



6560-50-P

## **ENVIRONMENTAL PROTECTION AGENCY**

### **40 CFR Part 52**

**[EPA-R09-OAR-2015-0621; FRL-9962-55-Region 9]**

### **Conditional Approval of Revision 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 a revision to the Imperial County Air Pollution Control District (ICAPCD or District) portion of the California State Implementation Plan (SIP). We are proposing a conditional approval of one rule. This rule updates and revises 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 removed or edited 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:** Khoi Nguyen, EPA Region IX, (415) 947-4120, [nguyen.thien@epa.gov](mailto:nguyen.thien@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 *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 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.
- (vi) The initials *NSR* mean or refer to New Source Review.
- (vii) The initials *SIP* mean or refer to State Implementation Plan.

### **I. The State's Submittal**

- A. *What rule did the State submit?*

Table 1 lists the rule addressed by this action with the date that it was adopted by

ICAPCD and submitted by the California Air Resources Board (CARB), which is the governor’s designee for California SIP submittals.

TABLE 1 - SUBMITTED RULE

Local Agency	Rule #	Rule Title	Adopted/ Revised	Submitted
ICAPCD	207	New and Modified Stationary Source Review	10/22/13	1/21/14

On March 7, 2014, EPA determined that the submittal for ICAPCD Rule 207 (New and Modified Stationary Source Review) met the completeness criteria in 40 CFR Part 51 Appendix V. On December 19, 2016, the EPA proposed a limited approval and limited disapproval (LA/LD) of Rule 207 along with a full approval of two rules - Rule 204 (Applications) and Rule 206 (Processing of Applications). 81 FR 91895. In a separate rulemaking action, we are finalizing our approval of Rules 204 and 206. We are not finalizing our proposed LA/LD of Rule 207; instead, we are proceeding with this proposed action to conditionally approve Rule 207 into the SIP.

*B. Are there other versions of this rule?*

EPA approved a previous version of Rule 207 into the SIP on November 10, 1980 (45 FR 74480). In addition, SIP-approved Rule 209 (Implementation Plans) and submitted Rule 207, section D.1.a, contain substantially similar language. *See* 45 FR 74480 (November 10, 1980).<sup>1</sup>

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

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<sup>1</sup> Approval of submitted Rule 207 would supersede our prior actions for SIP-approved Rules 207 and 209. 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.

Section 110(a) of the Clean Air Act (CAA) requires states to submit regulations that include a pre-construction 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 207 (New and Modified Stationary Source Review) is to implement a federal preconstruction permit program for new and modified minor sources of regulated NSR pollutants, and new and modified major sources of regulated NSR pollutants for which the area is designated nonattainment. Imperial County is currently designated as a Moderate nonattainment area for the 2008 8-hour ozone National Ambient Air Quality Standards (NAAQS).<sup>2</sup> Portions of the county are designated as a Serious nonattainment area for the 1987 24-hour PM<sub>10</sub> NAAQS, and as a Moderate nonattainment area for the 2006 24-hour PM<sub>2.5</sub> and 2012 annual PM<sub>2.5</sub> NAAQS. We present our evaluation under the CAA and EPA's regulations of the revised NSR rule submitted by CARB, as identified in Table 1, and provide our reasoning in general terms below and a more detailed analysis in our Technical Support Document (TSD), which is available in the docket for the proposed rulemaking.

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

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

The submitted rule 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 rule must contain the applicable regulatory provisions of 40 CFR 51.160-

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<sup>2</sup> EPA initially classified Imperial County as Marginal for the 2008 ozone NAAQS, but reclassified the area to Moderate because it failed to attain the standard by the applicable Marginal attainment date of July 20, 2015. 81 FR 26697 (May 4, 2016).

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).

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. Does the rule meet the evaluation criteria?*

Rule 207 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 the statutory and regulatory requirements for a nonattainment NSR permit program for moderate ozone and serious PM<sub>10</sub>, nonattainment areas as set forth in the applicable provisions of part D of title I of the Act (sections 172 and 173), in 40 CFR 51.165 and 40 CFR 51.307. For a Moderate PM<sub>2.5</sub> nonattainment area Rule 207 mostly satisfies these same requirements; however, we have determined that it does not satisfy the requirements of 40 CFR 51.165(a)(13), which requires ammonia to be regulated as a PM<sub>2.5</sub> precursor. Our TSD contains a more detailed discussion of this issue.<sup>3</sup>

*C. Public comment and final action.*

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<sup>3</sup> See also, 81 FR 91895 (December 19, 2016).

Section 110(k)(4) authorizes the EPA to conditionally approve a plan revision based on a commitment by the state to adopt specific enforceable measures by a date certain but not later than one year after the effective date of the plan approval. In this instance, the enforceable measure that the State must submit are revisions to regulate ammonia as a PM<sub>2.5</sub> precursor. The District submitted a letter committing to submit a SIP revision that regulates ammonia as a PM<sub>2.5</sub> precursor no later than one year from the effective of this final action. If the District fails to comply with this commitment, this conditional approval will convert to a disapproval and start an 18-month clock for sanctions under CAA section 179(a)(2) and a two-year clock for a federal implementation plan (FIP) under CAA section 110(c)(1).

We will accept comments from the public on the proposed conditional approval of Rule 207 for the next 30 days.

### **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 rule listed in Table 1 of this notice. The EPA has made, and will continue to make, these documents available through [www.regulations.gov](http://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**

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.*

Dated: May 19, 2017.

Alexis Strauss,  
Acting Regional Administrator,  
Region IX.

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