



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R09-OAR-2022-0604; FRL-10574-01-R9]

Air Plan Approval; CA; San Joaquin Valley Air Pollution Control District;

Removal of Excess Emissions Provisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve State Implementation Plan (SIP) revisions to the San Joaquin Valley Air Pollution Control District (SJVAPCD) portion of the California State Implementation Plan (SIP). The revisions were submitted by the California Air Resources Board (CARB), on behalf of SJVAPCD, in response to EPA's May 22, 2015, finding of substantial inadequacy and SIP call for certain provisions in the SIP related to exemptions and affirmative defenses applicable to excess emissions during startup, shutdown, and malfunction (SSM) events. EPA is proposing approval of the SIP revisions because the Agency has determined that they are in accordance with the requirements for SIP provisions under the Clean Air Act (CAA or the Act).

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

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R09-OAR-2022-0604 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 wherever “we” or “our” is used, it refers to EPA.

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I. Background

On February 22, 2013, the EPA issued a Federal Register notice of proposed rulemaking outlining EPA’s policy at the time with respect to SIP provisions related to periods of SSM. EPA analyzed specific SSM SIP provisions and explained how each one either did or did not comply with the CAA with regard to excess emission events.¹ For each

¹ State Implementation Plans: Response to Petition for Rulemaking; Findings of Substantial Inadequacy; and SIP Calls to Amend Provisions Applying to Excess Emissions During Periods of Startup, Shutdown, and Malfunction, 78 FR 12460 (Feb. 22, 2013).

SIP provision that EPA determined to be inconsistent with the CAA, EPA proposed to find that the existing SIP provision was substantially inadequate to meet CAA requirements and thus proposed to issue a SIP call under CAA section 110(k)(5). On September 17, 2014, EPA issued a document supplementing and revising what the Agency had previously proposed on February 22, 2013, in light of a D.C. Circuit decision that determined the CAA precludes authority of the EPA to create affirmative defense provisions applicable to private civil suits. EPA outlined its updated policy that affirmative defense SIP provisions are not consistent with CAA requirements. EPA proposed in the supplemental proposal document to apply its revised interpretation of the CAA to specific affirmative defense SIP provisions and proposed SIP calls for those provisions where appropriate (79 FR 55920, September 17, 2014).

On June 12, 2015, pursuant to CAA section 110(k)(5), EPA finalized “State Implementation Plans: Response to Petition for Rulemaking; Restatement and Update of EPA’s SSM Policy Applicable to SIPs; Findings of Substantial Inadequacy; and SIP Calls to Amend Provisions Applying to Excess Emissions During Periods of Startup, Shutdown and Malfunction,” (80 FR 33839, June 12, 2015), hereafter referred to as the “2015 SSM SIP Action.” The 2015 SSM SIP Action clarified, restated, and updated EPA’s interpretation that SSM exemption and affirmative defense SIP provisions are inconsistent with CAA requirements. The 2015 SSM SIP Action found that certain SIP provisions in 36 states were substantially inadequate to meet CAA requirements and issued a SIP call to those states to submit SIP revisions to address the inadequacies. EPA established an 18-month deadline by which the affected states had to submit such SIP revisions. States were required to submit corrective revisions to their SIPs in response to the SIP calls by November 22, 2016.

EPA issued a Memorandum in October 2020 (2020 Memorandum), which stated that certain provisions governing SSM periods in SIPs could be viewed as consistent with

CAA requirements.² Importantly, the 2020 Memorandum stated that it “did not alter in any way the determinations made in the 2015 SSM SIP Action that identified specific state SIP provisions that were substantially inadequate to meet the requirements of the Act.”

Accordingly, the 2020 Memorandum had no direct impact on the SIP call issued to SJVAPCD in 2015. The 2020 Memorandum did, however, indicate EPA’s intent at the time to review SIP calls that were issued in the 2015 SSM SIP Action to determine whether EPA should maintain, modify, or withdraw particular SIP calls through future agency actions.

On September 30, 2021, EPA’s Deputy Administrator withdrew the 2020 Memorandum and announced EPA’s return to the policy articulated in the 2015 SSM SIP Action (2021 Memorandum).³ As articulated in the 2021 Memorandum, SIP provisions that contain exemptions or affirmative defense provisions are not consistent with CAA requirements and, therefore, generally are not approvable if contained in a SIP submission. This policy approach is intended to ensure that all communities and populations, including minority, low-income, and indigenous populations overburdened by air pollution, receive the full health and environmental protections provided by the CAA.⁴ The 2021 Memorandum also retracted the prior statement from the 2020 Memorandum of EPA’s plans to review and potentially modify or withdraw particular SIP calls. That statement no longer reflects EPA’s intent. EPA intends to implement the principles laid out in the 2015 SSM SIP Action as the agency takes action on SIP submissions, including this SIP submittal provided in response to the 2015 SIP call.

² October 9, 2020 memorandum “Inclusion of Provisions Governing Periods of Startup, Shutdown, and Malfunctions in State Implementation Plans,” from Andrew R. Wheeler, Administrator.

³ September 30, 2021, memorandum “Withdrawal of the October 9, 2020, Memorandum Addressing Startup, Shutdown, and Malfunctions in State Implementation Plans and Implementation of the Prior Policy,” from Janet McCabe, Deputy Administrator.

⁴ 80 FR 33985.

With regard to the SJVAPCD SIP, in the 2015 SSM SIP Action, the EPA determined that the rules in the following table were substantially inadequate to meet CAA requirements (80 FR 33840, 33973):

| District | Rule Number | Adopted | Submitted | Rule Title |
|--|-------------|-----------|-----------|---------------------|
| San Joaquin Valley APCD (Fresno County APCD) | 110 | 2/17/2022 | 4/14/2022 | Equipment Breakdown |
| San Joaquin Valley APCD (Stanislaus County APCD) | 110 | 2/17/2022 | 4/14/2022 | Equipment Breakdown |
| San Joaquin Valley APCD (Kern County APCD) | 111 | 2/17/2022 | 4/14/2022 | Equipment Breakdown |
| San Joaquin Valley APCD (Kings County APCD) | 111 | 2/17/2022 | 4/14/2022 | Equipment Breakdown |
| San Joaquin Valley APCD (Tulare County APCD) | 111 | 2/17/2022 | 4/14/2022 | Equipment Breakdown |
| San Joaquin Valley APCD (Madera County APCD) | 113 | 2/17/2022 | 4/14/2022 | Equipment Breakdown |

Each of these SIP provisions provide an affirmative defense available to sources for excess emissions that occur during a breakdown condition (i.e., malfunction). The rationale underlying EPA’s determination that the provisions were substantially inadequate to meet CAA requirements, and therefore to issue a SIP call to SJVAPCD to remedy the provisions, is detailed in the 2015 SSM SIP Action and the accompanying proposals.

CARB, on behalf of SJVAPCD, submitted the SIP revisions on April 14, 2022, in response to the SIP call issued in the 2015 SSM SIP Action. In its submission, California is requesting that EPA revise the SJVAPCD SIP by removing the rules in the table above from the California SIP.

II. Analysis of SIP Submission

EPA is proposing to approve SJVAPCD’s April 14, 2022 SIP submission. Affirmative defense provisions like these are inconsistent with CAA requirements and removal of these

provisions would strengthen the SIP. This action, if finalized, would remove the affirmative defense provisions from the SJVAPCD portion of the EPA-approved SIP for California. EPA is proposing to find that these revisions are consistent with CAA requirements and that they adequately address the specific deficiencies that EPA identified in the 2015 SSM SIP Action with respect to the SJVAPCD portion of the California SIP.

III. Proposed Action

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). EPA is proposing to approve California's April 14, 2022 SIP submission requesting removal of (i) Fresno County "Rule 110 Equipment Breakdown"; (ii) Kern County "Rule 111 Equipment Breakdown"; (iii) Kings County "Rule 111 Equipment Breakdown"; (iv) Madera County "Rule 113 Equipment Breakdown"; (v) Stanislaus County "Rule 110 Equipment Breakdown"; and (vi) Tulare County "Rule 111 Equipment Breakdown" from the California SIP. We are proposing approval of the SIP revisions because we have determined that they are consistent with the requirements for SIP provisions under the CAA. EPA is further proposing to determine that such SIP revisions correct the deficiencies identified in the May 22, 2015 SIP call. EPA is not reopening the 2015 SSM SIP Action and is only taking comment on whether these SIP revisions are consistent with CAA requirements and whether they address the "substantial inadequacy" of the specific SJVAPCD SIP provisions identified in the 2015 SSM SIP Action.

IV. Incorporation by Reference.

In this document, EPA is proposing to amend regulatory text that includes incorporation by reference. In accordance with the requirements of 1 CFR 51.5, and as described in section I of the preamble, EPA is proposing to remove provisions from Fresno County, Kern County, Kings County, Madera County, Stanislaus County, and Tulare County portions of the California SIP. EPA has made, and will continue to make, these documents generally available through <https://www.regulations.gov> and at the EPA Region 9 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

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA 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 CAA. Accordingly, this proposed action merely approves removal of State law not meeting Federal requirements and does not impose additional requirements beyond those already imposed by State law. For that reason, this proposed 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 (Pub. L. 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 CAA.

In addition, 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. 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).

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. 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, Sulfur oxides.

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

Dated: July 25, 2023.

Martha Guzman Aceves,
Regional Administrator,
Region IX.

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