



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R09-OAR-2021-0933; FRL-11004-01-R9]

Air Plan Revisions; California; Placer County Air Pollution Control District; General Permit Requirements, New Source Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing action on two permitting rules submitted as a revision to the Placer County Air Pollution Control District (PCAPCD or “District”) portion of the California State Implementation Plan (SIP). We are proposing an approval of one rule and proposing a limited approval and limited disapproval of the second rule. These revisions concern the District’s New Source Review (NSR) permitting program for new and modified sources of air pollution under title I of the Clean Air Act (CAA). This action updates the District’s applicable SIP with revised rules that the District has amended to address deficiencies identified in a previous limited approval and limited disapproval action, as well as other updates related to NSR requirements. We are taking comments on this proposal and plan to follow with a final action.

DATES: Comments must be received by **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R09-OAR-2021-0933 at <https://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 the disclosure of which 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 <https://www.epa.gov/dockets/commenting-epa-dockets>. If you need assistance in a language other than English or if you are a person with a disability 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: Po-Chieh Ting, EPA Region IX, Air-3-1, 75 Hawthorne St., San Francisco, CA 94105. By phone: (415) 972-3191 or by email at ting.pochieh@epa.gov.

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

TABLE OF CONTENTS

- I. The State’s Submittal
 - A. What rules did the State submit?
 - B. Are there other versions of these rules?
 - C. What is the purpose of the submitted rule revisions?
- II. The EPA’s Evaluation and Action
 - A. How is the EPA evaluating the submitted rules?
 - B. Do the rules meet the evaluation criteria?
 - C. What are the rule deficiencies?
 - D. EPA recommendations to further improve the rule
 - E. Proposed action and public comment
- III. Incorporation by Reference
- IV. Statutory and Executive Order Reviews

I. The State’s Submittal

- A. What rules did the State submit?*

Table 1 lists the rules addressed by this proposal, including the dates on which they were

adopted by the District and the date on which they were submitted to the EPA by the California Air Resources Board (CARB), which is the governor’s designee for California SIP submittals.

TABLE 1 – SUBMITTED RULES

Rule #	Rule Title	Adopted Date	Submitted Date
501	General Permit Requirements	04/08/2021	10/06/2021
502	New Source Review	08/12/2021	10/06/2021

On April 6, 2022, the submittal for Rules 501 and 502 was deemed complete by operation of law.

B. Are there other versions of these rules?

The SIP-approved versions of Rules 501 and 502 are identified in Table 2.

TABLE 2 – SIP APPROVED RULES

Rule #	Rule Title	SIP Approval Date	Federal Register Citation
501	General Permit Requirements	04/20/2020	85 FR 21777
502	New Source Review	09/29/2014	79 FR 58263

If the EPA finalizes the actions proposed herein, these rules will be replaced in the SIP by the submitted rules listed in Table 1. Additionally, as described below, the EPA’s final approval of Rule 501 will resolve our limited disapproval of Rule 501 from our 2020 rulemaking action.¹

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

The submitted rules constitute part of the District’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 District’s preconstruction review and permitting program and are intended to satisfy the 2015 ozone NAAQS NSR program requirements under part D of title I of the Act (“nonattainment NSR” or “NNSR”), the general preconstruction review requirements under section 110(a)(2)(C) of the Act (“minor

¹ 85 FR 21777 (April 20, 2020).

NSR”), and related EPA regulations.

Minor NSR requirements are generally applicable to permitted sources, wherever located, while NNSR requirements apply only within areas designated as nonattainment for one or more NAAQS. A portion of Placer County is within the Sacramento Metro, CA ozone nonattainment area, which is classified as “Severe” for the 2008 ozone NAAQS and as Serious for the 2015 ozone NAAQS.² A portion of Placer County is also within the Sacramento nonattainment area for the 2006 fine particle (PM_{2.5}) NAAQS with a Moderate classification.³ The remaining areas within Placer County are designated attainment or unclassifiable for all other NAAQS. Therefore, in addition to being subject to the requirements for minor NSR at section 110(a)(2)(C) of the Act, the District is required to adopt and implement a SIP-approved NNSR permitting program that applies to new or modified major stationary sources of ozone precursors, PM_{2.5}, and PM_{2.5} precursors within the corresponding portions of the Placer County designated nonattainment under part D of title I of the Act.

Rule 501 and Rule 502 provide requirements and procedures for review of new stationary sources of air pollution and modification and operation of existing stationary sources of air pollution, through the issuance of permits under the minor NSR and NNSR programs. Additionally, the submitted rules address each of the four deficiencies identified in the EPA’s 2020 limited disapproval of the previous submitted version of Rule 501.⁴ Specifically, the revisions to Rule 501 address our findings that the previous Rule 501: (1) did not fully satisfy the requirements at 40 CFR 51.160(b) regarding a permitting agency’s authority to deny a permit if a proposed project will cause a violation of the SIP or interfere with attainment or maintenance of a NAAQS; (2) did not fully satisfy requirements at 40 CFR 51.164 relating to stack height procedures; and (3) relied on definitions in Rule 504, “Emission Reduction Credits,” which is not

² 77 FR 30087 (May 21, 2012); 86 FR 59648 (October 28, 2021). Sacramento Metro is also classified as Severe nonattainment for the revoked 1979 and 1997 ozone NAAQS. See 60 FR 20237 (April 25, 1995); 75 FR 24409 (May 5, 2010).

³ 74 FR 58687 (November 13, 2009); 79 FR 31566 (June 2, 2014).

⁴ 85 FR 21777 (April 20, 2020).

SIP-approved. The submitted Rule 502 addresses our finding that the previous Rule 501 did not fully satisfy the public notice requirements at 40 CFR 51.161 for new or modified emissions units located in the Lake Tahoe Air Basin portion of Placer County.

The District has also further amended Rule 502 to ensure compliance with NNSR permitting program requirements and recent federal court rulings that have become effective since Rule 502 was last approved into the SIP in 2014, as well as additional amendments not specifically required for approval into the SIP, but which provide streamlining and clarifying revisions. The District also added provisions to Rule 502 to implement the visibility protection provisions in CAA section 169A and 40 CFR 51.307(b).⁵

II. The EPA's Evaluation and Action

A. How is the EPA evaluating the submitted rules?

The EPA reviewed the submitted rules for compliance with CAA requirements for: (1) stationary source preconstruction permitting programs as set forth in CAA part D, including sections 110(a)(2)(C), 172(c)(5), 173, 182, and 189; (2) the review and modification of major sources in accordance with 40 CFR 51.160–51.165 as applicable in a Severe ozone and Moderate PM_{2.5} nonattainment area (the area's highest applicable classifications); (3) the review of new major stationary sources or major modifications located in a designated nonattainment area that may have an impact on visibility in any Mandatory Class I Federal area, in accordance with CAA section 169A and 40 CFR 51.307; (4) SIPs in general as set forth in CAA sections 110(a)(2), including 110(a)(2)(A);⁶ and (5) SIP revisions as set forth in CAA section 110(l)⁷ and

⁵ Such sources are required to perform a visibility impact analysis consistent with the provisions of 40 CFR 51.307(a) and 40 CFR 51.166 (o), (p)(1) through (2) and (q). See 40 CFR 51.307(c). 40 CFR 51.307(d) also provides for States to require monitoring of visibility in any Federal Class I area near the proposed new major stationary source or major modification.

⁶ CAA section 110(a)(2)(A) requires that regulations submitted to the EPA for SIP approval be clear and legally enforceable.

⁷ CAA section 110(l) requires SIP revisions to be subject to reasonable notice and public hearing prior to adoption and submittal by States to the EPA and prohibits the EPA from approving any SIP revision that would interfere with any applicable requirement concerning attainment and reasonable further progress, or any other applicable requirement of the CAA.

193.⁸ For Rule 501, which was the subject of our 2020 limited approval / limited disapproval, we have focused on our analysis on revisions made in the most recent submittal. We reviewed both rules to determine whether they address the deficiencies identified in our 2020 limited disapproval of Rule 501.

B. Do the rules meet the evaluation criteria?

CAA sections 110(a)(2) and 110(l) require that revisions to a SIP be adopted by the State after reasonable notice and public hearing. Based on our review of the public process documentation included in the October 6, 2021 submittal of Rules 501 and 502, we find that the District has provided sufficient evidence of public notice, opportunity for comment and a public hearing prior to adoption and submittal of the rules to the EPA.

With respect to the substantive requirements found in CAA sections 110(a)(2)(C), 172(c)(5), 173, 182, 189, and 40 CFR 51.160–51.165, we have evaluated the rules in accordance with the applicable CAA statutory and regulatory requirements for NNSR permit programs under part D of title I of the Act based on the area’s Severe ozone and Moderate PM_{2.5} classifications.⁹ Except for the deficiencies discussed in Section II.C. of this preamble, we find that Rule 502 satisfies these requirements. We have also determined that Rule 502 satisfies the related visibility requirements in 40 CFR 51.307. In addition, we have determined that Rules 501 and 502 satisfy the requirement in CAA section 110(a)(2)(A) that regulations submitted to the EPA for SIP approval be clear and legally enforceable.

With respect to correcting the deficiencies in our 2020 limited disapproval of Rule 501, we find that submitted Rules 501 and 502 address these deficiencies and satisfy all minor NSR program requirements.

⁸ CAA section 193 prohibits the modification of any 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 pollutants.

⁹ An NNSR program that satisfies the requirements of the Act and the EPA’s regulations for Severe ozone nonattainment areas also satisfies the NNSR program requirements for lower classifications, including the NNSR program requirements applicable to the District based on its Serious classification for the 2015 ozone NAAQS.

Additionally, we have concluded that our action would comply with CAA section 110(l) because our approval of Rule 501 and limited approval of Rule 502 will not interfere with any applicable requirement concerning attainment and reasonable further progress, or any other CAA applicable requirement. Similarly, we find that our action is consistent with the requirements of CAA section 193 because our approval of Rule 501 and limited approval of Rule 502 will not relax any pre-November 15, 1990 requirement in the SIP, and therefore changes to the SIP resulting from this action ensure greater or equivalent emission reductions of the nonattainment pollutants and their precursors in the District.

For more information about how the rules and our proposed approval satisfy the applicable requirements, please see the technical support document (TSD) found in the docket for this action.

C. What are the rule deficiencies?

The EPA identified five deficiencies in Rule 502. These deficiencies relate to the requirements of CAA sections 173(a), 173, 182(c), and 302(z), and 40 CFR 51.165(a), as summarized below:

1. Rule 502 does not contain provisions to restrict permitting when the EPA finds the SIP is not being adequately implemented in the area, as required under CAA section 173(a)(4).
2. The definition of the term “Major Modification” in Section 231 of the rule does not correctly apply the CAA section 182(c)(6) requirements regarding aggregation of net emission increases and incorrectly specifies use of potential to emit as the basis for calculating emission increases.
3. The rule does not contain the definition of “Federal Land Manager” from 40 CFR 51.165(a)(1)(xlii).
4. The definition of the term “Major Stationary Source – Sacramento Air Basin” in Section 229 of the rule does not specify a major source threshold for ammonia, which

is a PM_{2.5} precursor, as required by 40 CFR 51.165(a)(13). Similarly, the definition of the term “Major Modification” in Section 231 of the rule is deficient because it relies on the section 229 definition.

5. The definition of “Sacramento Valley Air Basin” in Section 251 does not include a small area that is included in the federal definition of the Sacramento PM_{2.5} nonattainment area. Therefore, the rule is deficient because it does not apply the PM_{2.5} NNSR program requirements to this area, as required under CAA section 173.

Our TSD contains a more detailed discussion of our analysis of Rule 502 and an explanation for each deficiency.

D. EPA recommendations to further improve the rule

The TSD also includes recommendations for additional clarifying revisions for the District to consider when it next revises Rule 502.

E. Proposed action and public comment

As authorized in section 110(k)(3) of the Act, the EPA is proposing a full approval of Rule 501 because it corrects the previously identified deficiencies and continues to satisfy the applicable administrative statutory and regulatory provisions governing regulation of stationary sources under CAA section 110(a)(2)(C).

Additionally, as authorized in sections 110(k)(3) and 301(a) of the Act, the EPA is proposing a limited approval and limited disapproval of Rule 502 because it fulfills most of the relevant CAA requirements, and strengthens the SIP, but also contains five deficiencies. We have concluded that our limited approval of the submitted rule would comply with the relevant CAA requirements, including provisions of CAA sections 110(a)(2)(C), 110(l), 172(c)(5), 173, 182, 189, and 193, and 40 CFR 51.160–51.165 and 51.307.

If we finalize this action as proposed, our action will be codified through revisions to 40 CFR 52.220a (Identification of plan - in part). This action would incorporate the submitted rules into the SIP, including those provisions identified as deficient. This approval is limited because

the EPA is simultaneously proposing a limited disapproval of the rule under CAA sections 110(k)(3) and 301(a). In conjunction with the EPA's SIP approval of the District's visibility provisions for sources subject to the NNSR program as meeting the relevant requirements of 40 CFR 51.307, this action would also revise the regulatory provision at 40 CFR 52.281(d) concerning the applicability of the visibility Federal Implementation Plan (FIP) at 40 CFR 52.28 as it pertains to California, to provide that this FIP does not apply to sources subject to review under the District's SIP-approved NNSR program.

If finalized as proposed, our limited disapproval action would trigger an obligation on the EPA to promulgate a 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 deficiencies relate to NNSR requirements under part D of title I of the Act, the offset sanction in CAA section 179(b)(2) would apply in the designated ozone and PM_{2.5} nonattainment areas in Placer 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 areas six months after the offset sanction is imposed. Section 179 sanctions will not 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 deficiencies that we identify in our final action. The EPA intends to work with the District to correct the deficiencies in a timely manner.

We will accept comments from the public on this proposal until **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

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 rules listed in Table 1 of this preamble, which implement the District's NSR permitting program for new and modified sources of air pollution and further described in Sections I and II 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

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 review State choices, and approve those choices if they meet the minimum criteria of the Act. Accordingly, this proposed action proposes a limited approval and limited disapproval of State law as meeting federal requirements and does not impose additional requirements beyond those imposed by State law.

Additional information about these statutes and Executive Orders can be found at <https://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. Therefore, this action is not subject to Executive Order 13045 because it merely proposes a limited approval and limited disapproval of State law as meeting federal requirements. Furthermore, the EPA’s Policy on Children’s Health does not apply to this action.

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 Population

Executive Order 12898 (Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations, 59 FR 7629, Feb. 16, 1994) directs Federal agencies to identify and address “disproportionately high and adverse human health or environmental effects” of their actions on minority populations and low-income populations to the greatest extent practicable and permitted by law. The EPA defines environmental justice (EJ) as “the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies.” The EPA further defines the term fair treatment to mean that “no group of people should bear a disproportionate burden of environmental harms and risks, including those resulting from the negative environmental consequences of industrial, governmental, and commercial operations or programs and policies.”

The State did not evaluate EJ considerations as part of its SIP submittal; the CAA and applicable implementing regulations neither prohibit nor require such an evaluation. The EPA did not perform an EJ analysis and did not consider EJ in this action. Due to the nature of this action, it is expected to have a neutral to positive impact on the air quality of the affected area. Consideration of EJ is not required as part of this action, and there is no information in the record inconsistent with the stated goal of EO 12898 of achieving environmental justice for people of color, low-income populations, and Indigenous peoples.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Nitrogen

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

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

Dated: July 13, 2023.

Martha Guzman Aceves,

Regional Administrator,

Region IX.

[FR Doc. 2023-15346 Filed: 7/21/2023 8:45 am; Publication Date: 7/24/2023]