



## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

#### EPA-R09-OAR-2019-0449; FRL-10013-14-Region 9

#### Approval and Limited Approval and Limited Disapproval of California Air Plan

#### Revisions; San Diego County Air Pollution Control District; Stationary Source Permits

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

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is taking final action on four permitting rules submitted as a revision to the San Diego County Air Pollution Control District (SDAPCD or “District”) portion of the California State Implementation Plan (SIP). We are finalizing a limited approval and limited disapproval of one rule and approval of the remaining three rules. These revisions concern the District’s New Source Review (NSR) permitting program for new and modified sources of air pollution under section 110(a)(2)(C) and part D of title I of the Clean Air Act (CAA). This action updates the SDAPCD’s applicable SIP with revised rules that the District has amended to address deficiencies identified in a previous conditional approval action.

**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 ID No. EPA-R09-OAR-2019-0449. All documents in the docket are listed on the <https://www.regulations.gov> web site. Although 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 <https://www.regulations.gov>, or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional availability information.

**FOR FURTHER INFORMATION CONTACT:** Sheila Tsai, EPA Region IX, Air-3-1, 75 Hawthorne St., San Francisco, CA 94105. By phone: (415) 972-3328 or by email at *Tsai.Ya-Ting@epa.gov*.

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

## **Table of Contents**

- I. Proposed Action
- II. Public Comments and EPA Responses
- III. EPA Action
- IV. Incorporation by Reference
- V. Statutory and Executive Order Reviews

### **I. Proposed Action**

On May 15, 2020 (85 FR 29377) the EPA proposed to finalize a limited approval and limited disapproval and full approval of the following rules into the California SIP.

#### TABLE 1 - SUBMITTED RULES

Rule #	Rule Title	Adopted Date	Submitted Date
20.1	New Source Review – General Provisions	06/26/2019	07/19/2019
20.2*	New Source Review – Non-Major Stationary Sources	06/26/2019	07/19/2019
20.3*	New Source Review – Major Stationary Sources and PSD Stationary Sources	06/26/2019	07/19/2019
20.4*	New Source Review – Portable Emission Units	06/26/2019	07/19/2019

\* The following subsections of the Rules 20.2-20.4 were not submitted to the EPA for inclusion in the San Diego SIP: Rule 20.2 Subsections (d)(2)(i)(B), (d)(2)(v), (d)(2)(vi)(B) and (d)(3); Rule 20.3 Subsections (d)(1)(vi), (d)(2)(i)(B), (d)(2)(v), (d)(2)(vi)(B) and (d)(3); and Rule 20.4 Subsections (b)(2), (b)(3), (d)(1)(iii), (d)(2)(i)(B), (d)(2)(iv), (d)(2)(v)(B), (d)(3) and (d)(5).

The District submitted these rules to address deficiencies that the EPA identified in a conditional approval of prior versions of Rules 20.1–20.4 at 83 FR 50007 (October 4, 2018). The 2018 action also included a conditional approval of Rule 20.6 and a full approval of Rules 11, 20, and 24. In our May 15, 2020 proposal, we proposed to approve the submitted rules because we determined that they satisfy the District’s commitment to remedy the deficiencies identified in our conditional approval of the Rules 20.1–20.4 and Rule 20.6, and generally comply with most applicable CAA requirements. However, we also determined that Rule 20.1(a) does not satisfy the requirements related to 40 CFR 51.160(a) and (b) and CAA section 173(a). The District revised Rule 20.1(a) to specify that the rule applies to a permit application based on the requirements in the rule as in effect on the date that the application is determined to be complete. By specifying the rule’s applicability based on the date of application completeness, this language may limit the Air Pollution Control Officer’s ability to ensure a source will comply with applicable NSR program requirements at the time the permit is issued. This deficiency is the basis for the EPA’s final limited approval and limited disapproval of Rule 20.1. In order to correct this deficiency, we recommend that SDAPCD remove or revise the language added in the

revised Rule 20.1(a).

## **II. Public Comments and EPA Responses**

The EPA's proposed action provided a 30-day public comment period. During this period, we received one comment, which is included in the docket for this action. We do not consider this comment to be germane or relevant to this action and therefore not adverse to this action. Moreover, the comment lacks the required specificity to the proposed SIP revision and the relevant CAA requirements, and does not address any specific regulation or provision in question or recommend a different action on the SIP submission from what EPA proposed. Therefore, we are finalizing our action as proposed.

## **III. EPA Action**

No comments were submitted that change our assessment of the rules as described in our proposed action. Therefore, as authorized in section 110(k)(3) and 301(a) of the Act, the EPA is finalizing full approval of Rules 20.2–20.4 and finalizing a limited approval and limited disapproval of Rule 20.1. This action incorporates the submitted rules into the California SIP, including those provisions identified as deficient. Because the submitted rules address the deficiencies identified in our October 4, 2018 conditional approval, the EPA is removing from the SIP the conditional approval of Rules 20.1–20.4 and Rule 20.6 at 40 CFR 52.248(e).

This approval is limited because EPA is simultaneously finalizing a limited disapproval of the rule under section 110(k)(3). Our limited disapproval action triggers an obligation for the EPA to promulgate a Federal Implementation Plan (FIP) unless the State corrects the deficiencies, and the EPA approves the related plan revisions, within two years of this final action. Additionally, because the deficiency relates to Nonattainment NSR requirements under part D of title I of the Act, sanctions will be imposed unless the EPA approves subsequent SIP

revisions that correct the rule deficiencies within 18 months of the effective date of this action. These sanctions will be imposed under section 179 of the Act and 40 CFR 52.31. The EPA intends to work with the SDAPCD to correct the deficiency in a timely manner.

Note that Rule 20.1 has been adopted by the SDAPCD, and the EPA's final limited disapproval does not prevent the local agency from enforcing it. The limited disapproval would also not prevent any portion of the rule from being incorporated by reference into the federally enforceable SIP as discussed in a July 9, 1992 EPA memo found at:

*<https://www.epa.gov/sites/production/files/2015-07/documents/procsip.pdf>*.

#### **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 SDAPCD rules described in Table 1 of this preamble. The EPA has made, and will continue to make, these materials available through *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).

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

Additional information about these statutes and Executive orders can be found at <http://www.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. Executive Order 13771: Reducing Regulations and Controlling Regulatory Costs*

This action is not an Executive Order 13771 regulatory action because SIP approvals, including limited approvals, are exempted under Executive Order 12866.

*C. 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.

*D. 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.

*E. 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.

*F. 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.

*G. 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.

*H. 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.

*I. 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.

*J. 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.

*K. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations*

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

*L. 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).

*M. 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 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

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

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

Dated: August 18, 2020

John Busterud,  
Regional Administrator,  
Region IX.

For the reasons stated in the preamble, the EPA amends part 52, Chapter I, Title 40 of the Code of Federal Regulations 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)(508)(i)(A)(6), (7), (8), (9) and (c)(539) to read as follows:

**§52.220 Identification of plan-in part.**

	*	*	*	*	*
(c)	*	*	*		
(508)	*	*	*		
(i)	*	*	*		
(A)	*	*	*		

(6) Previously approved on October 4, 2018 in paragraph (c)(508)(i)(A)(1) of this section and now deleted with replacement in (c)(539)(i)(A)(1), Rule 20.1, “New Source Review – General Provisions,” revision adopted on April 27, 2016.

(7) Previously approved on October 4, 2018 in paragraph (c)(508)(i)(A)(2) of this section and now deleted with replacement in (c)(539)(i)(A)(2), Rule 20.2, “New Source Review – Non-Major Stationary Sources” (except paragraphs (d)(2)(i)(B), (d)(2)(v), (d)(2)(vi)(B) and (d)(3)), revision adopted on April 27, 2016.

(8) Previously approved on October 4, 2018 in paragraph (c)(508)(i)(A)(3) of this section and now deleted with replacement in (c)(539)(i)(A)(3), Rule 20.3, “New Source Review – Major Stationary Sources and PSD Stationary Sources” (except paragraphs (d)(1)(vi), (d)(2)(i)(B),

(d)(2)(v), (d)(2)(vi)(B) and (d)(3)), revision adopted on April 27, 2016.

(9) Previously approved on October 4, 2018 in paragraph (c)(508)(i)(A)(4) of this section and now deleted with replacement in (c)(539)(i)(A)(4), Rule 20.4, “New Source Review – Portable Emission Units” (except paragraphs (b)(2), (b)(3), (d)(1)(iii), (d)(2)(i)(B), (d)(2)(iv),

(d)(2)(v)(B), (d)(3) and (d)(5)), revision adopted on April 27, 2016.

\* \* \* \* \*

(539) The following regulations were submitted on July 19, 2019 by the Governor’s designee as an attachment to a letter dated July 18, 2019.

(i) *Incorporation by reference.*

(A) San Diego County Air Pollution Control District.

(1) Rule 20.1 “New Source Review – General Provisions,” revision adopted on June 26, 2019.

(2) Rule 20.2 “New Source Review – Non-Major Stationary Sources,” (except paragraphs (d)(2)(i)(B), (d)(2)(v), (d)(2)(vi)(B) and (d)(3)), revision adopted on June 26, 2019.

(3) Rule 20.3 “New Source Review – Major Stationary Sources and PSD Stationary Sources,” (except paragraphs (d)(1)(vi), (d)(2)(i)(B), (d)(2)(v), (d)(2)(vi)(B) and (d)(3)), revision adopted on June 26, 2019.

(4) Rule 20.4 “New Source Review – Portable Emission Units,” (except paragraphs (b)(2), (b)(3), (d)(1)(iii), (d)(2)(i)(B), (d)(2)(iv), (d)(2)(v)(B), (d)(3) and (d)(5)), revision adopted on June 26, 2019.

(B) [Reserved]

(ii) [Reserved]

\* \* \* \* \*

§52.248 [Amended]

3. Section 52.248 is amended by removing and reserving paragraph (e).

[FR Doc. 2020-18425 Filed: 9/15/2020 8:45 am; Publication Date: 9/16/2020]