

requester of the FOIA provisions for judicial review of the decision.

(2) If the Agency reverses or modifies the adverse determination on appeal, the Agency will attach the requested information that the Agency determined on appeal to be releasable, or the Agency will return the request to the appropriate office so that the office may reprocess the request in accordance with the appeal decision.

(f) *When appeal is required.* If the requester wishes to seek judicial review of any adverse determination, the requester must first appeal that adverse determination under this section, except when EPA has not responded to the request within the applicable time-period. In such cases, the requester may seek judicial review without making an administrative appeal.

§ 2.109 Other rights and services.

Nothing in this subpart shall be construed to entitle any person, as a right, to any service or to the disclosure of any record to which such person is not entitled under the FOIA.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R09-OAR-2022-0910; FRL-10564-03-R9]

Air Quality Implementation Plan; California; El Dorado County Air Quality Management District; Stationary Source Permits

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is finalizing a revision to the El Dorado County Air Quality Management District’s (EDCAQMD 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”).

DATES: This rule is effective October 16, 2023.

ADDRESSES: The EPA has established a docket for this action under Docket No. EPA-R09-OAR 2022-0910. All documents in the docket are listed on the <https://www.regulations.gov> website. Although listed in the index, some information is not publicly

available, e.g., Confidential Business Information (CBI) or other information the disclosure of which 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. 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: Camille Cassar, EPA Region IX, 75 Hawthorne St., San Francisco, CA 94105; by phone: (415) 947-4164; or by email to cassar.camille@epa.gov.

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

Table of Contents

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

I. Proposed Action

On March 31, 2023,¹ the EPA proposed to approve the rule listed in Table 1 into the California SIP.²

TABLE 1—SUBMITTED RULE

Rule No.	Rule title	Revised	Submitted
Rule 523-1	Federal Non-Attainment New Source Review	December 7, 2021	March 9, 2022.

For areas designated nonattainment for one or more National Ambient Air Quality Standards (NAAQS), the applicable SIP must include preconstruction review and permitting requirements for new or modified major stationary sources of such nonattainment pollutant(s) under part D of title I of the Act, commonly referred to as Nonattainment New Source Review (NNSR). The rule listed in Table 1 contains the District’s NNSR permit program applicable to new and modified major sources located in the designated nonattainment areas in El Dorado County. Our proposed action

contains more information on the rule and our evaluation.

II. Public Comments

The EPA’s proposed action provided a 30-day public comment period. During this period, no comments were submitted on our proposal.

III. EPA Action

No comments were submitted on our proposal. We continue to find that Rule 523-1 satisfies the relevant requirements for a CAA NNSR program for ozone and PM_{2.5} nonattainment areas,³ as well as the associated

visibility requirements for sources subject to review under such a program in accordance with 40 CFR 51.307. Therefore, as authorized in section 110(k)(3) of the Act, the EPA is approving the submitted rule.

Additionally, all sanctions and sanctions clocks triggered by our February 2, 2000 final limited approval and limited disapproval action (65 FR 4887) will be permanently terminated on the effective date of this final approval action. In our interim final determination to defer sanctions (88 FR 19225), issued concurrently with our proposed approval action, we explained

¹ 88 FR 19233.

² Concurrent with our proposed approval action, we issued an interim final determination that the District had satisfied the requirements of title I, part D of the CAA permitting program for nonattainment areas within the jurisdiction of the EDCAQMD. See 88 FR 19225 (March 31, 2023). The effect of our

interim final determination was that the imposition of sanctions that had been triggered in a February 2, 2000 final limited approval and limited disapproval action (65 FR 4887) was deferred.

³ As discussed in our proposed action, we determined that Rule 523-1 satisfies the NNSR program requirements applicable to nonattainment

areas classified as Severe for ozone and Moderate for PM_{2.5}, and that the submittal addressed the NNSR requirements both the 2008 and 2015 ozone NAAQS, as well as the 2006 PM_{2.5} NAAQS. 88 FR 19233, 19235.

our finding that Rule 523–1 would correct the deficiencies that triggered such sanctions. We received no comments on this finding or our interim final determination. Our interim final determination and our proposed action, as well as our Technical Support Document (TSD), which can be found in the docket for this action, contain more information regarding the basis for our finding in this regard.

This action incorporates the submitted rule into the California SIP. In conjunction with the EPA’s SIP approval of the District’s visibility program for sources subject to the NNSR program, this action also revises the scope of the visibility Federal Implementation Plan (FIP) at 40 CFR 52.28 in California so that this FIP no longer applies to sources located in El Dorado County that are subject to the District’s visibility program.

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 incorporating by reference El Dorado County Air Quality Management District Rule 523–1, Federal Non-Attainment New Source Review, revised on December 7, 2021, which regulates the issuance of permits for stationary sources. The EPA has made, and will continue to make, these materials available through <https://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).

V. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA’s role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely approves state law as meeting federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 14094 (88 FR 21879, April 11, 2023);
- Does not impose an information collection burden under the provisions

of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);

- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
 - Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
 - Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
 - Is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997) because it approves a state program;
 - Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001); and
 - Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act.
- In addition, 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. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).
- Executive Order 12898 (Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations, 59 FR 7629, Feb. 16, 1994) directs Federal agencies to identify and address “disproportionately high and adverse human health or environmental effects” of their actions on minority populations and low-income populations to the greatest extent practicable and permitted by law. The EPA defines environmental justice (EJ) as “the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies.” The EPA further defines the term fair treatment to mean that “no group of people should bear a disproportionate burden of environmental harms and risks, including those resulting from the negative environmental consequences of industrial, governmental, and commercial operations or programs and policies.”

The State did not evaluate environmental justice considerations as

part of its SIP submittal; the CAA and applicable implementing regulations neither prohibit nor require such an evaluation. The EPA did not perform an EJ analysis and did not consider EJ in this action. Due to the nature of the action being taken here, this action is expected to have a neutral to positive impact on the air quality of the affected area. Consideration of EJ is not required as part of this action, and there is no information in the record inconsistent with the stated goal of E.O. 12898 of achieving environmental justice for people of color, low-income populations, and Indigenous peoples.

This action is subject to the Congressional Review Act, 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). 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 November 13, 2023. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action 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, Incorporation by reference, Intergovernmental relations, Nitrogen oxides, Ozone, Particulate matter, Reporting and recordkeeping requirements, Volatile organic compounds.

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

Dated: August 28, 2023.

Martha Guzman Aceves,
Regional Administrator, Region IX.

For the reasons stated in the preamble, the Environmental Protection Agency 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 paragraph (c)(604)(i)(B) to read as follows:

§ 52.220 Identification of plan-in part.

* * * * *

(c) * * *

(604) * * *

(i) * * *

(B) El Dorado County Air Quality Management District.

(1) Rule 523-1, “Federal Non-Attainment New Source Review,” revised on December 7, 2021.

(2) [Reserved]

■ 3. Section 52.281 is amended by adding paragraph (d)(11) to read as follows:

§ 52.28 1 Visibility protection.

* * * * *

(d) * * *

(11) El Dorado County Air Quality Management District.

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