



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R09-OAR-2021-0333; FRL-8609-02-R9]

Air Plan Limited Approval and Limited Disapproval, California; Mojave Desert Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is finalizing a limited approval and limited disapproval of a revision to the Mojave Desert Air Quality Management District's (MDAQMD or District) portion of the California State Implementation Plan (SIP). This revision concerns oxides of nitrogen (NO_x) emissions from stationary internal combustion engines.

Under the authority of the Clean Air Act (CAA or the "Act"), this action approves a local rule that regulates these emission sources into the federally-enforceable SIP, thereby strengthening the SIP, while identifying deficiencies with the rule that must be corrected by the MDAQMD in order for the EPA to grant full approval of the rule.

DATES: This rule will be 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 No. EPA-R09-OAR-2021-0333. 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: Kevin Gong, EPA Region IX, 75 Hawthorne St., San Francisco, CA 94105. By phone: (415) 972-3073 or by email at gong.kevin@epa.gov.

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

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I. Proposed Action

On June 1, 2021 (86 FR 29227), the EPA proposed a limited approval and limited disapproval of the following rule that was submitted for incorporation into the California SIP.

TABLE 1 - SUBMITTED RULE

Rule #	Rule Title	Amended	Submitted
1160	Internal Combustion Engines	01/22/2018	05/23/2018

We proposed a limited approval because we determined that this rule improves the SIP and is largely consistent with the relevant CAA requirements. We simultaneously proposed a limited disapproval because some rule provisions conflict with section 110 and part D of the Act. The following provisions do not satisfy the requirements of section 110 and part D of title I of the Act and prevent full approval of the SIP revision.

1. MDAQMD Rule 1160 section (C)(2)(b) allows for engines to comply with an alternative emission reduction provision instead of the concentration-based emission limits for NO_x. Specifically, this alternative provision allows for owners or operators of applicable

equipment to submit a plan for alternative emissions reduction that would achieve an 80% or 90% reduction of emissions from a baseline emission rate. Because the rule does not clearly specify how to calculate the baseline emission rate, the rule is not sufficiently clear to constitute an enforceable emission limitation, control measure, means or technique, as required under section 110(a)(2) of the Act. Furthermore, the rule leaves the approval of the NOx emission reduction alternative to the District without EPA review or approval of the alternative into the SIP. Because the rule is not clear with respect to how to calculate the baseline emission rate, and the approval of an alternative limit lies solely with the District, this provision allows for overbroad discretion on the part of the Director to modify requirements of the SIP without the procedures required under section 110 of the Act. In addition, the ambiguous alternative emission reduction provision could allow many units to emit more than the concentration limit in the rule by, in some cases, more than two times. Additionally, the alternative limits have not been justified as meeting the reasonably available control technology (RACT) requirement.

2. Under section (C)(2)(b)(v), the alternative emission reduction option also allows for units operating at the same facility to aggregate their emissions in order to comply with the percentage reduction. This type of provision (emissions aggregation) constitutes an economic incentive program (EIP) under the EPA's 2001 EIP guidance.¹ As discussed in the proposed rule, the rule provisions do not meet the criteria for EIP integrity because they fail to require that any excess emission reductions credited through the provision be surplus (i.e., not required by any other federally enforceable provision). This omission could allow reductions that are otherwise federally required to be aggregated and therefore allow greater emissions at other units.

3. The compliance determination requirements described in section (E)(1)(c) do not require adequate source testing for emission units without emission control equipment. The requirements do not specify any frequency for testing beyond the initial compliance test, and do not specify what criteria must be met for certified manufacturer emission rates to be evidence of

¹ "Improving Air Quality with Economic Incentive Programs" (EPA-452/R-01-001, January 2001).

compliance.

II. Public Comments and EPA Responses

The EPA's proposed action provided a 30-day public comment period. During this period, we received one comment from the MDAQMD expressing concern regarding the EPA's communication with the District in advance of the proposed action, indicating that these issues could have been raised sooner to give the District an opportunity to address them in the local rulemaking process. Although the comment expressed concern about the EPA's communications with the District during the rule development process, the comment did not criticize the substance of the deficiencies identified by the EPA in the proposed rulemaking and described the EPA's concerns as "legitimate." The District also stated they would be initiating a local rulemaking process in the near future to resolve these issues. Accordingly, we acknowledge the concerns raised by the District, but do not consider the comment to be suggesting that the EPA take a different course of action in the current rulemaking.

III. EPA Action

No comments were submitted that change our assessment of the rule as described in our proposed action. Therefore, as authorized by the grant of authority to approve and disapprove SIP submissions contained in sections 110(k)(3) and 301(a) of the Act, the EPA is finalizing a limited approval and limited disapproval of the submitted rule. Our limited approval incorporates the submitted rule into the California SIP, including those provisions identified as deficient.

As a result of the limited disapproval, the EPA must promulgate a Federal implementation plan (FIP) under section 110(c) unless we approve subsequent SIP revisions that correct the rule deficiencies within 24 months.

In addition, the offset sanction in CAA section 179(b)(2) will be imposed 18 months after the effective date of this action, and the highway funding sanction in CAA section 179(b)(1) six months after the offset sanction is imposed. A sanction will not be imposed if the EPA determines that a subsequent SIP submission corrects the identified deficiencies before the

applicable deadline.

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 MDAQMD rule 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

Additional information about these statutes and Executive orders can be found at <http://www.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. 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.

C. 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.

D. 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.

E. 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.

F. 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.

G. 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.

H. 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.

I. 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.

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

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

K. Congressional Review Act (CRA)

This action is subject to the CRA, and the EPA will submit a rule report to each House of the Congress and to the Comptroller General of the United States. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

L. Petitions for Judicial Review

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 the 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 rule 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, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: September 1, 2021.

Deborah Jordan,
Acting Regional Administrator,
Region IX.

For the reasons stated in the preamble, the Environmental Protection Agency amends part 52, chapter I, title 40 of the Code of Federal Regulations 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)(207)(i)(D)(5) and (c)(518)(i)(A)(7) to read as follows:

§52.220 Identification of plan-in part.

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(c) * * *

(207) * * *

(i) * * *

(D) * * *

(5) Previously approved on November 1, 1996 in paragraph (c)(207)(i)(D)(3) of this section and now deleted with replacement in paragraph (c)(518)(i)(A)(6) of this section, Rule 1160, adopted on October 26, 1994.

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(518) * * *

(i) * * *

(A) * * *

(7) Rule 1160, “Internal Combustion Engines,” amended on January 22, 2018.

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[FR Doc. 2021-19435 Filed: 9/9/2021 8:45 am; Publication Date: 9/10/2021]