision in time for the EPA to finalize this action by March 1, 2021, our court-ordered deadline for taking final action on the contingency measure element of the Portola PM_{2.5} Plan.¹² The EPA also proposed to find that the requirement for contingency measures to address a failure to meet a reasonable further progress (RFP) requirement for the 2019 RFP milestone year was moot as applied to the Portola nonattainment area, because the State and District had adequately demonstrated that the emission reductions needed for RFP had been achieved and that the Portola nonattainment area had met its 2019 quantitative milestone. Finally, the EPA proposed to approve a new prohibition on the open burning of yard waste and related provisions in City Ordinance No. 359 that would strengthen the SIP, excluding paragraph 15.10.060 B. and sections 15.10.100 and 15.10.110 regarding penalties and violations.¹³

On November 19, 2020, CARB adopted the Proposed PM_{2.5} Plan Revision, and on December 29, 2020, CARB submitted the final PM_{2.5} Plan Revision to the EPA as a revision to the California SIP.¹⁴ The SIP submission includes evidence that the State provided adequate public notice and an opportunity for a public hearing, consistent with the EPA’s implementing regulations in 40 CFR 51.102.

II. Public Comments and EPA Responses

The EPA’s proposed action provided a 30-day public comment period that ended on January 4, 2021. During this period, the EPA received one anonymous comment that does not articulate any issue.¹⁵ We do not respond to this comment because it fails to identify any issue that is germane to the EPA’s action.

¹² Order, *Center for Biological Diversity, et al. v. Andrew Wheeler*, Case No. 3:19-cv-02782-EMC (N.D. Cal., February 19, 2020).

¹³ 85 FR 78050.

¹⁴ CARB Resolution 20–26, “Proposed Portola PM_{2.5} Plan Contingency Measure State Implementation Plan Submittal” (November 19, 2020) and letter dated December 28, 2020, from Richard W. Corey, Executive Officer, CARB, to John W. Busterud, Regional Administrator, EPA Region IX, including enclosures (transmitting Proposed Portola PM_{2.5} Plan Contingency Measure State Implementation Plan Submittal).

¹⁵ The comment is available in the docket for this rulemaking at <https://www.regulations.gov/document?D=EPA-R09-OAR-2020-0534-0028>.

III. Final Action

For the reasons discussed in detail in the proposed rule and summarized herein, under CAA section 110(k)(3), the EPA is taking final action to approve the PM_{2.5} Plan Revision and to approve the contingency measure element of the Portola PM_{2.5} Plan, as revised and supplemented by the PM_{2.5} Plan Revision, as meeting the contingency measure requirements of CAA section 172(c)(9) and 40 CFR 51.1014 for the 2012 annual PM_{2.5} NAAQS in the Portola nonattainment area. The EPA is also determining that the requirement for RFP contingency measures for the 2019 milestone date is moot as applied to the Portola nonattainment area, because the State and District have adequately demonstrated that the emission reductions needed for RFP have been achieved and that the 2019 quantitative milestone has been met in the Portola nonattainment area.

Finally, the EPA is approving new provisions in City Ordinance No. 359 concerning open burning of yard wastes and other debris, including related definitions and exemptions. These provisions strengthen the SIP and are consistent with CAA requirements regarding enforceability and SIP revisions. At the State’s and District’s request, we are not acting on paragraph 15.10.060 B., section 15.10.100, or section 15.10.110 of City Ordinance No. 359.

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 City of Portola ordinance described in the amendments to 40 CFR part 52 set forth below. The EPA has made, and will continue to make, these documents available through www.regulations.gov and at the EPA Region IX Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** 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, or conditionally approves, state plans as meeting federal

⁷ 83 FR 9213.

⁸ 83 FR 13871.

⁹ Letter dated October 28, 2020, from Richard Corey, Executive Officer, CARB, to John Busterud, Regional Administrator, EPA Region IX, with enclosures.

¹⁰ CARB requested that the EPA entirely replace City Ordinance No. 344 in the SIP with City Ordinance No. 359. NSAQMD, Resolution 2020–09 (October 26, 2020).

¹¹ 85 FR 78050 (December 3, 2020).

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 (Pub. L. 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 practical 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 May 3, 2021. 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, Ammonia, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Particulate matter, Reporting and recordkeeping requirements, Sulfur dioxide, Volatile organic compounds.

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

Dated: February 23, 2021.

Deborah Jordan,

Acting Regional Administrator, Region IX.

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)(497)(i)(C)(1)(ii), (c)(500)(ii)(A)(2), and (c)(553) to read as follows:

§ 52.220 Identification of plan—in part.

* * * * *

(c) * * *

(497) * * *

(i) * * *

(C) * * *

(1) * * *

(ii) Previously approved on March 5, 2018 at (c)(497)(i)(C)(1)(i) of this section

and now deleted with replacement at (c)(553)(i)(B)(1)(i), Ordinance No. 344, Portola Municipal Code, Chapter 15.10, “Wood Stove and Fireplace Ordinance,” adopted June 22, 2016.

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(500) * * *

(ii) * * *

(A) * * *

(2) The “Portola Fine Particulate Matter (PM_{2.5}) Attainment Plan,” adopted January 23, 2017, subchapter VI.B (“Contingency Measure”), as supplemented and revised October 26, 2020.

* * * * *

(553) The following additional materials were submitted on December 29, 2020, by the Governor’s designee as an attachment to a letter dated December 28, 2020.

(i) *Incorporation by reference.* (A) Northern Sierra Air Quality Management District.

(1) City of Portola.

(i) Ordinance No. 359, Portola Municipal Code, Chapter 15.10, “Wood Stove and Fireplace Ordinance and the Prohibition of the Open Burning of Yard Waste,” adopted September 9, 2020, except paragraph 15.10.060 B., section 15.10.100, and section 15.10.110.

(ii) [Reserved]

(B) [Reserved]

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

(1) Resolution 20–26, “Proposed Portola PM_{2.5} Plan Contingency Measure State Implementation Plan Submittal,” adopted November 19, 2020.

(2) [Reserved]

(B) Northern Sierra Air Quality Management District.

(1) Northern Sierra Air Quality Management District Resolution 2020–09, adopted October 26, 2020.

(2) [Reserved]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2020–0196; FRL–10020–45–Region 3]

Air Plan Approval; West Virginia; 1997 8-Hour Ozone National Ambient Air Quality Standard Second Maintenance Plan for the West Virginia Portion of the Huntington-Ashland, WV-KY Area Comprising Cabell and Wayne Counties

AGENCY: Environmental Protection Agency (EPA).