



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R09-OAR-2022-0889; FRL-10441-01-R9]

Limited Approval, Limited Disapproval of California Air Plan Revisions, Mojave Desert Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing a limited approval and limited disapproval of revisions to the Mojave Desert Air Quality Management District (MDAQMD or “the District”) portion of the California State Implementation Plan (SIP). This revision concerns particulate matter (PM) emissions from all sources of air pollution emissions in the District. We are proposing action on a local rule that regulates these emission sources under the Clean Air Act (CAA or “the Act”). 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-EPA-R09-OAR-2022-0889 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 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 <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 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: Christine Vineyard, EPA Region IX, 75 Hawthorne St., San Francisco, CA 94105. By phone: (415) 947-4125 or by email at vineyard.christine@epa.gov.

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

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I. The State’s Submittal

A. What rule did the State submit?

Table 1 lists the rule addressed by this proposal with the date that it was adopted by the local air agency and submitted by the California Air Resources Board (CARB).

TABLE 1 - SUBMITTED RULE

Local Agency	Rule #	Rule Title	Amended	Submitted
MDAQMD	401	Visible Emissions	08/26/19	01/08/21

On July 8, 2021, the submittal for MDAQMD Rule 401 was deemed by operation of law to meet the completeness criteria in 40 CFR Part 51 Appendix V, which must be met before formal EPA review.

B. Are there other versions of this rule?

There are previous versions of Rule 401 in the SIP adopted by the MDAQMD's predecessor agencies. The San Bernardino County portion of MDAQMD adopted a version of Rule 401, Visible Emissions, on May 7, 1976, and CARB submitted it to us on June 6, 1977. We approved this version of the rule on September 8, 1978 (43 FR 40011). The Riverside County (Blythe/Palo Verde Valley) portion of the MDAQMD adopted a version of Rule 401, Visible Emissions, on March 2, 1984, and CARB submitted it to us on July 10, 1984. We approved this version of the rule on January 29, 1985 (50 FR 3906). The MDAQMD adopted revisions to the SIP-approved versions on August 26, 2019, and CARB submitted them to us on January 8, 2021. We consider the January 8, 2021 submittal to supersede the earlier submittals. While we can act on only the most recently submitted version of the rule, we have reviewed materials provided with previous submittals.

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

Emissions of PM, including PM equal to or less than 2.5 microns in diameter (PM_{2.5}) and PM equal to or less than 10 microns in diameter (PM₁₀), contribute to effects that are harmful to human health and the environment, including premature mortality, aggravation of respiratory and cardiovascular disease, decreased lung function, visibility impairment, and damage to vegetation and ecosystems. Section 110(a) of the CAA requires states to submit regulations that control PM emissions. Rule 401 provides limits for visible emissions from all sources of air pollution emissions in the district. The MDAQMD amended Rule 401 to be consistent with the applicable California Health & Safety Code provisions already enforced. The EPA's technical support

documents (TSD) has more information about this rulemaking.

II. The EPA's Evaluation and Action

A. How is the EPA evaluating the rule?

Rules in the SIP must be enforceable (see CAA section 110(a)(2)), must not interfere with applicable requirements concerning attainment and reasonable further progress or other CAA requirements (see CAA section 110(l)), and must not modify certain SIP control requirements in nonattainment areas without ensuring equivalent or greater emissions reductions (see CAA section 193).

Generally, SIP rules must implement reasonably available control measures (RACM), including reasonably available control technology (RACT), in Moderate PM₁₀ nonattainment areas (see CAA sections 172(c)(1) and 189(a)(1)(C)). The MDAQMD regulates a PM₁₀ nonattainment area classified as Moderate for the PM standard (40 CFR 81.305). An evaluation of RACM and RACT is generally performed in context of a broader plan.

Guidance and policy documents that we use to evaluate enforceability, revision relaxation, and rule stringency requirements for the applicable criteria pollutants include the following:

1. "State Implementation Plans; General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990," 57 FR 13498 (April 16, 1992); 57 FR 18070 (April 28, 1992).
2. "Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations," EPA, May 25, 1988 (the Bluebook, revised January 11, 1990).
3. "Guidance Document for Correcting Common VOC & Other Rule Deficiencies," EPA Region IX, August 21, 2001 (the Little Bluebook).
4. "PM-10 Guideline Document," EPA 452/R-93-008, April 1993.
5. "Fugitive Dust Background Document and Technical Information Document for Best Available Control Measures," EPA 450/2-92-004, September 1992.

B. Does the rule meet the evaluation criteria?

Rule 401 improves the SIP by establishing equipment-specific visible emissions limits and by clarifying applicability and test methods for compliance verification. The rule is largely consistent with CAA requirements and relevant guidance regarding enforceability and SIP revisions. Rule provisions which do not meet the evaluation criteria are summarized below and discussed further in the TSD.

C. What are the rule deficiencies?

These 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. An exemption for visible emissions resulting from an equipment breakdown in accordance with District Rule 430, Breakdown Provisions. This exemption is inconsistent with long-standing national policy requiring good engineering practices to prevent excess emissions at all times, including startup, shutdown, and malfunction.
2. An exemption for emissions from vessels during a breakdown condition, as long as the discharge is reported in accordance with District requirements. Again, this exemption is inconsistent with long-standing national policy requiring good engineering practices to prevent excess emissions at all times, including startup, shutdown, and malfunction.
3. An exemption for agricultural operations necessary for the growing of crops or raising of fowl or animals. This is an overly broad agricultural exemption.
4. An exemption for vessels using steam boilers during emergency shutdowns for safety reasons and operational tests. This exemption is inconsistent with long-standing national policy requiring good engineering practices to prevent excess emissions at all times, including startup, shutdown, and malfunction.
5. An exemption for smoke emissions from tepee burners during the disposal of forestry and agricultural residue when the emissions result from the startup or shutdown of the combustion process or from the malfunction of emission control equipment. This

exemption is inconsistent with long-standing national policy requiring good engineering practices to prevent excess emissions at all times, including startup, shutdown, and malfunction.

6. An exemption for smoke emissions from burners used to produce energy and fired by forestry and agricultural residues with supplementary fossil fuels when the emissions result from the startup or shutdown of the combustion process or from the malfunction of emission control equipment. This exemption is inconsistent with long-standing national policy requiring good engineering practices to prevent excess emissions at all times, including startup, shutdown, and malfunction.

D. EPA recommendations to further improve the rule

The TSD includes recommendations for the next time the local agency modifies the rule.

E. Proposed action and public comment

As authorized in sections 110(k)(3) and 301(a) of the Act, the EPA is proposing a limited approval and limited disapproval of the submitted rule. 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 rule 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 section 110(k)(3). If we finalize this disapproval, CAA section 110(c) would require the EPA to promulgate a federal implementation plan within 24 months unless we approve subsequent SIP revisions that correct the deficiencies identified in the final approval.

In addition, final disapproval would trigger the offset sanction in CAA section 179(b)(2) 18 months after the effective date of a final disapproval, 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 deficiencies identified in our final action before the applicable deadline.

Note that the submitted rule has been adopted by the MDAQMD, and the EPA's final limited disapproval would not prevent the local agency from enforcing it. The limited disapproval also would 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 rulemaking, 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 Mojave Desert Air Quality Management District Rule 401, Visible Emissions, adopted on August 26, 2019, which regulates particulate matter from all sources in the district as discussed in section I. 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 is proposing 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 is merely proposing 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. 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.” 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 environmental justice considerations as part of its SIP submittal; the CAA and applicable implementing regulations neither prohibit nor require such an evaluation. EPA did not perform an EJ analysis and did not consider EJ in this action. Due to the nature of the action being taken here, this action 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, Intergovernmental relations, Particulate matter, Reporting, and recordkeeping requirements.

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

Dated: July 13, 2023.

Martha Guzman Aceves,

Regional Administrator,

Region IX.

[FR Doc. 2023-15443 Filed: 7/19/2023 8:45 am; Publication Date: 7/20/2023]