



**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

**[EPA-R09-OAR-2015-0542; FRL-9933-52-Region 9]**

**Revision of Air Quality Implementation Plan; California; Feather River Air Quality Management District; Stationary Source Permits**

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

**ACTION:** Direct final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is taking direct final action to approve a revision to the Feather River Air Quality Management District (FRAQMD) portion of the California State Implementation Plan (SIP). This revision concerns a permitting rule that regulates construction and modification of stationary sources of air pollution. These revisions correct deficiencies in FRAQMD Rule 10.1, New Source Review, previously identified by EPA in a final rule dated September 24, 2013. We are approving revisions that correct the identified deficiencies.

**DATES:** This rule is effective on [Insert date 60 days from the date of publication in the Federal Register] without further notice, unless EPA receives adverse comments by [Insert date 30 days from the date of publication in the Federal Register]. If

we receive such comments, we will publish a timely withdrawal in the Federal Register to notify the public that this direct final rule will not take effect.

**ADDRESSES:** Submit comments, identified by docket number EPA-R09-OAR-2015-0542, by one of the following methods:

1. *Federal eRulemaking Portal:* <http://www.regulations.gov>.

Follow the on-line instructions.

2. *E-mail:* [R9airpermits@epa.gov](mailto:R9airpermits@epa.gov).

3. *Mail or deliver:* Gerardo Rios (Air-3), U.S. Environmental Protection Agency Region IX, 75 Hawthorne Street, San Francisco, CA 94105-3901.

*Instructions:* All comments will be included in the public docket without change and may be made available online at <http://www.regulations.gov>, including any personal information provided, unless the comment includes Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Information that you consider CBI or otherwise protected should be clearly identified as such and should not be submitted through <http://www.regulations.gov> or e-mail. <http://www.regulations.gov> is an "anonymous access" system, and EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send e-mail directly to EPA, your e-mail address will be automatically captured and included as part of the public

comment. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

*Docket:* EPA has established a docket for this action under EPA-R09-OAR-2015-0542. 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. While all documents 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 publicly available in either location (e.g., 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:** Lornette Harvey, EPA Region IX, (415) 972-3498, [harvey.lornette@epa.gov](mailto:harvey.lornette@epa.gov).

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

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**I. The State's Submittal**

A. *What rule did the State submit?*

Table 1 lists the rule we are approving with the date it was adopted by the local air agency and submitted to EPA by the California Air Resources Board (CARB).

Table 1 - Submitted Rule

Local Agency	Rule #	Rule Title	Amended	Submitted
FRAQMD	10.1	New Source Review	10/06/14	11/06/14

On December 18, 2014, EPA determined that the submittal for FRAQMD Rule 10.1 met the completeness criteria in 40 CFR part 51, appendix V, including evidence of public adoption of this regulation, which must be met before formal EPA review.

B. *Are there other versions of this rule?*

EPA approved a previous version of Rule 10.1, into the SIP on September 24, 2013 (78 FR 58460).

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

Section 110(a)(2) of the CAA requires that each SIP include, among other things, a preconstruction permit program to provide for regulation of the construction and modification of stationary sources within the areas covered by the plan as necessary to assure that the National Ambient Air Quality Standards (NAAQS) are achieved, including a permit program as required in parts C and D of title I of the CAA. For areas designated as nonattainment for one or more NAAQS, the SIP must include preconstruction permit requirements for new or modified major stationary sources of such nonattainment pollutant(s), commonly referred to as "Nonattainment New Source Review" or "NNSR." CAA 172(c)(5).

The jurisdiction of the FRAQMD consists of two counties, Yuba and Sutter, and contains two nonattainment areas. See 40 CFR 81.305. The first nonattainment area is the "Sutter Buttes" area, which consists of the area located in the District which is above 2000 feet of elevation. This area is designated nonattainment for the 2008 ozone NAAQS.

The second nonattainment area is the south "Sutter" area, which is part of the Sacramento Metro Nonattainment Area. This area is also designated nonattainment for the 2008 ozone NAAQS.

Since the District adopted the latest revisions to Rule 10.1, the "Yuba City-Marysville" area, which consists of all of

Sutter County and a portion of Yuba County, has been redesignated as attainment for the 2006 PM<sub>2.5</sub> NAAQS. See 79 FR 72981 (December 9, 2014).

Because of the nonattainment areas located in the FRAQMD, the District is required under part D of title I of the Act to adopt and implement a SIP-approved NNSR program for the nonattainment portions of Yuba and Sutter Counties that applies, at a minimum, to new or modified major stationary sources of the following pollutants: volatile organic compounds (VOCs), and nitrogen oxides (NO<sub>x</sub>).<sup>1</sup>

Rule 10.1, New Source Review, implements the NNSR requirements under part D of title I of the CAA for new or modified major stationary sources of nonattainment pollutants. FRAQMD amended and submitted Rule 10.1 to correct minor program deficiencies identified by EPA on September 24, 2013 (78 FR 58460).

## **II. EPA's Evaluation and Action**

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

EPA has reviewed the submitted permitting rule for compliance with the CAA's general requirements for SIPs in CAA section 110(a)(2), EPA's regulations for nonattainment stationary source permit programs in 40 CFR 51.165, and the CAA

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<sup>1</sup> VOCs and NO<sub>x</sub> are subject to NNSR as ozone precursors. See 40 CFR 51.165(a)(1)(xxxvii)(C).

requirements for SIP revisions in CAA section 110(1).

*B. Does the rule meet the evaluation criteria?*

Our September 24, 2013 action identified two deficiencies in Rule 10.1. First, Sections B.4 and B.5 contained language that was too broad because it exempted certain pollutants from all the requirements in Section E, if EPA redesignated the area from nonattainment to attainment, instead of only exempting those pollutants from the requirements for major sources. Second, the definition of "NSR Regulated Pollutant" did not specify that the term included gaseous emissions which condense to form either PM<sub>10</sub> or PM<sub>2.5</sub>, respectively.

The first deficiency was corrected by narrowing the language contained in Sections B.4 and B.5 to only exempt a source from the requirements of Sections E.1.b, E.2.a.2, E.5, E.7 and E.8, which apply to major sources emitting nonattainment pollutants, if EPA re-designates any of the nonattainment portions of the District to attainment for PM<sub>2.5</sub> or ozone.

The second deficiency was corrected by adding a second sentence to both Sections D.34 and D.35, which reads as follows: "Gaseous emissions which condense to form particulate matter at ambient temperatures shall be included." Adding this sentence to each section clarifies that condensable gases emissions, which condense to form either PM<sub>10</sub> or PM<sub>2.5</sub>, must be counted as PM<sub>10</sub> or PM<sub>2.5</sub>, respectively.

With respect to procedures, CAA sections 110(a) and 110(l) require that revisions to a SIP be adopted by the State after reasonable notice and public hearing. EPA has promulgated specific procedural requirements for SIP revisions in 40 CFR part 51, subpart F. These requirements include publication of notices, by prominent advertisement in the relevant geographic area, a public comment period of at least 30 days, and an opportunity for a public hearing.

Based on our review of the public process documentation included in CARB's November 6, 2014 submittal, we find that the State has provided sufficient evidence of public notice and opportunity for comment and public hearing prior to adoption and submittal of this rule to EPA.

With respect to substantive requirements, EPA has reviewed the submitted rule in accordance with the CAA and regulatory requirements that apply to NNSR permit programs under part D of title I of the Act. Based on our evaluation of this rule, as summarized in the Public Comment and Final Action section of this notice, we find that the rule meets the CAA and regulatory requirements for NNSR permit programs in part D of title I of the Act and EPA's NNSR implementing regulations in 40 CFR section 51.165 for new or modified major stationary sources proposing to locate within the District. Final approval of Rule 10.1 would correct all deficiencies in FRAQMD's permit program

identified in our September 24, 2013 final rule. 78 FR 58460.

*C. Public comment and final action.*

As authorized in section 110(k)(3) of the Act, EPA is fully approving the submitted rule because we believe it fulfills all relevant requirements. We do not think anyone will object to this approval, so we are finalizing it without proposing it in advance. However, in the Proposed Rules section of this Federal Register, we are simultaneously proposing approval of the same submitted rule. If we receive adverse comments by [**Insert date 30 days from date of publication in the Federal Register**], we will publish a timely withdrawal in the Federal Register to notify the public that the direct final approval will not take effect and we will address the comments in a subsequent final action based on the proposal. If we do not receive timely adverse comments, the direct final approval will be effective without further notice on [**Insert date 60 days from date of publication in the Federal Register**]. This will incorporate the rule into the federally enforceable SIP.

Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

**III. 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 incorporating by reference the FRAQMD Rule 10.1, as discussed in section I.A of this preamble. The EPA has made, and will continue to make, these documents generally available electronically through [www.regulations.gov](http://www.regulations.gov) and/or in hard copy at the appropriate EPA office (see the **ADDRESSES** section of this preamble for more information).

#### **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, 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 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 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. 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, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Volatile organic compounds.

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

Dated: August 21, 2015.

Jared Blumenfeld,  
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) (457) (i) (A) (4) to read as follows:

§52.220 Identification of plan.

\* \* \* \* \*

(c) \* \* \*

(457) \* \* \*

(i) \* \* \*

(A) \* \* \*

(4) Rule 10.1, "New Source Review," amended on October 6, 2014.

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