



BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R09-OAR-2023-0422; FRL-11353-01-R9]

**Air Plan Revisions; California; Butte County Air Quality Management District;
Nonattainment New Source Review Requirements for the 2015 8-Hour Ozone
Standard**

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve state implementation plan (SIP) revisions submitted by the State of California addressing the nonattainment new source review (NNSR) requirements for the 2015 8-hour ozone national ambient air quality standards (NAAQS or “standard”). This SIP revision addresses the Butte County Air Quality Management District (“District”) portion of the California SIP. This action is being taken pursuant to the Clean Air Act (CAA or “Act”) and its implementing regulations.

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-2023-0422 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://www2.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: Shaheerah Kelly, EPA Region IX, 75 Hawthorne Street (AIR-3-2), San Francisco, CA 94105. By phone: (415) 947-4156 or by email at kelly.shaheerah@epa.gov.

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

TABLE OF CONTENTS

- I. Background and Purpose
- II. The State’s Submittal
 - A. What did the State submit?
 - B. What is the purpose of the submitted rule?
- III. Analysis of Nonattainment New Source Review Requirements
- IV. Proposed Action and Public Comment

- V. Incorporation by Reference
- VI. Statutory and Executive Order Reviews

I. Background and Purpose

On October 26, 2015, the EPA promulgated a revised 8-hour ozone NAAQS of 0.070 parts per million (ppm).¹ Upon promulgation of a new or revised NAAQS, the CAA requires the EPA to designate as nonattainment any area that is violating the NAAQS based on the three most recent years of ambient air quality data. Butte County was classified as a “Marginal” ozone nonattainment area.²

On December 6, 2018, the EPA issued a final rule entitled, “Implementation of the 2015 National Ambient Air Quality Standards for Ozone: Nonattainment Area State Implementation Plan Requirements” (“SIP Requirements Rule”), which establishes the requirements and deadlines that state, tribal, and local air quality management agencies must meet as they develop implementation plans for areas where ozone concentrations exceed the 2015 ozone NAAQS.³ Based on the initial nonattainment designation for the 2015 ozone standard, the District was required to make a SIP revision addressing NNSR no later than August 3, 2021. See 40 CFR 51.1314. This requirement may be met by submitting a SIP revision consisting of a new or revised NNSR permit program.

II. The State’s Submittal

A. What did the State submit?

Table 1 lists the dates the submitted rule addressed by this proposal was amended

¹ 80 FR 65292 (October 26, 2015).

² 83 FR 25776 (June 4, 2018).

³ 83 FR 62998 (December 6, 2018). The SIP Requirements Rule addresses a range of nonattainment area SIP requirements for the 2015 ozone NAAQS, including requirements pertaining to attainment demonstrations, reasonable further progress (RFP), reasonably available control technology, reasonably available control measures, major new source review, emission inventories, and the timing of SIP submissions and of compliance with emission control measures in the SIP.

by the District and submitted by the California Air Resources Board (CARB), the agency that serves as the governor’s designee for California SIP submittals.

TABLE 1 - SUBMITTED RULE

| RULE | TITLE | AMENDMENT DATE | SUBMITTAL DATE | COVER LETTER DATE |
|-------------|----------------------------------|-----------------------|-----------------------|--------------------------|
| Rule 432 | Federal New Source Review (FNSR) | 4/22/2021 | 8/3/2021 | 8/3/2021 |

On February 3, 2022, CARB’s August 3, 2021 submittal was deemed to be complete by operation of law in 40 CFR part 51, appendix V, which must be met before formal EPA review.

B. What is the purpose of the submitted rule?

The submittal from the District is intended to satisfy the SIP Requirements Rule that requires states to make a SIP revision addressing NNSR. The SIP for the District currently contains an approved NNSR permit program based on their nonattainment classification for the 2008 8-hour ozone NAAQS. This submittal is intended to satisfy the 40 CFR 51.1314 submittal requirements based on the District’s 2015 ozone nonattainment designation. The EPA’s analysis of how these SIP revisions address the NNSR requirements for the 2015 ozone NAAQS is provided below.

III. Analysis of Nonattainment New Source Review Requirements

The minimum SIP requirements for NNSR permitting programs for the 2015 8-hour ozone NAAQS are contained in 40 CFR 51.165. These NNSR program requirements include those promulgated in the SIP Requirements Rule implementing the 2015 ozone NAAQS. The SIP for each ozone nonattainment area must contain NNSR provisions that: (1) set major source thresholds for nitrogen oxides (NO_x) and volatile organic compounds (VOC) pursuant to 40 CFR 51.165(a)(1)(iv)(A)(I)(i)-(iv) and (2);

(2) classify physical changes as a major source if the change would constitute a major source by itself pursuant to 40 CFR 51.165(a)(1)(iv)(A)(3); (3) consider any significant net emissions increase of NO_x as a significant net emissions increase for ozone pursuant to 40 CFR 51.165(a)(1)(v)(E); (4) consider any increase of VOC emissions in extreme ozone nonattainment areas as significant net emissions increases and major modifications for ozone pursuant to 40 CFR 51.165(a)(1)(v)(F); (5) set significant emissions rates for VOC and NO_x as ozone precursors pursuant to 40 CFR 51.165(a)(1)(x)(A)-(C) and (E); (6) contain provisions for emissions reductions credits pursuant to 40 CFR 51.165(a)(3)(ii)(C)(1)-(2); (7) provide that the requirements applicable to VOC also apply to NO_x pursuant to 40 CFR 51.165(a)(8); (8) set offset ratios for VOC and NO_x pursuant to 40 CFR 51.165(a)(9)(ii)-(iv); and (9) require public participation procedures compliant with 40 CFR 51.165(i).

The District's SIP-approved NNSR program, established in Rule 432, "Federal New Source Review (FNSR)" (amended March 23, 2017) ("Rule 432"), applies to the construction and modification of stationary sources, including major stationary sources in nonattainment areas under its jurisdiction.⁴ The only change from the SIP-approved NNSR program is the removal of provisions related to interpollutant trading, due to a recent court decision that vacated the interpollutant trading program.⁵ The District's submitted SIP revision includes a compliance demonstration, consisting of a table listing each of the 2015 ozone NAAQS NNSR SIP requirements from 40 CFR 51.165 and a citation to the specific provision of Rule 432 satisfying the requirement. These documents are available in the docket for this action. The EPA has reviewed the

⁴ 81 FR 93820 (December 22, 2016), and 83 FR 26222 (June 6, 2018).

⁵ *Sierra Club v. EPA*, 21 F.4th 815 (D.C. Cir. 2021) and 86 FR 37918 (July 19, 2021).

demonstration and cited program elements intended to meet the federal NNSR requirements and is proposing to approve the District's submittal because the current SIP-approved NNSR program contains all the SIP Requirements Rule NNSR program requirements applicable to the Butte County nonattainment area as a Marginal ozone nonattainment area.

IV. Proposed Action and Public Comment

The EPA is proposing to approve SIP revisions addressing the NNSR requirements for the 2015 ozone NAAQS for the District. In support of this proposed action, we have concluded that our approval of Rule 432 would comply with section 110(l) of the Act because the submittal will not interfere with continued attainment of the NAAQS in the District. The EPA has concluded that the State's submission fulfills the 40 CFR 51.1314 revision requirements and meets the requirements of CAA section 110 and the minimum SIP requirements of 40 CFR 51.165. If we finalize this action as proposed, our action will incorporate submitted Rule 432 into the federally enforceable SIP and be codified through revisions to 40 CFR 52.220 (Identification of plan-in part).

We will accept comments from the public on this proposal until **[Insert date 30 days after date of publication in the *Federal Register*]**.

V. 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 District's Rule 432, "Federal New Source Review (FNSR)," amended on April 22, 2021, which contains an NNSR program that meets federal permitting requirements. The EPA has made, and will continue to

make, these materials available through <https://www.regulations.gov> and in hard copy at the EPA Region IX Office (please contact the person identified in the “**FOR FURTHER INFORMATION CONTACT**” section of this preamble for more information).

VI. 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 approve state choices, provided that they meet the criteria of the CAA. 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:

- 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 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. 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 air agency 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, Carbon oxides, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: October 3, 2023.

Martha Guzman Aceves,

Regional Administrator, Region IX.

[FR Doc. 2023-22372 Filed: 10/16/2023 8:45 am; Publication Date: 10/17/2023]