

jeopardizing the safety or security of people, places, or vessels.

## V. Public Participation and Request for Comments

We view public participation as essential to effective rulemaking, and will consider all comments and material received during the comment period. Your comment can help shape the outcome of this rulemaking. If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation.

We encourage you to submit comments through the Federal eRulemaking Portal at <https://www.regulations.gov>. If your material cannot be submitted using <https://www.regulations.gov>, call or email the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions.

We accept anonymous comments. Comments we post to <https://www.regulations.gov> will include any personal information you have provided. For more about privacy and submissions in response to this document, see DHS's eRulemaking System of Records notice (85 FR 14226, March 11, 2020).

Documents mentioned in this NPRM as being available in the docket, and public comments, will be in our online docket at <https://www.regulations.gov> and can be viewed by following that website's instructions. We review all comments received, but we will only post comments that address the topic of the proposed rule. We may choose not to post off-topic, inappropriate, or duplicate comments that we receive. If you go to the online docket and sign up for email alerts, you will be notified when comments are posted or a final rule is published.

## List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard is proposing to amend 33 CFR part 165 as follows:

## PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

**Authority:** 46 U.S.C. 70034, 70051; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 0170.1, Revision No. 01.2.

■ 2. Add § 165.T13–0647 to read as follows:

### § 165.T13–0647 Safety Zones: Safety Zone; CBWTP Outfall Diffuser Improvements, Columbia River, Portland, OR.

(a) *Location.* The following area is a safety zone: All navigable waters of the Columbia River, surface to bottom, encompassed by a line connecting the following points beginning at the shoreline at 45°37'26.2" N, 122°41'46.91" W, northeast to 45°37'33.206" N, 122°41'37.699" W, southeast to 45°37'23.4" N, 122°41'18.1" W, thence southwest to 45°37'16.27" N, 122°41'30.75" W, and along the shoreline back to the beginning point.

(b) *Definitions.* As used in this section, *designated representative* means a Coast Guard Patrol Commander, including a Coast Guard coxswain, petty officer, or other officer operating a Coast Guard vessel and a Federal, State, and local officer designated by or assisting the Captain of the Port Sector Columbia River in the enforcement of the safety zone.

(c) *Regulations.* (1) Under the general safety zone regulations in subpart C of this part, you may not enter the safety zone described in paragraph (a) of this section unless authorized by the COTP or the COTP's designated representative.

(2) To seek permission to enter, contact the COTP or the COTP's representative by calling (503) 209–2468 or the Sector Columbia River Command Center on Channel 16 VHF–FM. Those in the safety zone must comply with all lawful orders or directions given to them by the COTP or the COTP's designated representative.

(d) *Enforcement period.* This safety zone is in effect from 12:01 a.m. on October 1, 2021, through 11:59 p.m. on February 28, 2022. It will be subject to enforcement this entire period unless the Captain of the Port, Sector Columbia River determines it is no longer needed, in which case the Coast Guard will inform mariners via Notice to Mariners.

Dated: August, 17, 2021.

**M. Scott Jackson,**

*Captain, U.S. Coast Guard, Captain of the Port Sector Columbia River.*

[FR Doc. 2021–17911 Filed 8–20–21; 8:45 am]

**BILLING CODE 9110–04–P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA–R09–OAR–2021–0438; FRL–8773–01–Region 9]

### Limited Approval and Limited Disapproval of California Air Quality Implementation Plan Revisions; Amador Air District; Stationary Source Permits

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

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing a limited approval and limited disapproval of a revision to the Amador Air District's (AAD or "District") portion of the California State Implementation Plan (SIP). This revision governs the District's issuance of permits for stationary sources, and focuses on the preconstruction review and permitting of major sources and major modifications under part D of title I of the Clean Air Act (CAA or "the Act"). We are taking comments on this proposal and plan to follow with a final action.

**DATES:** Comments must be received on or before September 22, 2021.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA–R09–OAR–2021–0438 at <http://www.regulations.gov>. For comments submitted at *Regulations.gov*, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider Confidential Business Information (CBI) or other information the disclosure of which 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://www.epa.gov/dockets/commenting-epa-dockets>. If you need

assistance in a language other than English or if you are a person with disabilities who needs a reasonable accommodation at no cost to you, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

**FOR FURTHER INFORMATION CONTACT:** Amber Batchelder, EPA Region IX, 75 Hawthorne St., San Francisco, CA 94105; by phone: (415) 947-4174, or by email to [batchelder.amber@epa.gov](mailto:batchelder.amber@epa.gov).

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

## Table of Contents

- I. The State’s Submittal
  - A. What rule did the State submit?
  - B. Are there other versions of this rule?
  - C. What is the purpose of the submitted rule?
- II. The EPA’s Evaluation and Action
  - A. What is the background for this proposal?
  - B. How is the EPA evaluating the rule?
  - C. Does the rule meet the evaluation criteria?
  - D. What are the rule deficiencies?
  - E. EPA Recommendations To Further Improve the Rule

- F. Proposed Action and Public Comment
- III. Incorporation by Reference
- IV. Statutory and Executive Order Reviews

## I. The State’s Submittal

### A. What rule did the State submit?

Table 1 lists the rule addressed by this proposal, including the date on which it was adopted by the District and the date on which it was submitted to the EPA by the California Air Resources Board (CARB or “the State”). The AAD is the air pollution control agency for Amador County in California.

TABLE 1—SUBMITTED RULE

Local agency	Rule No.	Rule title	Adopted	Submitted <sup>1</sup>
AAD .....	400	NSR Requirements for New and Modified Major Sources in Nonattainment Areas.	08/20/19	11/05/19

<sup>1</sup> The submittal was transmitted to the EPA via a letter from CARB dated October 31, 2019.

On May 5, 2020, the submittal for AAD Rule 400 was deemed by operation of law to meet the completeness criteria in 40 CFR part 51 Appendix V, which must be met before formal EPA review.

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

There are no previous versions of Rule 400 in the SIP.

### C. What is the purpose of the submitted rule?

Rule 400 is intended to address the CAA’s statutory and regulatory requirements for Nonattainment New Source Review (NNSR) permit programs for major sources emitting nonattainment air pollutants and their precursors.

## II. The EPA’s Evaluation and Action

### A. What is the background for this proposal?

The EPA’s April 2004 designation of Amador County as a nonattainment area for the 1997 8-hour ozone National Ambient Air Quality Standards (NAAQS) triggered the requirement for the AAD to develop and submit an NNSR program to the EPA for SIP approval.<sup>2</sup> Although the EPA revoked the 1997 8-hour ozone NAAQS effective April 6, 2015,<sup>3</sup> the NNSR requirements applicable to Amador County based on its designation and classification for the revoked 1997 8-hour ozone NAAQS remain applicable in order to prevent future emissions from new and modified major stationary sources from increasing beyond the levels allowed, based on the area’s prior designation

and classification for the 1997 ozone NAAQS. Thus, because Amador County was designated and classified as Moderate nonattainment for the 1997 8-hour ozone NAAQS, the District’s NNSR program must satisfy the NNSR requirements applicable to Moderate ozone nonattainment areas, including the offset ratios identified in CAA section 182(b)(5).<sup>4</sup> Amador County is also designated and classified as Marginal nonattainment for the 2015 8-hour ozone NAAQS and, therefore, subject to the NNSR requirements applicable to Marginal ozone nonattainment areas.<sup>5</sup> Submission of an NNSR program that satisfies the requirements of the Act and the EPA’s regulations for Moderate ozone nonattainment areas, however, would satisfy the NNSR program requirements for Marginal ozone nonattainment areas.<sup>6</sup>

<sup>4</sup> The EPA’s determination that the Amador County area had attained the 1997 8-hour ozone NAAQS by the applicable attainment date suspended the requirements to submit those SIP elements related to attainment of these NAAQS for so long as the area continues to attain but did not suspend the requirement to submit an NNSR program. 40 CFR 51.918; see also 77 FR 71551, 71553–71554 (Dec. 3, 2012) (noting that the EPA’s attainment determination does not redesignate the area to attainment or relax control requirements).

<sup>5</sup> 40 CFR 51.1314.

<sup>6</sup> The NNSR requirements applicable to Moderate ozone nonattainment areas are identical to those that apply to Marginal ozone nonattainment areas, except that Moderate nonattainment areas are subject to a more stringent offset ratio than Marginal nonattainment areas. CAA sections 182(a)(2)(C) (requiring permit programs consistent with CAA sections 172(c)(5) and 173 for ozone nonattainment areas), 182(a)(4) (establishing 1.1 to 1 offset ratio for Marginal nonattainment areas), and 182(b)(5) (establishing 1.15 to 1 offset ratio for Moderate nonattainment areas) and 40 CFR 51.165.

Additional information regarding the District’s nonattainment status for each pollutant is included in our Technical Support Document (TSD), which may be found in the docket for this rule.

### B. How is the EPA evaluating the rule?

The EPA reviewed Rule 400 for compliance with CAA requirements for: (1) Stationary source preconstruction permitting programs as set forth in CAA part D, including CAA sections 172(c)(5) and 173; (2) the review and modification of major sources in accordance with 40 CFR 51.160–51.165 as applicable in Moderate ozone nonattainment areas; (3) the review of new major stationary sources or major modifications in a designated nonattainment area that may have an impact on visibility in any mandatory Class I Federal Area in accordance with 40 CFR 51.307; (4) SIPs in general as set forth in CAA section 110(a)(2), including 110(a)(2)(A) and 110(a)(2)(E)(i);<sup>7</sup> and (5) SIP revisions as set forth in CAA section 110(l)<sup>8</sup> and 193.<sup>9</sup> Our review evaluated the

<sup>7</sup> CAA section 110(a)(2)(A) requires that regulations submitted to the EPA for SIP approval be clear and legally enforceable, and CAA section 110(a)(2)(E)(i) requires that states have adequate personnel, funding, and authority under state law to carry out their proposed SIP revisions.

<sup>8</sup> Per CAA section 110(l), SIP revisions are subject to reasonable notice and public hearing prior to adoption and submittal by states to the EPA. Additionally, CAA section 110(l) prohibits the 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.

<sup>9</sup> CAA section 193 prohibits the modification of any SIP-approved control requirement in effect before November 15, 1990 in a nonattainment area

Continued

<sup>2</sup> CAA section 172(b) and 40 CFR 51.914.

<sup>3</sup> 80 FR 12264, 12265 (March 6, 2015).

submittal for compliance with the NNSR requirements applicable to Moderate ozone nonattainment areas, and ensured that the submittal addressed the NNSR requirements for the 1997 and 2015 ozone NAAQS.

*C. Does the rule meet the evaluation criteria?*

With respect to procedural requirements, CAA sections 110(a)(2) 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 the public process documentation included in the November 5, 2019 submittal of Rule 400, we find that the AAD has provided sufficient evidence of public notice, opportunity for comment and a public hearing prior to adoption and submittal of these rules to the EPA.

With respect to the substantive requirements found in CAA sections 172(c)(5) and 173, and 40 CFR 51.160–51.165, we have evaluated Rule 400 in accordance with the applicable CAA and regulatory requirements that apply to NNSR permit programs under part D of title I of the Act for all relevant ozone NAAQS, including the 2015 ozone NAAQS. With the exceptions noted below in Section II.D, we find that Rule 400 satisfies these requirements as they apply to sources subject to the NNSR permit program requirements applicable to Moderate ozone nonattainment areas. We have also determined that this rule satisfies the related visibility requirements in 40 CFR 51.307. In addition, we have determined that Rule 400 satisfies the requirement in CAA section 110(a)(2)(A) that regulations submitted to the EPA for SIP approval be clear and legally enforceable, and have determined that the submittal demonstrates, in accordance with CAA section 110(a)(2)(E)(i), that the District has adequate personnel, funding, and authority under state law to carry out these proposed SIP revisions.

Regarding the additional substantive requirements of CAA sections 110(l) and 193, our action will result in a more stringent SIP, while not relaxing any existing provision contained in the SIP. We have concluded that our action would comply with section 110(l) because our limited approval of Rule 400 will not interfere with any applicable requirement concerning attainment and reasonable further progress, or any other CAA applicable requirement. In addition, our limited approval of Rule 400 will not relax any

pre-November 15, 1990 requirement in the SIP, and therefore changes to the SIP resulting from this action ensure greater or equivalent emission reductions of ozone and its precursors in the District. Accordingly, we have concluded that our action is consistent with the requirements of CAA section 193.

*D. What are the rule deficiencies?*

The EPA identified five deficiencies in Rule 400. First, Section 4.5 of Rule 400 allows for the District to approve interprecursor trading (IPT) of ozone precursors to satisfy emission offset requirements, provided certain conditions are satisfied. However, on January 29, 2021, the D.C. Circuit Court of Appeals in *Sierra Club v. EPA*, 984 F.3d 1055, issued a decision holding that the CAA does not allow IPT for ozone precursors and vacating the provisions in the EPA's NNSR regulations allowing IPT for ozone precursors. In light of the Court's decision, the provision in Section 4.5 allowing for IPT for ozone precursors is no longer permissible. Second, Section 9.1(b)(iii) of Rule 400 fails to reference Section 7.4 (Relaxation in Enforceable Limitations). This apparent typographical error creates a deficiency in Section 9.1(b)(iii) of the rule, because it suggests that the source and the District need not adhere to the General requirements for establishing Plant-wide Applicability Limitations (PALs) in Section 9.4, which are required by 40 CFR 51.165(f)(4). Third, due to an apparent typographical error, Section 9.5 of the rule does not require the District to implement the public participation provisions of Section 8 for purposes of processing a request for a PAL to be established, renewed or increased in accordance with 40 CFR 51.165(f)(5). Therefore, the provisions of Section 9.5 are deficient. This error also causes a related deficiency in Sections 9.4(a)(ii), 9.8(b)(iii), 9.10(a), and 9.11(c), because these rule sections cross-reference Section 9.5, which refers to the wrong section of the rule for public participation requirements. Fourth, Section 9.10(d)(i) references Section 9.5 when it should reference Section 9.6. This error appears typographical in nature. However, this error creates a deficiency because it does not provide the correct reference for how to perform the emissions level calculation in accordance with 40 CFR 51.165(f)(10)(iv)(A). Fifth, Section 9.12(a)(iii) includes a reference to Section 7.12 of the rule (which does not exist), instead of Section 9.12. This apparent typographical error creates a deficiency in Section 9.12(a)(iii), because it does not include the

requirement to comply with the provisions of Section 9.12 in accordance with 40 CFR 51.165(f)(12)(i)(C).

Our TSD, which can be found in the docket for this rule, contains a more detailed discussion of our analysis of Rule 400.

*E. EPA Recommendations To Further Improve the Rule*

The TSD also includes recommendations for additional clarifying revisions to consider for adoption when the AAD next modifies Rule 400.

*F. Proposed Action and Public Comment*

As authorized in sections 110(k)(3) and 301(a) of the Act, the EPA is proposing a limited approval and limited disapproval of the submitted rule because it fulfills most of the relevant CAA requirements, and strengthens the SIP, but also contains five deficiencies. We have concluded that our limited approval of the submitted rule would comply with the relevant provisions of CAA sections 110(a)(2), 110(l), 172(c)(5), 173, and 193, 40 CFR 51.160–51.165, and 40 CFR 51.307.

If we finalize this action as proposed, our action will be codified through revisions to 40 CFR 52.220a (Identification of plan—in part). This action would incorporate the submitted rule into the SIP, including those provisions identified as deficient. This approval is limited because the EPA is simultaneously proposing a limited disapproval of the rule under CAA section 110(k)(3).

If finalized as proposed, our limited disapproval action would trigger an obligation on 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 the final action. Additionally, because the deficiencies relate to NNSR requirements under part D of title I of the Act, the offset sanction in CAA section 179(b)(2) would apply in Amador County 18 months after the effective date of a final limited disapproval, and the highway funding sanctions in CAA section 179(b)(1) would apply in the area six months after the offset sanction is imposed. Section 179 sanctions will not be imposed under the CAA if the State submits, and we approve, prior to the implementation of the sanctions, a SIP revision that corrects the deficiencies that we identify in our final action. The EPA intends to work with the District to correct the deficiencies in a timely manner.

<sup>1</sup> unless the modification ensures equivalent or greater emission reductions of the relevant pollutants.

We will accept comments from the public on this proposal until September 22, 2021.

### 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 AAD rule described in Table 1 of this preamble. The EPA has made, and will continue to make, these materials available through [www.regulations.gov](http://www.regulations.gov) and in hard copy 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://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. 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, Administrative practice and procedure, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

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

Dated: August 9, 2021.

**Deborah Jordan,**

*Acting Regional Administrator, Region IX.*

[FR Doc. 2021–17312 Filed 8–20–21; 8:45 am]

**BILLING CODE 6560–50–P**