



## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R09-OAR-2022-0526; FRL-10286-01-R9]

### Air Quality Plans; California; Tehama County Air Pollution Control District; New Source Review

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

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing approval of a revision to the Tehama County Air Pollution Control District's (TCAPCD or "District") portion of the California State Implementation Plan (SIP). This revision governs the District's issuance of permits for stationary sources and focuses 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"). 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-2022-0526 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 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:** Manny Aquitania, EPA Region IX, 75 Hawthorne St., San Francisco, CA 94105; by phone: (415) 972-3977; or by email to [aquitania.manny@epa.gov](mailto: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, including the date it was adopted by the District and the date it was submitted to the EPA by the California Air Resources Board (CARB or “the State”). The TCAPCD is the air pollution control agency for Tehama County in California.

## **TABLE 1 – SUBMITTED RULE**

District	Rule or Regulation #	Rule Title	Adopted	Submitted <sup>1</sup>
Tehama County APCD	Rule 2:3C	New and Modified Major Sources in the Tuscan Buttes Nonattainment Areas	02/28/23	05/11/23

On November 11, 2023, the submittal for Rule 2:3C 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 2:3C in the California SIP.

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

Rule 2:3C is intended to address the CAA's statutory and regulatory requirements for Nonattainment New Source Review (NNSR) permit programs for major sources emitting nonattainment air pollutants and their precursors.

## **II. The EPA's Evaluation and Action**

*A. What is the background for this proposal?*

The EPA's May 2012 designation of the Tuscan Buttes area of the TCAPCD as a nonattainment area for the 2008 ozone National Ambient Air Quality Standards (NAAQS)<sup>2</sup> triggered the requirement for the District to develop and submit a NNSR program to the EPA for SIP approval. CAA section 172(b) and 40 CFR 51.1114. Because Tehama County is designated (in part) and classified as Marginal nonattainment for the 2008 ozone NAAQS, the District's NNSR program must satisfy the NNSR requirements applicable to Marginal ozone nonattainment areas. See 40 CFR 51.1102. As Tehama County (partial, Tuscan Buttes area) is also designated and classified as Marginal nonattainment (Rural Transport) for the 2015 ozone

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<sup>1</sup> The submittal was transmitted to the EPA via a letter from CARB dated May 10, 2023. On December 5, 2023, CARB submitted a corrected version of Rule 2:3C, as the copy of the clean version of the rule that had been included in the May 11, 2023 SIP submittal did not include its adoption date and also contained an additional formatting error, and thus did not reflect the final rule that had been adopted on February 28, 2023.

<sup>2</sup> 77 FR 30088, 30109 (May 21, 2012); see 40 CFR 81.305.

NAAQS,<sup>3</sup> TCAPCD's NNSR program is also required to satisfy the NNSR requirements applicable to Marginal ozone nonattainment areas for purposes of the 2015 ozone NAAQS. See 40 CFR 51.1302, 51.1314.<sup>4</sup>

Additional information regarding the District's ozone nonattainment status and attainment/nonattainment designations for other criteria pollutants is included in our Technical Support Document (TSD), which may be found in the docket for this rule.

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

The EPA reviewed Rule 2:3C 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 Marginal ozone nonattainment areas; (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 section 110(a)(2), including 110(a)(2)(A) and 110(a)(2)(E)(i);<sup>5</sup> and (5) SIP revisions as set forth in CAA section 110(l)<sup>6</sup> and 193.<sup>7</sup> Our review evaluated the submittal for compliance with the NNSR requirements applicable to Marginal ozone nonattainment areas, and ensured that the submittal addressed the NNSR requirements for the 2008 and 2015 ozone NAAQS.

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<sup>3</sup> 83 FR 25776, 25791 (June 4, 2018); see 40 CFR 81.305.

<sup>4</sup> The EPA's determination that the Tuscan Buttes nonattainment area in Tehama County had attained the 2008 and 2015 ozone NAAQS by the applicable attainment dates suspended the requirements to submit those SIP elements related to attainment of these NAAQS for so long as the area continues to attain but did not suspend the requirement to submit an NNSR program. See 81 FR 26697 (May 4, 2016); 87 FR 63698 (Oct. 20, 2022); 40 CFR 51.1118; 40 CFR 51.1318.

<sup>5</sup> 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.

<sup>6</sup> 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.

<sup>7</sup> 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.

*C. 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 May 11, 2023, submittal of Rule 2:3C, we find that the TCAPCD has provided sufficient evidence of public notice, opportunity for comment and a public hearing prior to adoption and submittal of this rule to the EPA.

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 TCAPCD Rule 2:3C 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 2:3C satisfies these requirements as they apply to sources subject to the NNSR permit program requirements applicable to Marginal ozone nonattainment areas. We have also determined that this rule satisfies the related visibility requirements in 40 CFR 51.307. In addition, we have determined that Rule 2:3C 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. Our TSD contains a more detailed discussion of our analysis of Rule 2:3C.

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 TCAPCD Rule 2:3C will not interfere with any applicable requirement concerning attainment and reasonable further progress, or any other CAA applicable requirement. In addition, our approval of Rule 2:3C 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 ozone and its precursors in the District; accordingly, we have concluded that our action is consistent with the requirements of CAA section 193.

*D. Proposed action and public comment*

As authorized in section 110(k)(3) of the Act, the EPA proposes to 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 52.220 (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 2:3C, "New and Modified Major Sources in the Tuscan Buttes Nonattainment Areas," adopted on February 28, 2023. Rule 2:3C 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 (Pub. L. 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, February 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. 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 E.O. 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 oxides, Ozone, Reporting and recordkeeping requirements, and Volatile organic compounds.

Dated: March 15, 2024.

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

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