



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 70

[EPA-R09-OAR-2024-0596; FRL-12507-03-R9]

Clean Air Act Operating Permit Program Revision; California; Monterey Bay Air Resources District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve revisions to the Monterey Bay Air Resources District's (MBARD or "District") Title V Operating Permits Program. These revisions remove emergency affirmative defense provisions; align the rule with current title V requirements by removing permitting requirements for greenhouse gases; create procedures for electronic public noticing of permits in addition to newspaper noticing; and update formatting to match the MBARD's current rule format. This action is being taken in accordance with federal regulations and the Clean Air Act (CAA or "Act"). We are taking comments on these proposed revisions and plan to follow with a final action.

DATES: Written 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-2024-0596 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 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: Camille Cassar, EPA Region IX, 75 Hawthorne St., San Francisco, CA 94105; telephone number: 415-947-4164, email address: cassar.camille@epa.gov.

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

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I. Title V Program Background

The CAA Amendments of 1990 include title V, which requires states to develop an operating permits program that meets the federal criteria codified in 40 CFR part 70. The title V program requires certain sources of air pollution to obtain federal operating permits from their respective states or air districts. These federal operating permits improve enforcement and

compliance by consolidating all applicable federal requirements into one federally enforceable document. Before a state can issue permits under 40 CFR part 70 (which are referred to as “title V permits”), the EPA must approve its program under Appendix A of 40 CFR part 70. States may submit revisions to their approved programs for EPA approval.

II. Requirements for Approval of Revisions to Title V Programs

Pursuant to 40 CFR 70.4(i), either the EPA or the state may initiate a title V program revision “when relevant Federal or State statutes or regulations are modified or supplemented.” It is the responsibility of the state to keep the EPA apprised of any proposed modifications to its basic statutory or regulatory authority or procedures. Revision of a state program shall be accomplished as follows:

- a) The state submits a modified program description, Attorney General's statement (if necessary for expanded or additional authority), or other documents as the EPA determines to be necessary. 40 CFR 70.4(i)(2)(i).
- b) After the EPA receives a proposed program revision, it will publish a notice of the proposed change in the *Federal Register* and provide for a public comment period of at least 30 days. 40 CFR 70.4(i)(2)(ii).
- c) The Administrator shall approve or disapprove program revisions based on the requirements of 40 CFR part 70 and the Act. 40 CFR 70.4(i)(2)(iii).
- d) The EPA must publish a notice of approval in the *Federal Register* for any substantial program revisions. 40 CFR 70.4(i)(2)(iv).
- e) Approval of nonsubstantial revisions may be given by a letter from the Administrator to the Governor or a designee. 40 CFR 70.4(i)(2)(iv).
- f) A program revision shall become effective upon the approval of the Administrator. 40 CFR 70.4(i)(2)(iv).

III. What are the State’s Proposed Title V Program Revisions?

Table 1 lists the rule submitted as part of MBARD’s title V program revisions and the

dates it was adopted by the District and submitted to the EPA by the California Air Resources Board (CARB), which is the governor’s designee for California rule submittals.

Table 1—Submitted Rule

Rule Number	Rule Title	Amended Date	Submitted Date
218	Title V: Federal Operating Permits	8/21/2024	9/4/2024

The MBARD Title V Operating Permit Program is implemented through its “Title V: Federal Operating Permits” rule, codified as MBARD Rule 218. On September 5, 2012, the EPA approved the MBARD Title V Operating Permit Program, which became effective October 5, 2012. See 77 FR 54382. On September 4, 2024, MBARD submitted the revisions to Rule 218 for approval into the district’s EPA-approved title V program. MBARD made the following revisions to its Rule 218: removed emergency affirmative defense provisions; removed permitting requirements for greenhouse gases; allowed for electronic noticing in addition to newspaper noticing; and updated the rule to match MBARD’s current rule format. A more detailed discussion of these revisions can be found in the Technical Support Document (TSD) for this rule.

IV. EPA Evaluation of Title V Program Revision

The revisions to Rule 218 include removing emergency affirmative defense provisions,¹ removing permitting requirements for greenhouse gases, updating public notice provisions to include electronic noticing, and updating the rule to meet current District rule formatting. Our TSD provides a detailed discussion of each of these revisions and how they meet EPA requirements. The EPA finds these revisions acceptable as a title V program revision and consistent with part 70 provisions including 40 CFR 70.2 and 40 CFR 70.7(h)(1).

¹ On September 5, 2025, the Court of Appeals for the D.C. Circuit issued a decision in *SSM Litigation Group v. EPA* rejecting the legal bases for EPA’s July 2023 final rule concerning “emergency” affirmative defense provisions in title V permits (88 FR 47029, July 21, 2023) and reversing that final rule. *SSM Litigation Group v. EPA, et al.*, 150 F.4th 593 (D.C. Cir. 2025), *reh’g denied*. Because *SSM Litigation Group* does not prohibit states from removing affirmative defense provisions from their title V programs, we are proceeding with this proposal to remove these provisions from MBARD’s Title V Operating Permit Program consistent with MBARD’s request. For additional information, please see the TSD in the docket for this action.

V. Proposed Action

Pursuant to 40 CFR 70.4(i)(2), the EPA is proposing to approve the revisions to the MBARD Title V Operating Permit Program submitted on September 4, 2024, which removes emergency affirmative defense provisions, allows for e-noticing, aligns the rule with current title V requirements including removing requirements for greenhouse gases, and updates the rule to match MBARD's rule format. The revisions meet the requirements of section 502 of the CAA and 40 CFR 70.4 and 70.9. The EPA is soliciting public comments on the revisions discussed in this document.

VI. Statutory and Executive Order Reviews

A. General Requirements

Under the CAA, the Administrator is required to approve title V operating permit program revisions that comply with the Act and applicable federal regulations. See 42 U.S.C. 7661a(d). Thus, in reviewing title V permit program submissions, the EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Is not subject to Executive Order 14192 (90 FR 9065, February 6, 2025) because it is not a significant regulatory action under Executive Order 12866;
- 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 an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- 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 CAA.

This rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the Title V action is not approved to apply in Indian country located in the State, and the EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects in 40 CFR Part 70

Environmental protection, Administrative practice and procedure, Air pollution control, Carbon monoxide, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

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

Dated: March 20, 2026.

Michael Martucci,
Acting Regional Administrator, Region IX.