



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R09-OAR-2015-0621; FRL-9965-89-Region 9]

Revisions to the California State Implementation Plan; Imperial County Air Pollution Control District; Stationary Sources Permits

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is finalizing 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 finalizing 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.

DATES: This rule is effective on **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: The EPA has established a docket for this action under Docket No. EPA-R09-OAR-2015-0621. All documents in the docket are listed on the <http://www.regulations.gov> web site. Although it may be listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available through <http://www.regulations.gov>, or please contact the person identified in the "FOR FURTHER INFORMATION CONTACT" section for additional availability information.

FOR FURTHER INFORMATION CONTACT: Thien Khoi Nguyen, EPA Region IX, (415) 947-4120, *nguyen.thien@epa.gov*.

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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 initials *FIP* mean or refer to Federal Implementation Plan.
- (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 *NSR* mean or refer to New Source Review.
- (viii) The initials *SIP* mean or refer to State Implementation Plan.
- (ix) The initials *TSD* mean or refer to Technical Support Document.

I. Proposed Action

On June 12, 2017, the EPA proposed a conditional approval of Rule 207 (New and Modified Stationary Source Review; as noted in Table 1) submitted by CARB for incorporation into the ICAPCD portion of the California SIP. 82 FR 26883.¹ Table 1 also lists the dates the rule was adopted by ICAPCD and submitted by CARB, which is the governor's designee for California SIP submittals.

Table 1 – Submitted NSR Rule

Rule #	Rule Title	Adopted/Revised	Submitted	Proposed Action
207	New and Modified Stationary Source Review	10/22/13	1/21/14	Conditional Approval

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 PM₁₀, 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_{2.5} nonattainment area, Rule 207 mostly satisfies these 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_{2.5} precursor. The state committed to revise the rule to correct this deficiency in Rule 207, and, based on those assertions, EPA proposed conditional approval of the rule.

¹ Previously, the EPA proposed a limited approval and limited disapproval of Rule 207. 81 FR 91895. (December 19, 2016)

II. Public Comments and EPA Responses

The EPA's proposed action provided a 30-day public comment period. During this period we received two comments, one posted anonymously and one from the Center for Biological Diversity (CBD). Copies of each comment letter have been added to the docket for this action and are accessible at www.regulations.gov. We have summarized the comments received and provided a response to the comments below.

Comment 1: “keep standards in place. we all want clean air to breathe.”

Response 1: The EPA did not propose to remove any standards. Instead, as explained in our proposed rulemaking, our action concerns ICAPCD Rule 207. Rule 207 implements 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. This action will not remove or alter the National Ambient Air Quality Standards, which are the federal standards promulgated by the EPA to protect air quality. As explained in our technical support document (TSD), dated November 28, 2016, in the rulemaking docket,² this action will update ICAPCD's SIP-approved preconstruction permitting program, including lower emission thresholds at which projects will trigger requirements for Lowest Achievable Emission Reductions and offsets. TSD at 20. These updates to ICAPCD's preconstruction permitting program will promote air quality protection, consistent with current federal requirements.

² We included the November 28, 2016 TSD in the rulemaking docket in connection with our previous proposed limited approval and limited disapproval of Rule 207. *See* 81 FR 91895 (December 19, 2016).

Comment 2: CBD stated that, “the EPA’s conditional approval of the proposed Rule 207 is not valid because the commitment letter submitted by the District does not provide for specific enforceable measures to regulate ammonia as a PM_{2.5} precursor as required by 40 CFR 51.165(a)(13).” CBD stated that the District’s commitment letter is neither specific nor enforceable but merely commits to revise the definitions of the terms “precursor” and “significant.” CBD stated that the District’s commitment lacks information on what the revision will entail, how the revision will satisfy the mandatory requirement to include ammonia as a PM_{2.5} precursor, how the revision will create enforceable mechanisms to control ammonia, and how the revision will meet CAA section 110(l) requirements to not interfere with attainment and reasonable further progress of the NAAQS. CBD proposed certain specific measures and controls technologies, and stated that because the District’s commitment letter did not include these measures or any other measures, the commitment measures cannot be properly enforced. CBD stated that the unspecified commitment puts the public at risk because the public cannot fully inform themselves as to whether the District is meeting its legal duties to protect public health. CBD stated that because the EPA must deny the District’s Rule 207 proposal, the EPA is obligated to implement a Federal Implementation Plan (FIP) that will mandate ammonia as a PM_{2.5} precursor and cure the Rule 207 deficiency within two years.

Response 2: The EPA disagrees with the comment. As explained further below, the EPA believes the record supports conditional approval of Rule 207 because the State has committed to correct the deficiency in Rule 207 identified by EPA in the November 2016 TSD within one year of this final action.

As explained in our proposed action, Rule 207 implements 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. Rule 207 authorizes ICAPCD to issue permits that will contain emission limits, and associated monitoring, reporting, and recordkeeping requirements, consistent with the EPA's requirements for such programs as set forth in CAA sections 110(a)(2), 172 and 173, and applicable regulatory provisions such as 40 CFR 51.160-51.165 and 40 CFR 51.307.

The EPA's proposed conditional approval of Rule 207 explained our determination that Rule 207 largely satisfies the statutory and regulatory requirements for an NSR permit program. We noted, however, one area in which Rule 207 was deficient. Specifically, our proposed action noted that Rule 207 does not adequately regulate ammonia as a PM_{2.5} precursor as required by 40 CFR 51.165(a)(13).³ Our proposed action explained that additional information on this issue could be found in our TSD.⁴

Our TSD explains that Rule 207, section B, contains various definitions necessary to implement the preconstruction permitting program set forth in the rule. TSD at 4. The TSD states that Rule 207's definition of the term "precursor" explicitly applies to two of four PM_{2.5} precursors, NO_x and SO_x, and indirectly applies to a third PM_{2.5} precursor, VOCs. *Id.* at 10. With respect to the fourth PM_{2.5} precursor, ammonia, the TSD states that the Rule 207 definition of "precursor" does not satisfy regulatory requirements. *Id.* at 10-11. The TSD notes that ICAPCD adopted Rule 207 in October 2013, prior to EPA's revisions to our PM_{2.5} regulations, including

³ 40 CFR 51.165(a)(13) provides: "The plan shall require that the control requirements of this section applicable to major stationary sources and major modifications of PM_{2.5} shall also apply to major stationary sources and major modifications of PM_{2.5} precursors in a PM_{2.5} nonattainment area, except that a reviewing authority may exempt new major stationary sources and major modifications of a particular precursor from the requirements of this section for PM_{2.5} if the NNSR precursor demonstration submitted to and approved by the Administrator shows that such sources do not contribute significantly to PM_{2.5} levels that exceed the standard in the area. Any demonstration submitted for the Administrator's review must meet the conditions for a NNSR precursor demonstration as set forth in § 51.1006(a)(3)."

⁴ *See also*, 82 FR 91897.

revisions relevant to the regulation of PM_{2.5} precursors.⁵ In particular, the TSD notes that Rule 207 requires regulation of ammonia as a PM_{2.5} precursor “if ammonia is determined to be a necessary part of the PM_{2.5} control strategy in the attainment demonstration approved by USEPA in the SIP.” *Id.* In other words, Rule 207 in its current form does not regulate ammonia as a PM_{2.5} precursor absent a finding by EPA that regulation of ammonia is a necessary component of ICAPCD’s strategy to attain the PM_{2.5} NAAQS. This presumption against regulating ammonia as a precursor absent a determination that regulation is necessary for attainment was rejected by the Court of Appeals for District of Columbia Circuit in *Natural Resources Defense Council (NRDC) v. EPA*, 706 F.3d 428 (D.C. Cir. 2013). Following the *NRDC* decision, EPA revised its regulatory requirements, (specifically, by promulgating 40 CFR 51.165(a)(13)), to require regulation of ammonia as a PM_{2.5} precursor unless EPA determines that such regulation is *not* necessary.⁶

As explained above, our proposed conditional approval of Rule 207 applies the correct standard pertaining to ammonia as a PM_{2.5} precursor and appropriately identifies Rule 207’s definition of precursor as deficient on the basis that it does not meet the requirements of 40 CFR 51.165(a)(13). As stated in our TSD, the remedy for Rule 207’s deficient definition of “precursor” is either a revision to the definition of “precursor” or a demonstration that regulation of ammonia is not necessary to attain the PM_{2.5} NAAQS, consistent with the EPA’s requirements for such demonstrations at 40 CFR 51.1006(a)(3). TSD at 10-11. Similarly, our proposed conditional approval of Rule 207 identified our authority under CAA section 110(k)(4) to conditionally approve a plan revision based on a commitment by the State to adopt specific enforceable measures by a date certain but no later than one year after the effective date of final

⁵ See FN 3; see also, “Fine Particulate Matter National Ambient Air Quality Standard: State Implementation Plan Requirements.” 81 FR 58010, 58151 (August 24, 2016).

⁶ *Id.*

action. We also explained that the enforceable measures that the State must submit are revisions that regulate ammonia as a PM_{2.5} precursor and that the District had in fact submitted such a letter.⁷

As noted by the commenter, ICAPCD's letter commits to submit a revised Rule 207 that will revise the definitions of the terms "precursor" and "significant".⁸ The record for this action demonstrates that EPA identified a deficiency in Rule 207 based on the definition of "precursor" not properly regulating ammonia as far back as December 19, 2016, when EPA proposed a limited approval / limited disapproval of Rule 207 and included the TSD in the publicly available rulemaking docket.⁹ As explained above and in our TSD, the only reason that Rule 207 is deficient with respect to federal requirements for NSR permit programs (specifically, 40 CFR 51.165(a)(13)) is that certain definitions in Rule 207 mean that the rule does not properly regulate ammonia as a PM_{2.5} precursor. Therefore, the most logical approach to remedy the identified deficiency is to revise the definitions for these terms as the TSD advises. The State and the District committed to implement the changes necessary to correct the deficiency.

We do not agree with the commenter that ICAPCD's commitment to remedy the deficiencies in Rule 207's definitions of "precursor" or "significant" are insufficiently specific or are unenforceable. The EPA's TSD explains that Rule 207's definition of "precursor" fails to

⁷ The rulemaking docket for our proposed action includes the following documents relevant to the State's commitment pursuant to CAA section 110(k)(4): (1) a letter dated May 17, 2017 from Karen Magliano, Chief of the Air Quality Planning and Science Division, California Air Resources Board (CARB) to Alexis Strauss, Acting Regional Administrator, EPA Region 9; (2) a letter dated May 16, 2017 from Matt Dessert, Air Pollution Control Officer (APCO), ICAPCD to Carol Sutkus, Manager, CARB; and (3) a letter dated May 16, 2017 from Matt Dessert APCO ICAPCD to Alexis Strauss, Acting Regional Administrator, EPA Region 9. CARB is the state agency responsible for adopting and revising the California SIP and for submitting SIP revisions to the EPA. We are clarifying that the State's commitment "to adopt specific enforceable measures by a date certain" pursuant to CAA section 110(k)(4) is comprised of all three documents.

⁸ The District also indicated its intent to revise Rule 207's definition of the term "significant." Rule 207's definition of "significant" also fails to include ammonia, and therefore requires revision for reasons similar to those necessitating a revision to the definition of "precursor."

⁹ By the time CARB and the District submitted their commitment letters to the EPA, in mid-May 2017, the EPA's TSD for Rule 207, which explained Rule 207's deficiency as linked to the rule's definitions, was in the rulemaking docket for several months (since December 2016). See FN 2.

include ammonia; therefore, the State and the District reasonably committed to address the deficiency by revising certain definitions.¹⁰ In addition, the District must solicit input from the public regarding the revisions to the definitions, and, as part of the public participation process for the revisions to Rule 207, interested members of the public will have the opportunity to provide input regarding the District's revised definitions and whether they meet the requirements of 40 CFR 51.165(a)(13). In addition, the public will be able to provide input as to whether the revisions provide an enforceable mechanism for regulating ammonia as a PM_{2.5} precursor.¹¹

EPA also disagrees with the commenter that the District's commitment lacks specificity because it does not explain how the revisions to Rule 207 will comply with CAA section 110(l). Once the EPA receives ICAPCD's revisions to Rule 207, the EPA will review the revised rule pursuant to CAA section 110(l) to ensure that the revisions do not interfere with any applicable requirements concerning attainment and reasonable further progress, or any other applicable requirements of the Act, and will take public comment on our determination regarding CAA section 110(l) along with other aspects of our action. It is therefore unnecessary for the District to provide this analysis in its commitment letter to EPA.

CBD also provided several suggestions for measures to control and monitor ammonia emissions and concluded that the failure to commit to implement such measures in the area puts the public at risk and deprives the public of its ability to assess compliance with the statute. The EPA disagrees that the State and the District are required to commit to implement specific control measures in order to obtain this conditional approval or that the public will be deprived

¹⁰ We also note that ICAPCD's letter states that EPA had "informed" it that Rule 207 "contains a deficiency regarding the treatment of ammonia as a PM_{2.5} precursor" and that it was committing to submit a revised rule with revised definitions of these terms "to address this deficiency."

¹¹ We also note that if the District does not fulfill its commitment, the conditional approval will convert to a disapproval and start an 18-month clock for sanctions under CAA section 179(a)(2). Such a failure would also trigger a two-year clock for a federal implementation plan (FIP) under CAA section 110(c)(1).

of the right to review the state revisions to Rule 207 or any permits issued thereunder. When the District proposes revisions to Rule 207 or is actively issuing permits pursuant to that rule, CBD and other parties may comment as part of the public participation processes for those future actions. Thus, the comments are not within the scope of our current action, and the comments do not demonstrate a flaw in the EPA's identification of the Rule 207 deficiency and revisions necessary to address it.

Finally, because the EPA believes that the commitment of the State and the District to remedy the deficiencies identified in Rule 207 to regulate ammonia as a precursor to PM_{2.5} is sufficient, we disagree that EPA is obligated to implement a FIP. Our proposed action to conditionally approve Rule 207 is based on a commitment from the State and the District to submit specific, enforceable measures in the form of revised definitions for the terms "precursor" and "significant" within twelve months from the effective date of our final action. Because the State and the District provided the necessary commitments, EPA reasonably proposed to conditionally approve Rule 207 pursuant to CAA section 110(k)(4).¹²

III. EPA Action

As authorized by CAA section 110(k)(4), EPA is finalizing conditional approval of Rule 207 – New and Modified Stationary Source Review into the ICAPCD portion of the California SIP.

Section 110(k)(4) authorizes the EPA to conditionally approve a plan revision based on a

¹² See *NRDC v. EPA*, 22 F3d 1125, 1134-1135 (D.C. Cir. 1994) (concluding that the conditional approval mechanism under CAA section 110(k)(4) "is intended to provide EPA with an alternative to disapproving substantive, but not entirely satisfactory, SIPs submitted by the statutory deadlines.")

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 measures that the State must submit are revisions to regulate ammonia as a PM_{2.5} precursor. On May 17, 2017, CARB submitted a letter dated May 16, 2017 from the District committing to submit a SIP revision that regulates ammonia as a PM_{2.5} precursor no later than one year from the effective date of this final action. Under a conditional approval, the state must adopt and submit the specific revisions it has committed to within one year. If the State does not comply with this commitment, the EPA's 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).

In today's action we are also making a technical correction to our previous action approving Rule 206 into the ICAPCD portion of the California SIP.¹³ In that action, we provided incorrect regulatory text to effect that change. This final action includes the corrected regulatory text to approve the revised Rule 206 in the California SIP. We did not seek public comment on this technical correction because public participation requirements were satisfied as part of our action approving Rule 206 into the SIP.

IV. Incorporation by Reference

In this rule, the EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is finalizing the incorporation by reference of the ICAPCD rules listed in Table 1 of this notice. The EPA has made, and will continue to make, these rules generally available electronically through www.regulations.gov and in hard copy at the U.S. Environmental Protection Agency, Region IX (Air -3), 75

¹³ 82 FR 27125 (June 14, 2017).

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.

K. Congressional Review Act (CRA)

This action is subject to the CRA, and the EPA will submit a rule report to each House of the Congress and to the Comptroller General of the United States. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

L. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[insert date 60 days after the date of publication in the Federal Register]**. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements (see section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

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

Dated: July 31, 2017.

Alexis Strauss,
Acting Regional Administrator,
Region IX.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52 – APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for part 52 continues to read as follows:

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

Subpart F – California

2. Section 52.220 is amended by adding paragraphs (c)(56)(i)(B), (c)(442)(i)(A)(5), and (c)(490) to read as follows:

§52.220 Identification of plan – in part.

* * * * *

(c) * * *

(56) * * *

(i) * * *

(B) Previously approved on November 10, 1980 in paragraph (c)(56)(i)(A) of this section and now deleted with replacement in paragraph (c)(490)(i)(A)(I) of this section: Rule 207 and Rule 209.

* * * * *

(442) * * *

(i) * * *

(A) * * *

(5) Rule 206, “Processing of Applications,” revised on October 22, 2013.

* * * * *

(490) An amended regulation was submitted on January 21, 2014 by the Governor’s designee.

(i) Incorporation by reference.

(A) Imperial County Air Pollution Control District.

(I) Rule 207, “Federal New Source Review,” revised on October 22, 2013.

§52.232 [Amended]

3. Section 52.232 is amended by removing and reserving paragraph (a)(1).

§52.233 [Amended]

4. Section 52.233 is amended by removing and reserving paragraph (a)(1).

[FR Doc. 2017-18623 Filed: 9/1/2017 8:45 am; Publication Date: 9/5/2017]