



ENVIRONMENTAL PROTECTION AGENCY

40 CFR part 52

[EPA-R09-OAR-2024-0627; FRL-12536-01-R9]

Air Plan Revisions; California Air Plan Revisions; San Joaquin Valley Unified Air Pollution Control District; Stationary Source Permits

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing action on three permitting rules submitted as a revision to the San Joaquin Valley Unified Air Pollution Control District (SJVUAPCD or “District”) portion of the California State Implementation Plan (SIP). These revisions concern the District’s New Source Review (NSR) permitting program for new and modified sources of air pollution under section 110(a)(2)(C) and part D of title I of the Clean Air Act (CAA or “Act”). This action will update the California SIP with rules that the District has revised to address deficiencies identified in a previous limited disapproval action and to incorporate other revisions related to NSR requirements. We are taking comments on this proposal and plan to follow with a final action. Elsewhere in this *Federal Register*, we are making an interim final determination that will defer the imposition of CAA sanctions associated with our previous limited disapproval action. This action also proposes to revise regulatory text to clarify that the SJVUAPCD is not subject to the federal implementation plan related to protection of visibility.

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-2024-0627 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://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: Doris Lo, EPA Region IX, 75 Hawthorne St., San Francisco, CA 94105. By phone: (415) 972-3959, or by email at lo.doris@epa.gov.

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

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I. The State’s Submittal

A. What rules did the State submit?

Table 1 lists the rules addressed by this proposal including the date they were adopted by the District and submitted to the EPA by the California Air Resources Board (CARB), which is the governor’s designee for California SIP submittals.

TABLE 1 – SUBMITTED RULES

| Rule # | Rule Title | Adopted | Submitted |
|--------|--|----------|-----------|
| 1020 | Definitions | 4/20/23 | 10/13/23 |
| 2020 | Exemptions | 12/18/14 | 10/13/23 |
| 2201 | New and Modified Stationary Source Review Rule | 4/20/23 | 10/13/23 |

On April 13, 2024, the submittal of each rule became complete by operation of law.

B. Are there other versions of these rules?

The SIP-approved versions of the submitted rules are identified below in Table 2.

TABLE 2 – SIP-APPROVED RULES

| Rule # | Rule Title | SIP Approval Date | <i>Federal Register</i> Citation |
|--------|--|-------------------|--|
| 1020 | Definitions | 10/02/14 | 79 FR 59433 |
| 2020 | Exemptions | 9/17/14 | 79 FR 55637 |
| 2201 | New and Modified Stationary Source Review Rule | 7/10/23 | 88 FR 43434 |

If the EPA finalizes the action proposed herein, these rules will be replaced in the SIP by the submitted set of rules listed in Table 1. Additionally, as described below, the EPA’s final approval of these rules will resolve our previous limited disapproval of Rule 2201.

C. What is the purpose of the submitted rules?

The submitted 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 update the District’s preconstruction review and permitting program and are intended to satisfy the NSR program requirements under part D of title I of the Act (“nonattainment NSR” or “NNSR”), the general preconstruction review requirements under section 110(a)(2)(C) of the Act (“minor NSR”), and related EPA regulations. The submitted rules are also intended to resolve deficiencies identified in our July 10, 2023 final action (“2023

NSR Action”),¹ which included a limited disapproval of a prior version of Rule 2201. The rules also include other assorted revisions, including new and revised definitions and applicability and compliance provisions.

The San Joaquin Valley is currently designated attainment for the nitrogen dioxide, carbon monoxide, particulate matter equal to or less than 10 micrometers (PM₁₀), sulfur dioxide (SO₂), and lead National Ambient Air Quality Standards (NAAQS). The San Joaquin Valley is currently designated “Extreme” nonattainment for the 1997, 2008, and 2015 ozone NAAQS and “Serious” nonattainment for the 1997, 2006, and 2012 particulate matter equal to or less than 2.5 micrometers (PM_{2.5}) NAAQS.² Therefore, the District is required to adopt and implement a SIP-approved NNSR permitting program that applies to new or modified major stationary sources of ozone precursors, PM_{2.5}, and PM_{2.5} precursors within the San Joaquin Valley.

The SIP submittal evaluated in this action includes revisions to Rule 1020, “Definitions,” Rule 2020, “Exemptions,” and Rule 2201, “New and Modified Stationary Source Review Rule.” Rule 1020 provides definitions for certain key terms used throughout the District’s regulations. Rule 2020 specifies types of emissions units that are not required to obtain an Authority to Construct (ATC) or Permit to Operate (PTO). The rule also specifies the recordkeeping requirements to verify a permit exemption and outlines the compliance schedule for existing emissions units that lose their permit exemption. Rule 2201 is intended to satisfy the requirements of the NNSR program under part D of title I of the CAA that are applicable in ozone and PM_{2.5} nonattainment areas and the general NSR program permit requirements.

The EPA’s technical support document (TSD) for this action, which is included in the docket for our proposed rulemaking, has more information about the purposes of the submitted rules and the District’s revisions.

II. The EPA’s Evaluation and Action

¹ 87 FR 45730.

² See 40 CFR 81.305 (describing geographic extent of San Joaquin Valley nonattainment area for each NAAQS).

A. How is the EPA evaluating the rules?

The EPA has evaluated the submitted rules to determine whether they address the deficiencies identified in our 2023 NSR Action. We have also evaluated all additional rule revisions for compliance with CAA sections 172(c)(5), 173, 182(e), and 189(b), which establish the requirements for stationary source preconstruction permitting programs, including those specifically applicable for an Extreme ozone nonattainment area and Serious PM_{2.5} nonattainment area, as well as the federal regulations applicable to stationary source permitting at 40 CFR 51.160 through 51.165. Additionally, the EPA reviewed the rules for consistency with other general CAA requirements for SIP submittals, including requirements at CAA section 110(a)(2)(A) regarding rule enforceability and requirements at CAA sections 110(l) and 193 for SIP revisions. We have also considered whether the rules meet the federal visibility requirements related to state NNSR programs as described in 40 CFR 51.307.

B. Do the rules meet the evaluation criteria?

With the exceptions noted below, the EPA finds that Rules 1020, 2020, and 2201 generally satisfy the applicable CAA and regulatory requirements for sources subject to NNSR permit program requirements. Below, we discuss our evaluation of the submitted rules. The TSD for this action contains a more detailed analysis.

The SJVUAPCD revised Rules 1020 and 2201 to address the deficiencies identified in the 2023 NSR action. Specifically, the District revised Rules 1020 and 2201 to address our findings that the previous version of Rule 2201 (1) omitted certain definitions necessary for application of the District's permitting program for new and modified stationary sources; (2) included provisions allowing for interprecursor trading (IPT) that are no longer permissible due to a 2021 D.C. Circuit Court of appeals decision; (3) allowed for impermissible exemptions for relocated sources; (4) lacked public notice requirements for certain minor sources; (5) included an offset tracking system that failed to ensure equivalency with federal offset requirements; (6) did not include certain required provisions for temporary replacement units and routine

replacement emission units; and (7) included other more minor deficiencies. The District addressed all these deficiencies in the SIP submission that is being evaluated in this action. The TSD for this action provides further detail on these deficiencies and how they were addressed by the District. While the District addressed all the deficiencies identified in the 2023 NSR action, pursuant to sections 110(k)(3) and 301(a) of the Act, we are proposing a limited approval and limited disapproval of Rules 1020, “Definitions,” 2020, “Exemptions,” and 2201, “New and Modified Stationary Source Review Rule” due to the newly identified deficiencies found in each rule. These new deficiencies are described in Section II.C of this action.

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

With respect to the substantive requirements of CAA section 110(l), we have determined that our approval of the submitted rules 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 rules are approvable under section 193 of the Act because they do not modify any control requirement in effect before November 15, 1990, without ensuring equivalent or greater emission reductions. The submitted rules are otherwise consistent with criteria for the EPA’s approval of regulations submitted for inclusion in the SIP, including the requirement at CAA section 110(c)(2)(A) that submitted regulations be clear and legally enforceable.

For the reasons stated above and explained further in the TSD for this action, we find that the submitted rules generally satisfy the applicable CAA and regulatory requirements for NSR permit programs under CAA section 110(a)(2)(A) and part D of title I of the Act and other applicable requirements, subject to the exceptions noted below where the EPA has identified

deficiencies. This submittal also corrects the deficiencies described in our 2023 NSR Action. If we finalize this action as proposed, our action will resolve the limited disapproval of Rule 2201 and will be codified through revisions to 40 CFR 52.220 (Identification of plan—in part). Because Rules 1020, 2020, and 2201 are not fully consistent with these requirements, we are proposing a limited approval and limited disapproval of the rules under CAA sections 110(k)(3) and 301(a). The specific rule provisions that do not meet the evaluation criteria are summarized in the following section and described in more detail in the TSD included in the docket for this proposed action.

We are concurrently making an interim final determination to defer CAA section 179 sanctions associated with the 2023 NSR Action’s limited disapproval of Rule 2201. Consistent with our order of sanction regulations,³ this determination is based on this proposal to approve SIP revisions from the District that resolve the deficiencies that were the basis of our prior limited disapproval that triggered sanctions under section 179 of the CAA.

C. What are the rule deficiencies?

The following provisions of Rules 1020, 2020, and 2201 do not satisfy the requirements of section 110 and/or part D of title I of the Act and prevent full approval of the rules. The District must correct the deficiencies identified in this section and resubmit the rules for the EPA’s approval in a subsequent action. The EPA has identified three deficiencies in the submitted rules.

1. Rule 1020 – Definitions

The definition of VOC in Rule 1020 is deficient because it does not include trans-1,1,1,4,4,4-hexafluorobut-2-ene (also known as HFO-1336mzz(E)), which is an exempt compound listed in the definition of VOC as found in 40 CFR 51.100(s)(1). In addition, on November 12, 2024, the EPA proposed to add (Z)-1-chloro-2,3,3,3-tetrafluoropropene (also known as HCFO-1224yd(Z)) to the definition of VOC as an exempt compound. The District

³ 40 CFR 52.31.

must revise the Rule 1020 definition of VOC to match the federal definition at 40 CFR

51.100(s), including the exemptions listed at 40 CFR 51.100(s)(1).

2. Rule 2020 – Exemptions

Several American Society for Testing and Materials (ASTM) test method citations provided in Rule 2020 are deficient because they do not include the revision or reissuance date of the specific ASTM methods.

3. Rule 2201 – New and Modified Stationary Source Review Rule

The term “Emission Reduction Credit” is used in Rule 2201, but the term is not defined in the rule or in Rule 1020, “Definitions.” We note that the term is defined in Rule 2301 – Emission Reduction Credit Banking, but this rule has not been submitted for SIP approval. Therefore, we find Rule 2201 deficient because it does not provide a definition for the term Emission Reduction Credit, and the term is a necessary component of an approvable NNSR program.

D. EPA recommendations to further improve the rules

The TSD for this action includes recommendations for the next time the District revises Rule 2201.

E. Proposed action and public comment

As authorized in sections 110(k)(3) and 301(a) of the Act, the EPA is proposing a limited approval and limited disapproval of Rules 1020, 2020, and 2201. 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, this action will incorporate the submitted rules into the SIP, including those provisions identified as deficient. This approval is limited because the EPA is simultaneously proposing a limited disapproval of the rules under section 110(k)(3). If finalized as proposed, our limited disapproval action would trigger an obligation on the EPA to promulgate a federal implementation plan (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 deficiency relates to NNSR requirements under part D of title I of the Act, the offset sanction in CAA section 179(b)(2) would apply in the San Joaquin Valley 18 months after the effective date of a final limited disapproval, and the highway funding sanctions in CAA section 179(b)(1) would apply in the area six months after the offset sanction is imposed. Neither sanction will 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 we identify in our final action. The EPA intends to work with the District to correct the deficiencies in a timely manner.

This action would also revise the regulatory provisions at 40 CFR 52.281(d) concerning the applicability of the visibility 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, we are proposing to find that Rule 2201 satisfies the visibility provisions for sources subject to the NNSR program at 40 CFR 51.307.

Note that the submitted rules have been adopted by the District, and the EPA's final limited disapproval would not prevent the local agency from enforcing them. The limited disapproval would also not prevent any portion of the rules from being incorporated by reference into the federally enforceable SIP.⁴

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 the rules listed in Table 1 of this preamble. These rules implement the District's nonattainment NSR program. The EPA has made, and will continue to make, this document available electronically through <https://www.regulations.gov> and at the

⁴ Memorandum dated July 9, 1992, from John Calcagni, Director, Air Quality Management Division, Office of Air Quality Planning and Standards, U.S. EPA, to EPA Regional Air Directors, Regions I–X, Subject: "Processing of State Implementation Plan (SIP) Submittals."

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 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 proposed action is proposing 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 proposing 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 and Executive Order 14096: Revitalizing Our Nation's Commitment to Environmental Justice for All

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 communities with environmental justice (EJ) concerns to the greatest extent practicable and permitted by law. Executive Order 14096 (Revitalizing Our Nation's Commitment to Environmental Justice for All, 88 FR 25251, April 26, 2023) builds on and supplements Executive Order 12898 and defines EJ as, among other things, “the just treatment and meaningful involvement of all people, regardless of income, race, color, national origin, Tribal affiliation, or disability, in agency decision-making and other Federal activities that affect human health and the environment.”

The State did not evaluate 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. 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 Executive Orders 12898 and 14096 of achieving EJ for communities with EJ concerns.

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, Particulate matter, Reporting and recordkeeping requirements, Sulfur dioxide, Volatile organic compounds.

Dated: **January 13, 2025.**

Martha Guzman Aceves,
Regional Administrator,
Region IX.

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