



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R09-OAR-2016-0726; FRL-9957-12-Region 9]

Approval and Limited Approval and Limited Disapproval of Air Quality Implementation Plans; California; Mendocino County Air Quality Management District; Stationary Source Permits

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing action on four permitting rules submitted as a revision to the Mendocino County Air Quality Management District (“MCAQMD” or “the District”) portion of the applicable state implementation plan (SIP) for the State of California pursuant to requirements under the Clean Air Act (CAA or Act). We are proposing a limited approval and limited disapproval of one rule and we are proposing to approve the remaining three permitting rules. The submitted revisions include amended rules governing the issuance of permits for stationary sources, including review and permitting of minor sources, and major sources and major modifications under part C of title I of the Act. The intended effect of these proposed actions is to update the applicable SIP with current MCAQMD permitting rules and to set the stage for remedying certain deficiencies in these rules. If finalized as proposed, the limited disapproval actions would trigger an obligation for EPA to promulgate a Federal Implementation Plan (FIP) for the specific New Source Review (NSR) program

deficiencies unless California submits and we approve SIP revisions that correct the deficiencies within two years of the final action.

DATES: Any comments must arrive by **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA-R09-OAR-2016-0726 at <http://www.regulations.gov>, or via email to 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, by phone: (415) 972-3534 or by email at yannayon.laura@epa.gov.

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

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I. The State’s Submittal

A. Which rules did the State submit?

On November 15, 2016, California submitted amended regulations to EPA for approval as revisions to the MCAQMD portion of the California SIP under the Clean Air Act.

Collectively, the submitted regulations comprise the District’s current program for preconstruction review and permitting of new or modified stationary sources. This SIP revision

submittal, referred to herein as the “SIP submittal” or “submitted rules,” represents a significant update to the District’s preconstruction review and permitting program and is intended to satisfy the requirements under part C (prevention of significant deterioration) (PSD) of title I of the Act as well as the general preconstruction review requirements for minor sources under section 110(a)(2)(C) of the Act (minor NSR).

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

Table 1 – Submitted NSR Rules

Rule #	Rule Title	Amended	Submitted
1-130	Definitions	9/20/16	11/15/16
1-200	Permit Requirements	9/20/16	11/15/16
1-220	New Source Review Standards (Including PSD Evaluations)	9/20/16	11/15/16
1-230	Action on Applications	9/20/16	11/15/16

The rule submittals were determined to meet the completeness criteria 40 CFR part 51, appendix V on December 5, 2016. A completeness finding must be made before formal EPA review. Each of these submittals includes evidence of public notice and adoption of the regulation. Our technical support document (TSD) provides additional background information on each of the submitted rules.

B. What are the existing MCAQMD rules governing stationary source permits in the California SIP?

Table 2 lists the rules that make up the existing SIP-approved rules for new or modified stationary sources in MCAQMD. All of these rules would be replaced or deleted from the SIP if EPA takes final action on the proposed approval of the submitted set of rules listed in Table 1.

Table 2 — Existing SIP Rules

Rule #	Rule Title	SIP Approval Date	Federal Register Citation
130	Definitions	5/6/11	76 FR 26192
200	Permit Requirements	4/12/89	54 FR 14650
220	New Source Review Standards	7/31/85	50 FR 30942
230	Action on Applications	7/31/85	50 FR 30942

C. What is the purpose of this proposed rule?

The purpose of this proposed rule is to present our evaluation under the CAA and the EPA's regulations of the submitted rules adopted by the District as identified in Table 1. We provide our reasoning in general terms below but provide more detailed analysis in our TSD, which is available in the docket for this proposed rulemaking.

II. EPA's Evaluation

A. How is EPA evaluating the rules?

EPA has reviewed the rules submitted by MCAQMD governing PSD and minor NSR for stationary sources for compliance with the CAA's general requirements for SIPs in CAA section 110(a)(2), EPA's regulations for stationary source permitting programs in 40 CFR part 51, sections 51.160 through 51.164 and 51.166, and the CAA requirements for SIP revisions in CAA section 110(l).¹ As described below, EPA is proposing a combination of actions consisting of limited approval and limited disapproval of Rule 220 (New Source Review); full approval of Rules 130 (Definitions), 200 (Permit Requirements), and 230 (Action on Applications).

B. Do the rules meet the evaluation criteria?

With respect to procedures, CAA sections 110(a) 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

¹ CAA section 110(l) requires SIP revisions to be subject to reasonable notice and public hearing prior to adoption and submittal by States to EPA and prohibits 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.

the public process documentation included in the various submittals, we find that MCAQMD has provided sufficient evidence of public notice and opportunity for comment and public hearings prior to adoption and submittal of these rules to EPA.

With respect to substantive requirements, we have evaluated each submitted rule in accordance with the CAA and regulatory requirements that apply to: (1) general preconstruction review programs for minor sources under section 110(a)(2)(C) of the Act and 40 CFR 51.160-164, and (2) PSD permit programs under part C of title I of the Act and 40 CFR 51.166. For the most part, the submitted rules satisfy the applicable requirements for these permit programs and would strengthen the applicable SIP by updating the regulations and adding requirements to address new or revised PSD permitting requirements promulgated by EPA in the last several years; however, the submitted rules also contain specific deficiencies which prevent full approval of Rule 220. Below, we discuss generally our evaluation of MCAQMD's submitted rules and the deficiencies that are the basis for our proposed action on these rules. Our TSD contains a more detailed evaluation and recommendations for program improvements.

1. Minor Source Permits

Section 110(a)(2)(C) of the Act requires that each SIP include a program to provide for “regulation of the modification and construction of any stationary source within the areas covered by the plan as necessary to assure that national ambient air quality standards are achieved, including a permit program as required in parts C and D” of title I of the Act. Thus, in addition to the permit programs required in parts C and D of title I of the Act, which apply to new or modified “major” stationary sources of pollutants, each SIP must include a program to provide for the regulation of the construction and modification of any stationary source within the areas covered by the plan as necessary to assure that the national ambient air quality

standards (NAAQS) are achieved. These general pre-construction requirements are commonly referred to as “minor” or “general” NSR and are subject to EPA’s implementing regulations in 40 CFR 51.160-51.164.

Rules 130 - *Definitions*, 200 – *Permit Requirements*, 220 – *New Source Review Standards*, and 230 – *Action on Applications*, contain the requirements for review and permitting of individual minor stationary sources in MCAQMD. These rules satisfy the statutory and regulatory requirements for minor NSR programs. The changes the District made to the rules listed above as they pertain to the minor source program were largely administrative in nature and provide additional clarity to the rules.

2. Prevention of Significant Deterioration

Part C of title I of the Act contains the provisions for the prevention of significant deterioration of air quality in areas designated “attainment” or “unclassifiable” for the NAAQS, including preconstruction permit requirements for new major sources or major modifications proposing to construct in such areas. EPA’s regulations for PSD permit programs are found in 40 CFR 51.166. MCAQMD is currently designated as “attainment” or “unclassifiable/attainment” for all NAAQS pollutants.

The submitted rules contain the requirements for review and permitting of minor and PSD sources in MCAQMD. The rules satisfy most of the statutory and regulatory requirements for PSD permit programs, but Rule 220 also contains some minor deficiencies that form the basis for our proposed limited disapproval, as discussed below.

First, Rule 220 does not contain any provisions specifying that required air quality modeling shall be based on the applicable models, databases, and other requirements specified in Part 51 Appendix W, as required by 40 CFR 51.160(f) and 51.166(f). Provisions pertaining to

modeling requirements must also specify the requirements for using any alternative models. To correct the deficiency, the District should add the required modeling provisions to Rule 220.

Second, Rule 220 does not contain any provisions to satisfy the requirements of 40 CFR 51.166(r)(2) that require permit programs to include specific language providing that if "...a particular source or modification becomes a major stationary source or major modification solely by virtue of a relaxation in any enforceable limitation which was established after August 7, 1980, on the capacity of the source or modification otherwise to emit a pollutant, such as a restriction on hours of operation, then the requirements..." of the PSD program shall apply to the source or modification as though construction had not yet commenced on the source or modification. This deficiency can be corrected by adding the language found in 40 CFR 51.166(r)(2).

Compared to the existing SIP approved PSD program in Rule 220 (approved July 31, 1985), however, submitted Rule 220 represents an overall strengthening of the District's PSD program, in large part because the rule includes updated PSD provisions to regulate new or modified major stationary sources of PM_{2.5} emissions, which are unregulated under the existing SIP PSD program. Because submitted Rule 220 strengthens the SIP, we are proposing a limited approval and limited disapproval based on the deficiencies listed above.

3. Nonattainment New Source Review

The CAA defines "nonattainment areas" as air quality planning areas that exceed the primary or secondary NAAQS for the given criteria pollutant. The MCAQMD is not designated nonattainment for any NAAQS. Because the MCAQMD is not currently classified nonattainment for any NAAQS, we are not evaluating the submitted rules for approval under 40 CFR 51.165, which contains the requirements for nonattainment NSR programs.

4. Section 110(l) of the Act

Section 110(l) prohibits EPA from approving a revision of a plan if the revision would “interfere with any applicable requirement concerning attainment and reasonable further progress. . . or any other applicable requirement of [the Act].”

MCAQMD is currently designated attainment or unclassifiable/attainment for all NAAQS pollutants. We are unaware of any reliance by the District on the continuation of any aspect of the permit-related rules in the MCAQMD portion of the California SIP for the purpose of continued attainment or maintenance of the NAAQS. Our approval of the MCAQMD SIP submittal would strengthen the applicable SIP. Therefore, we find that this SIP revision represents a strengthening of MCAQMD’s minor NSR and PSD programs compared to the existing SIP rules that we previously approved, and that our approval of the SIP submittal would not interfere with any applicable requirement concerning attainment or any other applicable requirement of the Act.

Given all these considerations and in light of the air quality improvements in MCAQMD, we propose that our approval of these updated NSR regulations into the California SIP would not interfere with any applicable requirement concerning attainment or any other applicable requirement of the Act.

5. Conclusion

For the reasons stated above and explained further in our TSD, we find that the submitted rules satisfy most of the applicable CAA and regulatory requirements for the District’s minor NSR and PSD permit programs under CAA section 110(a)(2)(C) and part C of title I of the Act. However, Rule 220 contains certain deficiencies that prevent us from proposing a full approval and we are proposing a limited approval and limited disapproval of this rule. We do so based on

our finding that, while these rules do not meet all of the applicable requirements, the rules represent an overall strengthening of the SIP by clarifying and enhancing the permitting requirements for major and minor stationary sources in MCAQMD. We are proposing a full approval of Rules 130, 200, and 230.

Our TSD, which is available in the docket for today's action, contains additional information on this rulemaking.

III. Proposed Action and Public Comment

Pursuant to section 110(k) of the CAA and for the reasons provided above, EPA is proposing a limited approval and limited disapproval of Rule 220, and approval of the remaining revisions to the MCAQMD portion of the California SIP that governs the issuance of permits for stationary sources under the jurisdiction of MCAQMD, including review and permitting of major sources and major modifications under part C of title I of the CAA. Specifically, EPA is proposing an action on MCAQMD rules listed in Table 1, above, as a revision to the MCAQMD portion of the California SIP.

EPA is proposing this action because, although we find that the new and amended rules meet most of the applicable requirements for such permit programs and that the SIP revisions improve the existing SIP, we have found certain deficiencies that prevent full approval of Rule 220, as explained further in this preamble and in the TSD for this rulemaking. The intended effect of the proposed approval and limited approval and limited disapproval portions of this action is to update the applicable SIP with current MCAQMD permitting regulations² and to set the stage for remedying deficiencies in these regulations.

² Final approval of the rules in Table 1 would supersede all of the rules in the existing California SIP as listed in Table 2.

In addition, on April 1, 2016 (81 FR 18766), EPA partially disapproved California's 110(a)(2) "Infrastructure" SIP Submittal for multiple NAAQS, including the 2008 ozone, 1997 and 2006 PM_{2.5} standards with respect to Mendocino County AQMD because it did not include requirements for a baseline date for PSD increments for PM_{2.5}. If we finalize our proposed action, this SIP deficiency pertaining to the PSD-related requirements of section 110(a)(2)(C), (D)(i)(II) and (J) will be remedied, resulting in fully approved infrastructure SIPs for those NAAQS with respect to Mendocino County AQMD.

If finalized as proposed, the limited disapproval of Rule 220 would trigger an obligation for EPA to promulgate a Federal Implementation Plan unless the State of California corrects the deficiencies, and EPA approves the related plan revisions, within two years of the final action.

We will accept comments from the public on both the proposed full approval and the proposed limited approval and limited disapproval for the next 30 days.

IV. Incorporation by Reference

In this rulemaking, 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 MCAQMD rules as described in Table 1 of this notice. The EPA has made, and will continue to make, this document available electronically through www.regulations.gov and in hard copy at U.S. Environmental Protection Agency Region IX (Air -3), 75 Hawthorne Street, San Francisco, CA, 94105-3901.

V. 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, Nitrogen dioxide, Ozone, Particulate Matter, Reporting and recordkeeping requirements.

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

Dated: December 9, 2016.

Alexis Strauss,
Acting Regional Administrator,
Region IX.

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