



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R09-OAR-2021-0933; FRL-11004-02-R9]

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

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking final 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 finalizing an approval of one rule and finalizing 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 or “Act”). This final action stops all sanction and federal implementation plan clocks started by our April 20, 2020 limited approval and limited disapproval. This action also adds regulatory text to clarify that Placer County is no longer subject to the Federal Implementation Plan related to protection of visibility.

DATES: This rule is 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-2021-0933. 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. 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: Po-Chieh Ting, EPA Region IX, 75 Hawthorne St., San Francisco, CA 94105. By phone at (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. Proposed Action
- II. Public Comments
- III. EPA Action
- IV. Incorporation by Reference
- V. Statutory and Executive Order Reviews

I. Proposed Action

On July 24, 2023, the EPA proposed approval of Rule 501 and limited approval and limited disapproval of Rule 502, listed in Table 1, as a revision to the California SIP.¹ These rules constitute 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 District’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”) as well as the general preconstruction review requirements under section 110(a)(2)(C) of the Act (“Minor NSR”).

¹ 88 FR 47409.

TABLE 1 – SUBMITTED RULES

Rule #	Rule Title	Amended Date	Submitted Date
501	General Permit Requirements	4/8/2021	10/6/2021
502	New Source Review	8/12/2021	10/6/2021

We proposed to approve Rule 501 and to issue a limited approval of Rule 502 because we determined that Rule 501 complies, and Rule 502 mostly complies, with the relevant CAA requirements. Our proposal identified the following deficiencies in Rule 502:

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.

As described in our proposal, the EPA's final approval of Rule 501 and limited approval of 502 addresses our April 20, 2020 limited disapproval action.²

II. Public Comments

The EPA's proposed action provided a 30-day public comment period. During this period, no comments were submitted on our proposal.

III. EPA Action

No comments were submitted on our proposal. Therefore, as authorized in sections 110(k)(3) and 301(a) of the Act, the EPA is finalizing approval of Rule 501 and limited approval of Rule 502. This action incorporates the submitted rules into the California SIP and replaces the versions of these rules previously approved into the SIP.³ The approval of Rule 501 stops all sanction and federal implementation plan clocks started by our April 20, 2020 limited approval and limited disapproval action. 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 also revises 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.

Additionally, as authorized in sections 110(k)(3) and 301(a) of the Act, the EPA is simultaneously finalizing a limited disapproval of Rule 502. Our limited disapproval final action triggers 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) will apply in the designated ozone and PM_{2.5}

² 85 FR 21777.

³ As described in the EPA's July 24, 2023 proposed action, the EPA previously issued a limited approval of Rule 501 on April, 20, 2020 (85 FR 21777) and previously approved Rule 502 on September 29, 2014 (79 FR 58263). See 88 FR 47409, 47410, Table 2.

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) will 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 have identified in our final action. The EPA intends to work with the District to correct the deficiencies in a timely manner.

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 rules described in Section I of this preamble, which pertain to new source review permit programs, and set forth below in the amendments to 40 CFR 52. The EPA has made, and will continue to make, these documents 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).

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 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 final action is finalizing 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 finalizing 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 Populations

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 (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 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.

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 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, Incorporation by reference, Nitrogen oxides, Ozone, Particulate matter, Reporting and recordkeeping requirements, Volatile organic compounds.

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

Dated: September 18, 2023.

Martha Guzman Aceves,
Regional Administrator,
Region IX.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended 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:

a. Adding paragraphs (c)(389)(i)(B)(7) and (c)(441)(i)(B)(4);

b. Revising paragraph (c)(595) introductory text; and

c. Adding paragraph (c)(595)(i) to read as follows:

§52.220 Identification of plan-in part.

* * * * *

(c) * * *

(389) * * *

(i) * * *

(B) * * *

(7) Previously approved on April 20, 2020, in paragraph (c)(389)(i)(B)(1) of this section and now deleted with replacement in (c)(595)(i)(A)(1) of this section: Rule 501, “General Permit Requirements,” adopted on August 12, 2010.

* * * * *

(441) * * *

(i) * * *

(B) * * *

(4) Previously approved on September 29, 2014, in paragraph (c)(441)(i)(B)(1) of this section and now deleted with replacement in (c)(595)(i)(A)(2) of this section: Rule 502, “New Source Review,” amended on August 8, 2013.

* * * * *

(595) The following rules and additional materials were submitted on October 6, 2021, by the Governor’s designee as an attachment to a letter dated October 6, 2021.

(i) *Incorporation by reference.* (A) Placer County Air Pollution Control District.

(1) Rule 501, “General Permit Requirements,” amended on April 8, 2021.

(2) Rule 502, “New Source Review,” amended on August 12, 2021.

(B) [Reserved]

* * * * *

3. Section 52.281 is amended by adding paragraph (d)(12) to read as follows:

§52.281 Visibility protection.

* * * * *

(d) * * *

(12) Placer County Air Pollution Control District.

* * * * *

[FR Doc. 2023-20673 Filed: 9/25/2023 8:45 am; Publication Date: 9/26/2023]