



## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R09-OAR-2023-0355; FRL-11176-01-R9]

### Air Quality Plans; Approvals and Promulgations: California; Amador Air District; New Source Review

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing to approve a permitting rule submitted as a revision to the Amador Air District (AAD or “District”) portion of the California State Implementation Plan (SIP). This revision concerns the District’s New Source Review (NSR) permitting program for new and modified sources of air pollution under part D of Title I of the Clean Air Act (CAA or “Act”). This action will update the District’s applicable SIP with a rule revised to address deficiencies identified in a previous limited disapproval action. This action also proposes to revise regulatory text to clarify that the District is not subject to the Federal Implementation Plan related to protection of visibility. 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 date of publication in the *Federal Register***].

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R09-OAR-2023-0355 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 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 a 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 systems). 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 reasonable accommodation at no cost to you, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

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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 rule did the State submit?*

Table 1 lists the rule addressed by this proposal with the dates when it was revised by the District and submitted to the EPA for SIP approval by the California Air Resources Board (CARB). This rule constitutes part of the District’s 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 AAD’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”) including the implementing regulations at 40 CFR 51.160-165, and the relevant regulatory requirements at 40 CFR 51.307, as well as the requirements of sections 110(l) and 193 of the Act.

**TABLE 1 - SUBMITTED RULE**

Rule #	Rule Title	Revision Date	Submitted Date
400	Requirements for New and Modified Major Sources in Nonattainment Areas	1/17/2023	3/3/2023

CARB’s March 3, 2023 SIP submittal package meets the completeness criteria in 40 CFR part 51, which must be met before formal EPA review. The EPA’s signed notice of proposed rulemaking for our proposed action on this submittal will serve as the EPA’s formal completeness determination for this submittal.

*B. Are there other versions of this rule?*

The previously SIP-approved version of AAD Rule 400 is identified in Table 2.

**TABLE 2 – SIP APPROVED RULE**

Rule #	Rule Title	SIP Approval Date	<i>Federal Register</i> Citation
400	Requirements for New and Modified Major Sources in Nonattainment Area	1/12/2022	87 FR 1683

Our action approving this previous version of Rule 400 into the SIP was a limited approval and limited disapproval. If the EPA finalizes the action proposed herein, this rule will be replaced in the SIP by the submitted rule listed in Table 1. Additionally, as described below, the EPA’s final approval of Rule 400 will resolve all deficiencies forming the basis for our

previous limited disapproval.

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

The submitted rule is intended to resolve the NSR program deficiencies we identified in our January 12, 2022 final action (“2022 NSR Action”),<sup>1</sup> which included limited disapproval of a prior version of Rule 400. In addition, the District made minor revisions to correct typographical errors, provide clarifying edits, and make other similar minor editorial revisions.

**II. The EPA’s Evaluation and Action**

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

The EPA has evaluated the submitted rule to determine whether it addresses the deficiencies identified in our 2022 NSR Action. We have also evaluated various additional minor revisions to Rule 400 that were made for clarity and accuracy. We have reviewed the rule as revised for consistency with the Act’s NNSR requirements, including the implementing regulations at 40 CFR 51.160-165, and the relevant regulatory requirements at 40 CFR 51.307, as well as the requirements in sections 110(l) and 193 of the Act for SIP revisions.

*B. Does the rule meet the evaluation criteria?*

We find that the revisions to Rule 400 correct all deficiencies identified in the 2022 NSR Action, and we find that the other minor revisions to the rule are approvable. The technical support document (TSD) for this proposed rulemaking contains a more detailed analysis and is included in the docket for this action.

The submitted rule complies 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 rule, we find that the District has provided sufficient evidence of public notice and opportunity for comment and public hearings prior to the submittal of this SIP revision and has satisfied these procedural requirements under CAA section 110(l).

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<sup>1</sup> 87 FR 1683.

With respect to the substantive requirements of CAA section 110(l), we have determined that our approval of the submitted rule would not interfere with the area's ability to attain or maintain the NAAQS or with any other applicable requirements of the CAA. Similarly, we find that the submitted rule is approvable under section 193 of the Act because it does not modify any control requirement in effect before November 15, 1990, without ensuring equivalent or greater emission reductions. The submitted rule is otherwise consistent with the criteria for the EPA's approval of regulations submitted for inclusion in the SIP.

For the reasons stated above and explained further in our TSD, we find that submitted Rule 400 satisfies the applicable requirements under part D of Title I of the Act and other applicable requirements of the Act. This submittal also corrects the deficiencies described in our 2022 NSR Action.

*C. Proposed action and public comment*

As authorized in section 110(k)(3) of the Act, the EPA is proposing approval of Rule 400 into the California SIP. We are proposing this action based on our determination that the submitted rule satisfies the applicable statutory and regulatory provisions governing the regulation of stationary sources under part D of title I of the Act and accompanying regulations at 40 CFR 51.160-165, as well as 40 CFR 51.307. In support of our proposed action, we have concluded that our approval would comply with sections 110(l) and 193 of the Act because the amended rule will not interfere with the continued attainment of the NAAQS in Amador County and does not relax any requirements in the SIP.

This action would also revise the regulatory provisions 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. As described in more detail in the TSD for this action, the EPA has previously found Subsections 3.6 and 5.1 of Rule 400 acceptable to meet the

visibility provisions for sources subject to the NNSR program at 40 CFR 51.307.<sup>2</sup>

We will accept comments from the public on this proposal until **[Insert date 30 days after date of publication in the *Federal Register*]**. If we finalize this action as proposed, our action will resolve the limited disapproval of Rule 400, incorporate the submitted rule into the SIP and our action would be codified through revisions to 40 CFR 52.220, “Identification of plan—in part.” In conjunction with our final approval into the SIP of the submitted version of Rule 400, we would remove from the SIP the previous version of the rule, identified in Table 2 above.

### **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 rule identified and discussed in section I.A. of this preamble that includes revisions concerning the District’s NSR permitting program for new and modified sources of air pollution under part D of Title I of the CAA. The EPA has made and will continue to make, these materials available through <https://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 Clean Air Act, 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 approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this proposed action merely proposes to approve state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

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<sup>2</sup> See TSD for 2018 NSR Action, Section 6.2.

- 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 14094 (88 FR 21879, April 11, 2023);
- 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 (Public Law 104-4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997) because it proposes to approve a state program;
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001); and
- 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 Clean Air Act.

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. 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 environmental justice 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 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, Administrative practice and procedure, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, and Volatile organic compounds.

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

Dated: September 18, 2023.

**Martha Guzman Aceves,**  
*Regional Administrator,*  
*Region IX.*

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