



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R09-OAR-2019-0449; FRL-10008-59-Region 9]

Approval and Limited Approval and Limited Disapproval of California Air Plan

Revisions; San Diego County Air Pollution Control District; Stationary Source Permits

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing action on four permitting rules submitted as a revision to the San Diego County Air Pollution Control District (SDAPCD or “District”) portion of the California State Implementation Plan (SIP). We are proposing a limited approval and limited disapproval of one rule and proposing approval of the remaining three rules. These revisions concern the District’s New Source Review (NSR) permitting program for new and modified sources of air pollution under section 110(a)(2)(C) and part D of title I of the Clean Air Act (CAA). This action updates the SDAPCD’s applicable SIP with revised rules that the District has amended to address deficiencies identified in a previous conditional approval action. We are taking comments on this proposal and plan to follow with a final action.

DATES: Comments must be received on or before [**Insert date 30 days after the date of publication in the *Federal Register***].

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R09-OAR-2019-0449 at <http://www.regulations.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. 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://www.epa.gov/dockets/commenting-epa-dockets>.

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

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I. The State’s Submittal

A. What rules did the State submit?

Table 1 lists the rules addressed by this proposal with the dates when they were adopted by the SDAPCD and submitted by the California Air Resources Board (CARB), which is the governor’s designee for California SIP submittals. These rules constitute part of the SDAPCD’s current program for preconstruction review and permitting of new or modified stationary sources under its jurisdiction. The rule revisions that are the subject of this action represent an update to the SDAPCD’s preconstruction review and permitting program and are intended to satisfy the requirements under part D of title I of the Act (“nonattainment NSR” or “NNSR”) as well as the general preconstruction review requirements under section 110(a)(2)(C) of the Act (“minor NSR”).

TABLE 1 - SUBMITTED RULES

Rule #	Rule Title	Adopted Date	Submitted Date
20.1	New Source Review – General Provisions	06/26/2019	07/19/2019
20.2*	New Source Review – Non-Major Stationary Sources	06/26/2019	07/19/2019
20.3*	New Source Review – Major Stationary Sources and PSD Stationary Sources	06/26/2019	07/19/2019
20.4*	New Source Review – Portable Emission Units	06/26/2019	07/19/2019

* The following paragraphs of the Rules 20.2-20.4 were not submitted to the EPA for inclusion in the San Diego SIP: Rule 20.2 paragraphs (d)(2)(i)(B), (d)(2)(v), (d)(2)(vi)(B) and (d)(3); Rule 20.3 paragraphs (d)(1)(vi), (d)(2)(i)(B), (d)(2)(v), (d)(2)(vi)(B) and (d)(3); and Rule 20.4 paragraphs (b)(2), (b)(3), (d)(1)(iii), (d)(2)(i)(B), (d)(2)(iv), (d)(2)(v)(B), (d)(3) and (d)(5).

On August 6, 2019, the EPA determined that the submittal of the revised Rules 20.1, 20.2, 20.3,

and 20.4 meets the completeness criteria in 40 CFR part 51 appendix V, which must be met before formal EPA review.

B. Are there other versions of these rules?

The EPA conditionally approved Rules 20.1–20.4 into the SDAPCD portion of the California SIP in 2018, based on the District’s commitment to adopt and submit revisions to address identified deficiencies within one year, consistent with the requirements at CAA section 110(k)(4) for conditional approval. 83 FR 50007 (October 4, 2018). That action also included a conditional approval of Rule 20.6, and a full approval of Rules 11, 20, and 24. The conditionally approved versions of Rules 20.1–20.4 are identified below in Table 2.

TABLE 2 – SIP APPROVED RULES

Rule #	Rule Title	SIP Approval Date	Federal Register Citation
20.1	New Source Review – General Provisions	10/4/2018	83 FR 50007
20.2	New Source Review – Non-Major Stationary Sources	10/4/2018	83 FR 50007
20.3	New Source Review – Major Stationary Sources and PSD Stationary Sources	10/4/2018	83 FR 50007
20.4	New Source Review – Portable Emission Units	10/4/2018	83 FR 50007

If the EPA finalizes the action proposed herein, these rules will be replaced in the SIP by the submitted set of rules listed in Table 1. Additionally, as described below, the EPA’s final approval of Rules 20.1–20.4 will resolve our conditional approval of Rule 20.6.

C. What is the purpose of the submitted rule revisions?

As noted above and described in further detail below, the submitted rules are intended to satisfy aspects of the minor NSR and NNSR requirements of section 110(a)(2)(C) and part D of

title I of the Act, and related EPA regulations. Minor NSR requirements are generally applicable for SIPs in all areas, while NNSR requirements apply only for areas designated as nonattainment for one or more National Ambient Air Quality Standards (NAAQS). San Diego County is classified as a serious nonattainment area for the 2008 ozone standard and a moderate nonattainment area for the 2015 8-hour ozone standard. San Diego County is designated attainment or unclassifiable for all other NAAQS. *See* 40 CFR 81.305. Therefore, in addition to being subject to the requirements for minor NSR at section 110(a)(2)(C) of the Act, California is required to adopt and implement a SIP-approved NNSR permitting program that applies to new or modified major stationary sources of ozone and ozone precursors within the San Diego County nonattainment area, under part D of title I of the Act.

These rules were submitted to address deficiencies identified in the EPA's 2018 action to approve and conditionally approve updates to the SDAPCD's SIP-approved NSR permitting program. *See* 83 FR 50007 (October 4, 2018). Additionally, the rules have been revised to include NO_x and VOC applicability thresholds and offset ratios applicable to severe and extreme ozone nonattainment areas, and to incorporate federal requirements for interprecursor offsetting that were added in the EPA's Implementation Rule for the 2015 Ozone NAAQS. *See* 83 FR 62998 (December 6, 2018).

II. The EPA's Evaluation and Action

A. *How is the EPA evaluating the rules?*

The EPA evaluated the submitted rules to determine whether they address the deficiencies identified in our 2018 conditional approval, and for compliance with applicable requirements of section 110(a)(2)(C) and part D of title I of the CAA and associated regulations

at 40 CFR 51.160–165, consistent with the District’s current classification as a serious nonattainment area for the 2008 ozone standard and a moderate nonattainment area for the 2015 8-hour ozone standard. We have also reviewed the rules for consistency with other CAA general requirements for SIP submittals, including requirements at section 110(a)(2) regarding rule enforceability, and requirements at sections 110(l) and 193 for SIP revisions.

Section 110(a)(2)(C) of the Act requires each SIP to include a program to regulate the modification and construction of any stationary source within the areas covered by the SIP as necessary to assure attainment and maintenance of the NAAQS. The EPA’s regulations at 40 CFR 51.160–51.164 provide general programmatic requirements to implement this statutory mandate. These requirements, commonly referred to as the “minor NSR” or “general NSR” program, apply to both major and non-major stationary sources and modifications and in both attainment and nonattainment areas, in contrast to the specific statutory and regulatory requirements for the prevention of significant deterioration (PSD)¹ and NNSR permitting programs under parts C and D of title I of the Act that apply to major sources in attainment and nonattainment areas, respectively.

Part D of title I of the Act, and the implementing regulations at 40 CFR 51.165, contain the NNSR program requirements for major stationary sources and major modifications (as those terms are defined at 40 CFR 51.165) at facilities that are located in a nonattainment area and are major sources for the pollutants for which the area has been designated nonattainment.

¹ The SDAPCD has elected not to submit rules to satisfy requirements of the PSD program under part C of title I of the Act for major stationary sources in attainment areas at this time. Accordingly, the EPA is not evaluating whether this SIP submittal satisfies PSD program requirements at 40 CFR 51.166, and some portions of Rules 20.2–20.4 addressing major sources in attainment areas are excluded from the submittal. See Table 1. The EPA remains the PSD permitting authority in San Diego County.

Section 110(a)(2)(A) of the Act requires that regulations submitted to the EPA for SIP approval must be clear and legally enforceable. Section 110(l) of the Act prohibits the EPA from approving any SIP revisions that would interfere with any applicable requirement concerning attainment and reasonable further progress (RFP) or any other applicable requirement of the CAA. Section 193 of the Act prohibits the modification of a SIP-approved control requirement in effect before November 15, 1990 in a nonattainment area, unless the modification ensures equivalent or greater emission reductions of the relevant pollutant(s). With respect to procedures, CAA sections 110(a) and 110(l) require that a state conduct reasonable notice and hearing before adopting a SIP revision.

B. Do the rules meet the evaluation criteria?

With the exception noted below, the EPA finds that the submitted rules generally satisfy the applicable CAA and regulatory requirements. Accordingly, we are proposing a full approval of Rules 20.2–20.4 and a limited approval and limited disapproval of Rule 20.1 under CAA section 110(k)(3) and 301(a). Below, we discuss generally our evaluation of the submitted rules. The technical support document (TSD) included in the docket for this proposed rulemaking contains a more detailed analysis.

We find that the submitted rules generally satisfy the NNSR and minor NSR requirements. The rules clearly identify the kinds of projects subject to review under the District's program, include legally enforceable procedures to ensure that construction will not violate the state's control strategy or interfere with attainment or maintenance of the NAAQS, provide for public availability of relevant information, and meet other requirements of the minor NSR regulations at 40 CFR 51.160–164. In addition, the rules include the definitions,

applicability procedures, and requirements for sources in nonattainment areas to obtain emission reduction offsets and comply with the lowest achievable emissions rate, as required by the NNSR regulations at 40 CFR 51.165. Rule 20.1 incorporates general regulatory requirements of the minor NSR program and definitions, applicability procedures, and requirements of the minor NSR and NNSR programs, while Rules 20.2, 20.3, and 20.4 apply applicable elements of the program to minor stationary sources, major stationary sources, and portable emission units, respectively. For more information about how the rules satisfy these requirements, see our 2018 conditional approval of the District's minor NSR and NNSR program at 83 FR 50007 (October 4, 2018).

The EPA has identified one deficiency in Rule 20.1(a) related to 40 CFR 51.160(a) and (b) and CAA section 173(a). The District revised Rule 20.1(a) to specify that the rule applies to a permit application based on the requirements in the rule as in effect on the date that the application is determined to be complete. By specifying the rule's applicability based on the date of application completeness, this language may limit the APCO's ability to ensure a source will comply with applicable NSR programs requirements at the time the permit is issued. Because of this deficiency, and our determination that other revisions to the rule conform to federal requirements, we are proposing a limited approval and limited disapproval of Rule 20.1. In order to correct this deficiency, we recommend that SDAPCD remove or revise the language added in the revised Rule 20.1(a). The TSD for this action contains additional detail regarding our determination and recommendation.

The submitted rules comply with the substantive and procedural requirements of CAA section 110(l). With respect to the procedural requirements, based on our review of the public

process documentation included with the submitted rules, we find that the SDAPCD has provided sufficient evidence of public notice and opportunity for comment and public hearings prior to submittal of this SIP revision and has satisfied these procedural requirements under CAA section 110(l).

With respect to the substantive requirements of CAA section 110(l), we have determined that our approval of the submitted rules would strengthen the applicable SIP. The addition of public noticing requirement revisions, updates to the interpollutant offset procedures, and other changes to Rules 20.1–20.4 will not interfere with any applicable requirements of the CAA. Overall, the changes to Rules 20.1–20.4 better conform to the federal requirements. These changes will not interfere with the area’s ability to attain or maintain the NAAQS and will better align SDAPCD’s NSR program to the federal requirements. Accordingly, we are proposing to find that the revisions to Rules 20.1–20.4 are approvable under section 110(l).

Similarly, we find that the submitted rules are approvable under section 193 of the Act because they do not modify any control requirement in effect before November 15, 1990 without ensuring equivalent or greater emission reductions.

The submitted rules are otherwise consistent with criteria for the EPA’s approval of regulations submitted for inclusion in the SIP, including the requirement at CAA section 110(c)(2)(A) that submitted regulations be clear and legally enforceable.

For the reasons stated above and explained further in our TSD, we find that the submitted NSR rules generally satisfy the applicable CAA and regulatory requirements for minor NSR and NNSR permit programs under CAA section 110(a)(2)(C) and part D of title I of the Act and other applicable requirements, subject to the one exception noted above where the EPA has

identified a deficiency. This submittal also corrects the deficiencies described in our 2018 conditional approval of Rules 20.1–20.4 and Rule 20.6. If we finalize this action as proposed, our action will resolve the conditional approval of these rules, and will be codified through revisions to 40 CFR 52.220 (Identification of plan—in part) and 40 CFR 52.248 (Identification of plan—conditional approval). As described below, a final limited disapproval would also trigger a timeline for the State to submit a revised SIP, or else face sanctions under the CAA.

C. Proposed action and public comment

As authorized in sections 110(k)(3) and 301(a) of the Act, the EPA is proposing full approval of Rules 20.2–20.4, and a limited approval and limited disapproval of Rule 20.1. We will accept comments from the public on this proposal until **[Insert date 30 days after date of publication in the Federal Register]**. If finalized, this action would incorporate the submitted rules into the SIP, including those provisions identified as deficient. This approval is limited because EPA is simultaneously proposing a limited disapproval of the rule under section 110(k)(3).

If finalized as proposed, our limited disapproval action would trigger an obligation on the EPA to promulgate a Federal Implementation Plan (FIP) unless the State corrects the deficiencies, and the EPA approves the related plan revisions, within two years of the final action. Additionally, because the deficiency relates to NNSR requirements under part D of title I of the Act, the offset sanction in CAA section 179(b)(2) would apply in San Diego County 18 months after the effective date of a final limited disapproval, and the highway funding sanctions in CAA section 179(b)(1) would apply in the area six months after the offset sanction is imposed. Neither sanction will be imposed under the CAA if the State submits and we approve,

prior to the implementation of the sanctions, a SIP revision that corrects the deficiency that we identify in our final action. The EPA intends to work with the SDAPCD to correct the deficiency in a timely manner.

Note that the submitted rule has been adopted by the SDAPCD, and the EPA's final limited disapproval would not prevent the local agency from enforcing it. The limited disapproval would also not prevent any portion of the rule from being incorporated by reference into the federally enforceable SIP as discussed in a July 9, 1992 EPA memo found at:

<https://www.epa.gov/sites/production/files/2015-07/documents/procsip.pdf>.

III. Incorporation by Reference

In this rule, the EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is proposing to incorporate by reference the SDAPCD rules described in Table 1 of this preamble. The EPA has made, and will continue to make, these materials 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).

IV. Statutory and Executive Order Reviews

Additional information about these statutes and Executive Orders can be found at <http://www2.epa.gov/laws-regulations/laws-and-executive-orders>.

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

This action is not a significant regulatory action and was therefore not submitted to the

Office of Management and Budget (OMB) for review.

B. Executive Order 13771: Reducing Regulations and Controlling Regulatory Costs

This action is not expected to be an Executive Order 13771 regulatory action because this action is not significant under Executive Order 12866.

C. Paperwork Reduction Act (PRA)

This action does not impose an information collection burden under the PRA because this action does not impose additional requirements beyond those imposed by state law.

D. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. This action will not impose any requirements on small entities beyond those imposed by state law.

E. Unfunded Mandates Reform Act (UMRA)

This action does not contain any unfunded mandate as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. This action does not impose additional requirements beyond those imposed by state law. Accordingly, no additional costs to state, local, or tribal governments, or to the private sector, will result from this action.

F. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

G. Executive Order 13175: Coordination with Indian Tribal Governments

This action does not have tribal implications, as specified in Executive Order 13175, because 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, and will not impose substantial direct costs on tribal governments or preempt tribal law. Thus, Executive Order 13175 does not apply to this action.

H. Executive Order 13045: Protection of Children from Environmental Health Risks and Safety Risks

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that the EPA has reason to believe may disproportionately affect children, per the definition of “covered regulatory action” in section 2-202 of the Executive Order. This action is not subject to Executive Order 13045 because it does not impose additional requirements beyond those imposed by state law.

I. Executive Order 13211: Actions that Significantly Affect Energy Supply, Distribution, or Use

This action is not subject to Executive Order 13211, because it is not a significant regulatory action under Executive Order 12866.

J. National Technology Transfer and Advancement Act (NTTAA)

Section 12(d) of the NTTAA directs the EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. The EPA believes that this action is not subject to the requirements of section 12(d) of the NTTAA because application of those requirements would be inconsistent with the CAA.

K. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Population

The EPA lacks the discretionary authority to address environmental justice in this rulemaking.

List of Subjects in 40 CFR Part 52

Administrative practice and procedure, Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur dioxide, Volatile organic compounds.

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

Dated: May 1, 2020.

John Busterud,
Regional Administrator,
Region IX.

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