



## **ENVIRONMENTAL PROTECTION AGENCY**

### **40 CFR Part 52**

**[EPA-R09-OAR-2015-0621; FRL-9956-96-Region 9]**

### **Revisions to the California State Implementation Plan; Imperial County Air Pollution**

#### **Control District; Stationary Sources Permits**

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

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing action on revisions to the Imperial County Air Pollution Control District (ICAPCD or District) portion of the California State Implementation Plan (SIP). We are proposing full approval of two rules and a limited approval and limited disapproval of one rule. All three rules update and revise the District's New Source Review (NSR) permitting program for new and modified sources of air pollution. We are taking comments on this proposal and plan to follow with a final action.

**DATES:** Any comments must arrive by **[Insert date 30 days from the date of publication in the Federal Register]**.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R09-OAR-2015-0621 at <http://www.regulations.gov>, or via email to [R9AirPermits@epa.gov](mailto:R9AirPermits@epa.gov). For comments submitted at [Regulations.gov](http://www.regulations.gov), follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from [Regulations.gov](http://www.regulations.gov). For either manner of submission, 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 <http://www2.epa.gov/dockets/commenting-epa-dockets>.

**FOR FURTHER INFORMATION CONTACT:** Laura Yannayon, EPA Region IX, (415) 972-3534, [yannayon.laura@epa.gov](mailto:yannayon.laura@epa.gov).

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

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## **DEFINITIONS**

For the purpose of this document, we are giving meaning to certain words or initials as follows:

- (i) The word or initials *Act* or *CAA* mean or refer to the Clean Air Act, unless the context indicates otherwise.
- (ii) The initials *CARB* mean or refer to the California Air Resources Board.
- (iii) The initials *CFR* mean or refer to Code of Federal Regulations.
- (iv) The initials or words *EPA*, *we*, *us* or *our* mean or refer to the United States Environmental Protection Agency.
- (v) The initials *FR* mean or refer to Federal Register.
- (vi) The word or initials *ICAPCD* or *District* mean or refer to the Imperial County Air Pollution Control District, the agency with jurisdiction over stationary sources within Imperial County.
- (vii) The initials *NAAQS* mean or refer to National Ambient Air Quality Standards.
- (viii) The initials *NSR* mean or refer to New Source Review.
- (ix) The initials *PM<sub>10</sub>* mean or refer to particulate matter with an aerodynamic diameter of less than or equal to 10 micrometers (coarse particulate matter).
- (x) The initials *PM<sub>2.5</sub>* mean or refer to particulate matter with an aerodynamic diameter of less than or equal to 2.5 micrometers (fine particulate matter).

- (xi) The initials *SIP* mean or refer to State Implementation Plan.
- (xii) The initials *TSD* mean or refer to the technical support document for this action.

**I. The State’s Submittal**

*A. What rules did the State submit?*

Table 1 lists the rules addressed by this proposal, including the dates they were adopted by ICAPCD and submitted by CARB, which is the governor’s designee for California SIP submittals.

Table 1 - Submitted Rules

Local Agency	Rule #	Rule Title	Adopted/ Revised	Submitted
ICAPCD	204	Applications	9/14/99	05/26/00
ICAPCD	206	Processing of Applications	10/22/13	02/10/14
ICAPCD	207	New and Modified Stationary Source Review	10/22/13	1/21/14

On April 9, 2014 and March 7, 2014, EPA determined that the submittals for ICAPCD Rules 206 and 207, respectively, met the completeness criteria in 40 CFR part 51 Appendix V. The submittal for ICAPCD Rule 204 was deemed by operation of law to meet the completeness criteria in 40 CFR part 51 Appendix V as of October 6, 2000. The completeness criteria in 40 CFR part 51, Appendix V must be met before formal EPA review.

*B. Are there other versions of these rules?*

There is no previous version of Rule 204 in the SIP; EPA approved previous versions of Rules 206 and 207 into the SIP on January 3, 2007 (72 FR 9) and November 10, 1980 (45 FR

74480), respectively.<sup>1</sup> Section D.1.a of submitted Rule 207 is contained in SIP-approved Rule 209 (Implementation Plans), which was also approved on November 10, 1980.<sup>2</sup>

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

Section 110(a) of the CAA requires states to submit regulations that include a preconstruction permit program for certain new or modified stationary sources of pollutants, including a permit program as required by Part D of Title I of the CAA.

The purpose of District Rule 204 (Applications), Rule 206 (Processing of Applications) and Rule 207 (New and Modified Stationary Source Review) is to implement a federal preconstruction permit program for new and modified minor sources of criteria pollutants and new and modified major sources of criteria pollutants for which the area is designated nonattainment. Imperial County is currently designated as a moderate nonattainment area for the 2008 8-hr ozone NAAQS.<sup>3</sup> Portions of the county are designated as a serious nonattainment area for the 1987 24-hr PM<sub>10</sub> NAAQS, as a moderate nonattainment area for the 2006 24-hr PM<sub>2.5</sub> NAAQS and as a moderate nonattainment area for the 2012 annual PM<sub>2.5</sub> NAAQS. We present our evaluation under the CAA and EPA's regulations of the amended NSR rules submitted by

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<sup>1</sup> EPA disapproved subparagraph C.5 of SIP-approved Rule 207 because it exempted some sources from the requirement to apply LAER. *See* 40 CFR 52.233(a)(1).

<sup>2</sup> EPA's approval of Rule 206 would supersede our prior approval of Rule 206 in the SIP. Likewise, approval of Rule 207 would supersede our prior approval of SIP-approved Rules 207 and 209 and will supersede our prior disapproval of Rule 207, subparagraph C.5 and our Part D conditional approval. We intend to make conforming changes to the regulatory text codified in 40 CFR 52.220, 40 CFR 52.232 and 40 CFR 52.233.

<sup>3</sup> Effective March 14, 2008 (73 FR 8209, February 13, 2008), the EPA reclassified Imperial County to a moderate ozone nonattainment area for the 1997 ozone NAAQS. In 2012, EPA designated Imperial County as a nonattainment area for the 2008 ozone NAAQS and classified the area as marginal. 77 FR 30088 (May 21, 2012). The SIP submittal that EPA is now evaluating via this proposal addresses the NNSR requirement for the Imperial County ozone nonattainment area for a moderate classification under the 1997 ozone NAAQS as well as a marginal classification under the 2008 ozone NAAQS.

CARB, as identified in Table 1 and provide our reasoning in general terms below and a more detailed analysis in our TSD, which is available in the docket for this proposed rulemaking.

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

### *A. How is EPA evaluating the rules?*

The submitted rules must meet the CAA's general requirements for SIPs and SIP revisions in CAA sections 110(a)(2), 110(l), and 193, as well as the applicable requirements contained in part D of title I of the Act (sections 172, and 173) for a nonattainment NSR permit program. In addition, the submitted rules must contain the applicable regulatory provisions of 40 CFR 51.160-51.165 and 40 CFR 51.307.

Among other things, section 110 of the Act requires that SIP rules be enforceable and provides that EPA may not approve a SIP revision if it would interfere with any applicable requirements concerning attainment and reasonable further progress or any other requirement of the CAA. In addition, section 110(a)(2) and section 110(l) of the Act require that each SIP or revision to a SIP submitted by a state must be adopted after reasonable notice and public hearing.

Section 110(a)(2)(c) of the Act requires each SIP to include a permit program to regulate the modification and construction of any stationary source within the areas covered by the SIP as necessary to assure attainment and maintenance of the NAAQS. EPA's regulations at 40 CFR 51.160-51.164 provide general programmatic requirements to implement this statutory mandate commonly referred to as the "minor NSR" or "general NSR" permit program. These NSR program regulations impose requirements for SIP approval of state and local programs that are more general in nature as compared to the specific statutory and regulatory requirements for nonattainment NSR permitting programs under Part D of title I of the Act.

Part D of title I of the Act contains the general requirements for areas designated nonattainment for a NAAQS (section 172), including preconstruction permit requirements for new major sources and major modifications proposing to construct in nonattainment areas (section 173).

Part D of title I of the Act also includes section 182(b), which contains the additional requirements for areas designated as a moderate ozone nonattainment area, and section 189(e), which requires the control of major stationary sources of PM<sub>10</sub> precursors (and hence PM<sub>2.5</sub> precursors) “except where the Administrator determines that such sources do not contribute significantly to PM<sub>10</sub> [and PM<sub>2.5</sub>] levels which exceed the standard in the area.” Additionally, 40 CFR 51.165 sets forth EPA’s regulatory requirements for SIP-approval of a nonattainment NSR permit program.

The protection of visibility requirements that apply to New Source Review programs are contained in 40 CFR 51.307. This provision requires that certain actions be taken in consultation with the local Federal Land Manager if a new major source or major modification may have an impact on visibility in any mandatory Class I Federal Area.

Section 110(l) of the Act prohibits EPA from approving any SIP revisions that would interfere with any applicable requirement concerning attainment and reasonable further progress (RFP) or any other applicable requirement of the CAA. Section 193 of the Act, which only applies in nonattainment areas, prohibits the modification of a SIP-approved control requirement in effect before November 15, 1990, in any manner unless the modification insures equivalent or greater emission reductions of such air pollutant.

Our TSD, which can be found in the docket for this rule, contains a more detailed

discussion of the approval criteria.

*B. Do the rules meet the evaluation criteria?*

EPA has reviewed the submitted rules in accordance with the rule evaluation criteria described above. With respect to procedures, based on our review of the public process documentation included in the May 26, 2000, January 21, 2014, and February 10, 2014 submittals, we are proposing to approve the submitted rules in part because we have determined that ICAPCD has provided sufficient evidence of public notice and opportunity for comment and public hearings prior to adoption and submittal of these rules, in accordance with the requirements of CAA sections 110(a)(2) and 110(l).

With respect to substantive requirements, we have reviewed the submitted rules in accordance with evaluation criteria discussed above. We are proposing to approve Rules 204 and 206 as part of ICAPCD's general NSR permitting program because we have determined that these rules, together with Rule 207, satisfy the substantive statutory and regulatory requirements for a general NSR permit program as contained in CAA section 110(a)(2)(c) and 40 CFR 51.160 - 51.164.

In addition, we are proposing a limited approval/limited disapproval of Rule 207. We are proposing a limited approval because we have determined that Rule 207 (i) satisfies the statutory and regulatory requirements for a general NSR permit program as set forth in CAA section 110(a)(2)(c) and 40 CFR 51.160 – 51.164; and (ii) mostly satisfies the statutory and regulatory requirements for a nonattainment NSR permit program for moderate ozone, serious PM<sub>10</sub>, and moderate PM<sub>2.5</sub> nonattainment areas as set forth in the applicable provisions of part D of title I of the Act (sections 172 and 173) and in 40 CFR 51.165 and 40 CFR 51.307. We are also proposing

a limited disapproval of Rule 207 because we have determined that the rule does not regulate ammonia as a PM<sub>2.5</sub> precursor consistent with the requirements of 40 CFR 51.165(a)(13). While the District provided a demonstration to support their contention that ammonia is not a significant contributor to the areas PM<sub>2.5</sub> nonattainment status, the demonstration was not consistent with EPA's newly promulgated nonattainment NSR precursor demonstration requirements as set forth in 40 CFR 51.1006(a)(3). Our TSD contains a more detailed discussion of this disapproval issue.

EPA is also proposing to find that it is acceptable for ICAPCD to not incorporate the NSR Reform provisions of 40 CFR 51.165 into its NSR permit program because ICAPCD's permitting program will not be any less stringent than the federal permitting program.

In addition, EPA is proposing to find that Rules 204, 206 and 207 meet the statutory requirements for SIP revisions as specified in sections 110(l) and 193 of the CAA.

Please see our TSD for more information regarding our evaluation of Rules 204, 206 and 207.

*C. Public comment and proposed action.*

As authorized by CAA section 110(k)(3) and 301(a), we are proposing approval of Rule 204 (Applications) and Rule 206 (Processing of Applications), and we are proposing limited approval of Rule 207 (New and Modified Stationary Source Review) into the ICAPCD portion of the California SIP. If finalized, this action would incorporate the submitted rules into the SIP, including those provisions identified as deficient. The approval of Rule 207 is limited because EPA is simultaneously proposing a limited disapproval of Rule 207 under section 110(k)(3). If finalized, this disapproval would trigger the two-year clock for the federal implementation plan

(FIP) requirement under section 110(c). In addition, final disapproval would trigger sanctions under CAA section 179 and 40 CFR 52.31 unless the EPA approves subsequent SIP revisions that correct the rule deficiencies within 18 months of the effective date of the final action.

We will accept comments from the public on the proposed approvals of Rules 204 and 206 and the proposed limited approval and limited disapproval of Rule 207 for the next 30 days.

In today's action we are also notifying the public that we intend to make a technical correction to our previous action approving Rule 202 – *Exemptions* into the ICAPCD portion of the California SIP.<sup>4</sup> In that action we stated that approval of Rule 202 into the SIP would supersede and remove Rule 103 – *Exemptions*, which EPA has previously approved on May 31, 1972 (37 FR 10832), but we failed to include the necessary regulatory text to effect this change. Our final rulemaking for our action on Rules 204, 206 and 207 will include the necessary regulatory text to remove Rule 103 from the California SIP. We are not seeking public comment on this technical correction because public participation requirements were satisfied as part of our action approving Rule 202 into the SIP.

### **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 ICAPCD rules listed in Table 1 of this notice. The EPA has made, and will continue to make, these documents generally available electronically through [www.regulations.gov](http://www.regulations.gov) and in hard copy at the appropriate EPA office (see the **ADDRESSES** section of this preamble for more information).

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<sup>4</sup> 76 FR 26615 (May 9, 2011).

#### **IV. Statutory and Executive Order Reviews**

Additional information about these statutes and Executive Orders can be found at <http://www2.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. This action is not subject to Executive Order 13045 because it does not impose additional requirements beyond those imposed by state law.

#### 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 Population

The EPA lacks the discretionary authority to address environmental justice in this rulemaking.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, New Source Review, Ozone, Particulate matter, Reporting and recordkeeping requirements, Volatile organic compounds.

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

*Date:* December 8, 2016.

Alexis Strauss,  
Acting Regional Administrator,  
Region IX.

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