



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R09-OAR-2023-0449; FRL-11378-01-R9]

Air Quality Plans; California; San Luis Obispo County Air Pollution Control District; New Source Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve a revision to the San Luis Obispo County Air Pollution Control District (SLOCAPCD or “District”) portion of the California State Implementation Plan (SIP). In this action, we are proposing to approve a rule submitted by the SLOCAPCD governing the issuance of permits for stationary sources, focusing on the preconstruction review and permitting of major sources and major modifications under part D of title I of the Clean Air Act (CAA or “the Act”). This action also proposes to revise regulatory text to clarify that the District is not subject to the Federal Implementation Plan related to the 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-2023-0449 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 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 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 a disability 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: Manny Aquitania, EPA Region IX, 75 Hawthorne St., San Francisco, CA 94105. By phone: (415) 972-3977, or by email at aquitania.manny@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 dates on which it was adopted by the local air agency and submitted by the California Air Resources Board (CARB or “the State”).

TABLE 1 - SUBMITTED RULE

Agency	Rule #	Rule Title	Adopted	Submitted¹
SLOCAPCD	224	Federal Requirements for New and Modified Major Sources in Non-Attainment Areas	01/26/22	07/05/22

On January 5, 2023, the submittal for Rule 224 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 no previous versions of Rule 224 in the SIP.

C. What is the purpose of the submitted rule?

For areas designated nonattainment for one or more National Ambient Air Quality Standards (NAAQS), the applicable SIP must include preconstruction review and permitting requirements for new or modified major stationary sources of such nonattainment pollutant(s) under part D of title I of the Act, commonly referred to as Nonattainment New Source Review (NNSR). In addition, to implement CAA section 169A, 40 CFR 51.307(b) requires that NNSR programs provide for review of any major stationary source or major modification that may have an impact on visibility in any mandatory Class I Federal area. Because the eastern portion of San Luis Obispo County is designated as a federal ozone nonattainment area for the 2008 and 2015 ozone NAAQS, with a Marginal classification, the CAA requires the District to have a SIP-approved NNSR program for new and modified major sources located in the ozone nonattainment area that are under its jurisdiction.²

Rule 224 is intended to address the CAA's statutory and regulatory requirements for NNSR permit programs for major sources emitting nonattainment air pollutants and their precursors in the areas within the District that are designated nonattainment for the NAAQS,

¹ The submittal was transmitted to the EPA via a letter from CARB dated July 5, 2022.

² The relevant nonattainment designation and classification history for the ozone NAAQS for the eastern portion of San Luis Obispo County is provided in our Technical Support Document (TSD) for this action, which can be found in the docket for this rule. Information regarding the District's attainment/nonattainment status for other criteria pollutants is also included in our TSD.

including the implementing regulations at 40 CFR 51.160-51.165, and the relevant regulatory requirements at 40 CFR 51.307.

II. The EPA's Evaluation and Action

A. How is the EPA evaluating the rule?

The EPA reviewed Rule 224 for compliance with CAA requirements for: (1) stationary source preconstruction permitting programs as set forth in CAA part D, including CAA sections 172(c)(5) and 173; (2) the review and modification of major sources in accordance with 40 CFR 51.160-51.165 as applicable in a Marginal ozone nonattainment area; (3) the review of new major stationary sources or major modifications in a designated nonattainment area that may have an impact on visibility in any mandatory Class I Federal area in accordance with 40 CFR 51.307; (4) SIPs in general as set forth in CAA sections 110(a)(2), including 110(a)(2)(A) and 110(a)(2)(E)(i);³ and (5) SIP revisions as set forth in CAA section 110(l)⁴ and 193.⁵ Our review evaluated the submittal for compliance with the NNSR requirements applicable to ozone nonattainment areas classified as Marginal, and ensured that the submittal addressed the NNSR requirements for the 2008 and 2015 ozone NAAQS.

B. Does the rule meet the evaluation criteria?

With respect to procedural requirements, CAA sections 110(a)(2) and 110(l) require that revisions to a SIP be adopted by the state after reasonable notice and public hearing. Based on our review of the public process documentation included in the July 5, 2022 submittal of Rule 224, we find that the District has provided sufficient evidence of public notice, opportunity for comment and a public hearing prior to adoption and submittal of the rule to the EPA.

³ CAA section 110(a)(2)(A) requires that regulations submitted to the EPA for SIP approval be clear and legally enforceable, and CAA section 110(a)(2)(E)(i) requires that states have adequate personnel, funding, and authority under state law to carry out their proposed SIP revisions.

⁴ CAA section 110(l) requires SIP revisions to be subject to reasonable notice and public hearing prior to adoption and submittal by states to the EPA and prohibits the EPA from approving any SIP revision that would interfere with any applicable requirement concerning attainment and reasonable further progress, or any other applicable requirement of the CAA.

⁵ CAA section 193 prohibits the modification of any SIP-approved control requirement in effect before November 15, 1990 in a nonattainment area, unless the modification ensures equivalent or greater emission reductions of the relevant pollutants.

With respect to the substantive requirements found in CAA sections 172(c)(5) and 173, and 40 CFR 51.160-51.165, we have evaluated Rule 224 in accordance with the applicable CAA and regulatory requirements that apply to NNSR permit programs under part D of title I of the Act for all relevant ozone NAAQS. We find that Rule 224 satisfies these requirements as they apply to sources subject to NNSR permit program requirements for ozone nonattainment areas classified as Marginal. We have also determined that these rules satisfy the related visibility requirements in 40 CFR 51.307. In addition, we have determined that the Rule 224 satisfies the requirement in CAA section 110(a)(2)(A) that regulations submitted to the EPA for SIP approval be clear and legally enforceable, and have determined that the submittal demonstrates in accordance with CAA section 110(a)(2)(E)(i) that the District has adequate personnel, funding, and authority under state law to carry out this proposed SIP revision.

Regarding the additional substantive requirements of CAA sections 110(l) and 193, our action will result in a more stringent SIP, while not relaxing any existing provision contained in the SIP. We have concluded that our action would comply with section 110(l) because our approval of this rule will not interfere with any applicable requirement concerning attainment and reasonable further progress, or any other CAA applicable requirement. In addition, our approval of this rule will not relax any pre-November 15, 1990 requirement in the SIP, and therefore changes to the SIP resulting from this action ensure greater or equivalent emission reductions of the nonattainment pollutants and their precursors in the District; accordingly, we have concluded that our action is consistent with the requirements of CAA section 193.

Our TSD, which can be found in the docket for this rule, contains a more detailed discussion of our analysis of Rule 224.

C. Proposed action and public comment

As authorized in section 110(k)(3) of the Act, the EPA proposes to fully approve the submitted rule because it fulfills all relevant requirements.

We have concluded that our approval of the submitted rule would comply with the relevant provisions of CAA sections 110(a)(2), 110(l), 172(c)(5), 173, and 193, and 40 CFR 51.160-51.165 and 40 CFR 51.307. If we finalize this action as proposed, our action will be codified through revisions to 40 CFR 52.220a (Identification of plan-in part).

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 would also revise 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.

We will accept comments from the public on this proposal until [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

III. 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 Rule 224, "Federal Requirements for New and Modified Major Sources in Non-Attainment Areas," adopted on January 26, 2022. Rule 224 is intended to address the CAA's statutory and regulatory requirements for Nonattainment New Source Review permit programs for major sources emitting nonattainment air pollutants and their precursors 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:

- 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

Administrative practice and procedure, Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, and Volatile organic compounds.

Dated: December 21, 2023.

Cheree Peterson,

Acting Regional Administrator, Region IX.

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