



U.S. Environmental Protection Agency, Region 9

Technical Support Document

**Notice of Proposed Rulemaking
Revisions to the California State Implementation Plan
Tehama County Air Pollution Control District
Rule 2:3C – New and Modified Major Sources in the Tuscan Buttes
Nonattainment Areas**

Docket ID No.: EPA-R09-OAR-2022-0526

Prepared by: Manny Aquitania

Reviewed by: Doris Lo

February 2024

Table of Contents

1	Introduction	1
2	Submittal Information.....	2
2.1	Submittal Agency Information.....	2
2.2	Air Quality in Tehama County	2
3	SIP Submittal	4
3.1	State Rule Adoption and Submittal Information	4
3.2	Completeness Determination	4
4	Requirements for SIP Approval	4
4.1	Nonattainment NSR Programs.....	4
4.2	General NSR Programs.....	5
4.3	Scope of SIP Submittal for Rule 2:3C	6
5	Rule 2:3C Section Summaries.....	7
5.1	Rule 2:3C –New and Modified Major Sources in the Tuscan Buttes Nonattainment Area	7
6	Evaluation of Nonattainment NSR Program and related Requirements	10
6.1	Rule Evaluation Criteria	10
6.2	Nonattainment NSR Evaluation	11
6.3	Summary of the EPA’s Rule Evaluation.....	11
6.4	Clean Air Act Section 110(a)(2)(E)(i) Analysis	11
7	Clean Air Act Section 110(l) Analysis.....	12
8	Clean Air Act Section 193 Analysis.....	12
9	The EPA’s Proposed Action.....	13
10	References	13

1 INTRODUCTION

In this Technical Support Document (TSD), the U.S. Environmental Protection Agency (EPA) discusses its analysis of a rule adopted by the Tehama County Air Pollution Control District (TCAPCD or “District”) and submitted by the California Air Resources Board (CARB) for inclusion in California’s State Implementation Plan (SIP) under the Clean Air Act (CAA or “the Act”). The submitted rule implements preconstruction review and permitting requirements for stationary sources of air pollution, as required under the New Source Review (NSR) program of the Act. This TSD discusses the EPA’s findings on whether the submitted rule meets the applicable CAA requirements for state NSR programs, as well as other CAA general requirements for SIP submittals. A more detailed analysis of how the TCAPCD’s NSR submittal of Rule 2:3C, “New and Modified Major Sources in the Tuscan Buttes Nonattainment Areas” (“Rule 2:3C”), addresses the relevant CAA requirements is provided in the document entitled “TCAPCD Rule 2:3C Evaluation” (“Evaluation”), which is included as Attachment 1 to this TSD.

The four main components of the Act’s NSR program, and the SIP requirements for each component, are briefly summarized as follows:

Minor or General NSR Program

Section 110(a)(2)(C) of the Act requires that each SIP include a program to provide for “regulation of the modification and construction of any stationary source within the areas covered by the plan as necessary to assure that national ambient air quality standards are achieved, including a permit program as required in parts C and D.” The permit programs specified in parts C and D of title I of the Act only apply to new major stationary sources of regulated NSR pollutants and major modifications of such sources. Thus, in addition to the permit programs specified in parts C and D of title I of the Act, each SIP must also include a broader program to provide for the regulation of the construction and modification of any stationary source within the areas covered by the plan as necessary to assure attainment and maintenance of the national ambient air quality standards (NAAQS). These broader, general preconstruction requirements are commonly referred to as the “minor NSR” or “general NSR” program and are implemented through the EPA’s regulations at 40 CFR 51.160-51.164. These requirements are the only NSR requirements that apply to non-major, i.e., “minor” stationary sources and modifications. While these requirements also apply to new major sources and major modifications, such sources are also addressed by more detailed requirements in parts C and D of the Act and their implementing regulations, as described below.

Nonattainment NSR Program

Part D of title I of the Act, and the EPA’s implementing regulations at 40 CFR 51.165, contain the NSR requirements for preconstruction permitting programs in areas designated nonattainment for one or more of the NAAQS. These requirements, referred to as the “nonattainment NSR” or “NNSR” program, apply only to nonattainment pollutants (and their precursors) at new major stationary sources and major modifications at existing major stationary sources located in nonattainment areas.

PSD Program

Part C of title I of the Act, and the EPA's implementing regulations at 40 CFR 51.166, contain the requirements for preconstruction permitting programs for the prevention of significant deterioration of air quality (PSD) in areas designated as attainment or unclassifiable for one or more NAAQS.¹ Like the NNSR program, the PSD program applies only to new major sources and major modifications at existing major sources.

Visibility

CAA Section 169A imposes additional requirements for PSD and NNSR programs. CAA section 169A specifies that the EPA must promulgate regulations requiring states to provide for visibility protection for mandatory Class I Federal areas. The EPA developed implementing regulations at 40 CFR 51.307(a) that require that PSD programs provide for review of any major stationary source or major modification that may have an impact on visibility in any mandatory Class I Federal area. Similarly, the EPA's implementing regulations at 40 CFR 51.307(b) and (c) require that NNSR programs provide for review of any major stationary source or major modification that may have an impact on visibility in any mandatory Class I Federal area. 40 CFR 51.307(d) provides that the state may require monitoring of visibility in any Federal Class I area near the proposed new major stationary source or major modification for such purposes and by such means as the state deems necessary and appropriate.

In this case, the rule that is the subject of this EPA action, TCAPCD's Rule 2:3C, is intended to address the CAA NNSR program requirements and related visibility program requirements that apply to the District and the relevant sources therein, as explained in more detail in Section 4 below.

2 SUBMITTAL INFORMATION

2.1 SUBMITTAL AGENCY INFORMATION

The TCAPCD is the air pollution control agency for all of Tehama County and is responsible for regulating stationary sources of air pollution within its boundaries. CARB is the California agency responsible for submitting official revisions of the California SIP to the EPA.

2.2 AIR QUALITY IN TEHAMA COUNTY

Tehama County is currently designated attainment/unclassifiable for the nitrogen dioxide (NO₂), carbon monoxide (CO), particulate matter equal to or less than 10 micrometers (PM₁₀), particulate matter equal to or less than 2.5 micrometers (PM_{2.5}), sulfur dioxide (SO₂), and lead

¹ In areas without a SIP-approved State PSD program, the EPA implements a federal PSD program pursuant to the requirements of the PSD Federal Implementation Plan (FIP) at 40 CFR 52.21. The EPA may delegate authority to implement the federal PSD program at 40 CFR 52.21 to a State or local agency, pursuant to 40 CFR 52.21(u).

(Pb) NAAQS. See 40 CFR 81.305. The area's nonattainment designation history for the ozone NAAQS and basis for needing a NNSR program is detailed below.

2008 Ozone NAAQS

On March 27, 2008, the EPA issued a final rule revising the NAAQS for ozone, reducing the standards to a level of 0.075 ppm. 40 CFR 50.15; see 73 FR 16436, 16511. On May 21, 2012, the EPA issued a final rule designating a portion of Tehama County (Tuscan Buttes area) as nonattainment for the 2008 8-hour ozone NAAQS, with a Marginal classification.² 77 FR 30088, 30109; see 40 CFR 81.305. On May 4, 2016, the EPA issued a final rule that determined that the Tuscan Buttes nonattainment area in Tehama County had attained the 2008 ozone NAAQS by the applicable attainment date. 81 FR 26697.

2015 Ozone NAAQS

On October 26, 2015, the EPA issued a final rule revising the NAAQS for ozone, reducing the standards to a level of 0.070 ppm. 40 CFR 50.19; see 80 FR 65292, 65452-53. On June 4, 2018, the EPA issued a final rule designating a portion of Tehama County (Tuscan Buttes area) as nonattainment for the 2015 8-hour ozone NAAQS, with a Marginal (Rural Transport)³ classification. 83 FR 25776, 25791; see 40 CFR 81.305. On October 20, 2022, the EPA published a Federal Register notice determining that the Tuscan Buttes nonattainment area attained the 2015 ozone NAAQS by the attainment date of August 3, 2021. 87 FR 63698.

NNSR Program Development

The EPA's May 2012 designation of the Tuscan Buttes area as a nonattainment area for the 2008 ozone NAAQS triggered the requirement for the District to develop and submit an NNSR program to the EPA for SIP approval. CAA section 172(b) and 40 CFR 51.1114. Because Tehama County (Tuscan Buttes area) is designated as Marginal nonattainment for the 2008 ozone NAAQS, the District's NNSR program must satisfy the NNSR requirements applicable to Marginal ozone nonattainment areas. See 40 CFR 51.1102. As Tehama County (Tuscan Buttes area) is also designated as Marginal nonattainment (Rural Transport) for the 2015 ozone NAAQS, its NNSR program for the 2015 ozone NAAQS likewise must satisfy the NNSR requirements applicable to Marginal ozone nonattainment areas. See 40 CFR 51.1302, 51.1314.⁴

² The Tuscan Buttes area, which is defined as those portions of the immediate Tuscan Buttes area at or above 1,800 feet in elevation, is the nonattainment area in Tehama County.

³ See CAA section 182(h).

⁴ The EPA's determination that the Tuscan Buttes nonattainment area in Tehama County had attained the 2008 and 2015 ozone NAAQS by the applicable attainment dates 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. See 40 CFR 51.1118; 40 CFR 51.1318.

3 SIP SUBMITTAL

3.1 STATE RULE ADOPTION AND SUBMITTAL INFORMATION

Rule 2:3C was adopted by the TCAPCD on the date listed below in Table 1 and was submitted to the EPA through CARB via correspondence dated May 10, 2023, on the submittal date indicated in Table 1.⁵

Table 1 – Submitted Rule

Rule #	Rule Title	Adopted	Submitted
Rule 2:3C	New and Modified Major Sources in the Tuscan Buttes Nonattainment Area	02/28/2023	05/11/2023

3.2 COMPLETENESS DETERMINATION

With respect to procedures, CAA section 110(a) requires that revisions to a SIP be adopted by the State after reasonable notice and opportunity for a public hearing. The EPA has promulgated specific procedural requirements for SIP revisions in 40 CFR part 51, Subpart F and Appendix V. These requirements include publication of notices by prominent advertisement in the relevant geographic area, a public comment period of at least 30 days, and an opportunity for a public hearing. Based on our review of the public process documentation included in the May 11, 2023 submittal, and the supplemental submittal of the rule by CARB on December 5, 2023, we find that the TCAPCD has provided sufficient evidence of public notice, opportunity for comment, and public hearings prior to adoption and submittal of this rule to the EPA.

On November 11, 2023, CARB's May 11, 2023 SIP submittal was determined to be complete by operation of law.

4 REQUIREMENTS FOR SIP APPROVAL

4.1 NONATTAINMENT NSR PROGRAMS

As discussed above, the NNSR program is a preconstruction review and permitting program established under CAA sections 110, 172(c)(5) and 173 that is applicable to certain new stationary sources and modifications at existing stationary sources. The specific regulatory requirements applicable to NNSR programs are contained in 40 CFR 51.165, and state NNSR programs must also be consistent with the general NSR requirements in 40 CFR 51.160-51.164. Sections 172(c)(5) and 173 of Part D of title I of the CAA and the EPA's implementing regulations at 40 CFR 51.165 contain the NNSR requirements that are specific to areas designated

⁵ On December 5, 2023, CARB submitted a corrected version of Rule 2:3C, as the copy of the clean version of the rule that had been included in the May 11, 2023 SIP submittal did not include its adoption date and also contained an additional formatting error, and thus did not reflect the final rule that had been adopted on February 28, 2023.

nonattainment under the CAA for the NAAQS. NNSR applies only to the pollutants for which the area is designated nonattainment and to precursors of those pollutants.

The primary criterion for applicability of the NNSR program to a particular stationary source is whether the proposed new source or project at an existing source is sufficiently large (in terms of its emissions) to be a major stationary source or major modification. The NNSR program has specific emission thresholds for determining which sources are major stationary sources or major modifications based on the nonattainment classification of the particular nonattainment pollutants in the area at issue.

Generally, a major stationary source in a nonattainment area is defined as a stationary source with a potential to emit (PTE) of 100 tons per year (tpy) or more of a nonattainment pollutant or one of its precursors. The major stationary source emissions thresholds are generally lower in nonattainment areas that have been determined to have higher degrees of nonattainment. For example, ozone nonattainment areas are classified as being marginal, moderate, serious, severe, or extreme (listed in increasing order of the degree of nonattainment). The major source thresholds for these areas vary between 100 and 10 tpy. A new major stationary source is subject to the NNSR program requirements only if the source is a major source for that nonattainment pollutant or one of its precursors.

Modifications to existing major stationary sources (for a particular nonattainment pollutant) are subject to the NNSR program requirements at “significant” emission rates. The significant emission rate is lower in certain nonattainment areas with higher degrees of nonattainment, with the specific level based on the area’s particular nonattainment classification.

The CAA provides that once a stationary source is subject to the NNSR program, the source must meet several criteria prior to receiving a preconstruction permit. The most significant of these requirements are (1) the application of the lowest achievable emission rate (LAER) to the new stationary source or project and (2) the requirement to offset the emission increases from the new source or project with decreases in emissions from the same or other stationary sources.

In addition, to implement CAA Section 169A, 40 CFR 51.307(b) requires that NNSR programs provide for review of any major stationary source or major modification that may have an impact on visibility in any mandatory Class I Federal area. Such sources are required to perform a visibility impact analysis consistent with the provisions of 40 CFR 51.307(a) and 40 CFR 51.166 (o), (p)(1) through (2) and (q). See 40 CFR 51.307(c). 40 CFR 51.307(d) also provides for states to require monitoring of visibility in any Federal Class I area near the proposed new major stationary source or major modification.

4.2 GENERAL NSR PROGRAMS

As discussed above, CAA section 110(a)(2)(C) requires that SIPs include a general NSR program, which is a preconstruction review and permitting program that is applicable to new and

modified stationary sources of air pollution. The specific regulatory requirements for the general NSR program are found at 40 CFR 51.160-51.164. These requirements also apply to major sources and major modifications, in addition to the more detailed requirements in parts C and D of the Act and their implementing regulations at 40 CFR 51.166 and 51.165, respectively.

4.3 SCOPE OF SIP SUBMITTAL FOR RULE 2:3C

Because the Tuscan Buttes portion of Tehama County is a federal ozone nonattainment area, the CAA requires the TCAPCD to have a SIP-approved NNSR program for new and modified major sources in the ozone nonattainment area that is under its jurisdiction. CAA 110(a)(2)(C), 172(c)(5), 173; 40 CFR 51.165. This TSD discusses the EPA's findings on whether Rule 2:3C meets the federal requirements for SIP-approved NNSR programs in 40 CFR 51.165 and relevant provisions of CAA section 173 that are applicable to the District as an ozone nonattainment area with a Marginal classification.⁶ Our analysis reflects the EPA's examination of whether Rule 2:3C satisfies currently applicable CAA NNSR program requirements for ozone nonattainment areas.⁷

This TSD also discusses the EPA's findings on whether Rule 2:3C meets the federal visibility requirements related to State NNSR programs in 40 CFR 51.307(b)-(d). In addition, this TSD discusses the EPA's findings on whether the submitted rule meets the "general NSR" requirements of 40 CFR 51.160-51.164 as applied to the major sources and major modifications that are the subject of the rule.

Rule 2:3C is not intended to address CAA NSR requirements applicable to minor sources and minor modifications, thus our evaluation and this TSD do not evaluate CAA NSR requirements as applied to such sources. Rule 2:3C is also not intended to address the requirements for the PSD component of the CAA NSR program, thus our evaluation and this TSD do not address CAA PSD requirements.

⁶ We are not currently evaluating whether Rule 2:3C would satisfy the federal requirements for NNSR programs for areas with a higher ozone nonattainment classification, nor are we evaluating whether this rule would satisfy the federal requirements for NNSR programs applicable to areas designated nonattainment for other NAAQS pollutants. If, in the future, the District were to be designated nonattainment for a NAAQS pollutant other than ozone, the requirements of 40 CFR Part 51, Appendix S would govern NNSR permitting for that pollutant upon the effective date of such designation for purposes of the CAA.

⁷ We note that, on December 6, 2018, the EPA issued a final rule promulgating the implementation requirements for the 2015 ozone NAAQS, including updated NNSR program requirements for ozone nonattainment areas. See 83 FR 62998. On January 29, 2021, the D.C. Circuit Court of Appeals in *Sierra Club v. EPA*, 21 F.4th 815, issued a decision holding that the CAA does not allow interprecursor trading (IPT) of ozone precursors to satisfy emission offset requirements, and vacating the provisions in the EPA's NNSR regulations allowing IPT for ozone precursors. The EPA subsequently revised its regulations at 40 CFR 51.165(a)(11) to make them consistent with the Court's ruling. See 86 FR 37918 (July 19, 2021). As part of the same rulemaking action, the EPA also made other minor revisions to 40 CFR 51.165 to correct minor, inadvertent, and non-substantive errors, noting that states have discretion as to when to make those changes and may choose to combine them with other SIP submittals. See *id.*

In reviewing Rule 2:3C, we have also evaluated the District's rule and our proposed action on the rule to ensure that they adhere to the requirements of CAA sections 110(a)(2)(A), 110(a)(2)(E)(i), 110(l), and 193. CAA section 110(a)(2)(A) requires that regulations submitted to the EPA for SIP approval be clear and legally enforceable. 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. CAA section 110(l) requires that states provide notice and hearing of SIP revisions prior to their submittal and prohibits the EPA from approving any SIP revisions that would interfere with attainment or maintenance of a NAAQS, reasonable further progress (RFP) or other applicable requirement of the CAA. CAA section 193 prohibits the modification of any SIP-approved control requirement in effect before November 15, 1990 in a nonattainment area, unless the modification ensures equivalent or greater emission reductions of the relevant pollutants. This TSD discusses our analysis of these requirements as applied to Rule 2:3C and our proposed action on the rule.

As noted above, our detailed analysis of how the TCAPCD's NSR submittal of Rule 2:3C addresses the applicable requirements for a NNSR program, including the general NSR requirements, and related visibility requirements, is summarized in our Evaluation, which is included as Attachment 1 to this TSD. In addition, our analysis of the rule is summarized below in Section 6.3 of this TSD.

5 RULE 2:3C SECTION SUMMARIES

5.1 RULE 2:3C—NEW AND MODIFIED MAJOR SOURCES IN THE TUSCAN BUTTES NONATTAINMENT AREA

Rule 2:3C is a new rule intended to satisfy the requirements of the NNSR program under CAA Part D of title I that are applicable in an ozone nonattainment area. Rule 2:3C is divided into 11 sections. A summary of each Rule 2:3C section, and some subsections, is provided below.

Section 1, Applicability Procedures – This section is comprised of 8 subsections:

1.1 – Preconstruction Review Requirements – This subsection provides that Rule 2:3C's requirements for preconstruction review apply to all proposed new major stationary sources or major modifications in the District that are major for a nonattainment pollutant anywhere in the nonattainment area and specifies that the requirements of Rule 2:3C take precedence over those in other District rules and regulations.

1.2 – Authority to Construct Requirement – This subsection provides that no new major source or major modification subject to Rule 2:3C may begin construction without first obtaining an authority to construct (ATC) from the TCAPCD in accordance with the rule.

1.3 – Emission Calculation Requirements to Determine NSR Applicability – This subsection contains the procedures and formulas to calculate emissions increases and decreases for new or modified facilities.

1.4 – Major Sources with Plant-wide Applicability Limitations (PAL) – This subsection requires that any major stationary source with a PAL permit for a nonattainment pollutant obtain a PAL permit from the Air Pollution Control Officer (APCO) that complies with the provisions in 40 CFR 51.165(f)(1) through (14), which are incorporated by reference into Section 9 of the rule.

1.5 – Projects That Rely On a Projected Actual Emissions Test – This subsection requires that, prior to beginning actual construction of certain projects at existing major stationary sources that are not part of a major modification, the owner or operator of the source document and maintain certain information concerning the project and its emissions. It also requires that the owner or operator monitor and/or report information concerning the project and/or its emissions in certain circumstances.

1.6 – Secondary Emissions – This subsection states that secondary emissions will not be considered for determining whether a stationary source would qualify as a major stationary source.

1.7 – Stationary Sources – This subsection clarifies that the term “stationary source” does not refer to emissions resulting directly from internal combustion engines for transportation purposes or nonroad engines or nonroad vehicles as defined in section 216 of the Act.

1.8 – Environmental Protection Agency Determination – This subsection provides that the Air Pollution Control Officer (APCO) will not issue an ATC to a major stationary source or a major modification if the EPA has determined that the nonattainment area requirements of the SIP are not being adequately implemented for the nonattainment area.

Section 2, Definitions – This section provides a list of definitions that apply to the rule, including the incorporation by reference of the definitions contained in 40 CFR 51.100, 51.165(a)(1), and 51.301.

Section 3, Application Requirements – This section contains requirements that direct the owner or operator of the source to apply for an ATC and identifies the required contents of the application. It also requires an analysis proposing LAER for each emission unit included in the proposed new major source or major modification emitting the nonattainment pollutant that makes the source subject to review under Rule 2:3C. The seven subsections of Section 3 are as follows:

3.1 – Application Submittal – This subsection requires an owner/operator of any proposed new major stationary source or major modification required to obtain an ATC to submit a complete application for the ATC adhering to specified criteria.

3.2 – Application Content – This subsection lists the information required in an ATC application.

3.3 – Lowest Achievable Emission Rate (LAER) – This subsection requires the applicant to provide an analysis demonstrating that LAER has been proposed for each emission unit of the new major stationary source or major modification that emits the nonattainment pollutant at issue.

3.4 – Statewide Compliance – This subsection requires the applicant to submit a certification that each major stationary source owned or operated by the applicant (or specific affiliated entities) in California is in compliance with all applicable emission limitations and standards under the Act or a federally enforceable compliance schedule.

3.5 – Analysis of Alternatives – This subsection requires that the applicant submit an analysis of alternative sites, sizes, production processes, and environmental control techniques for the proposed source that demonstrates that the benefits of the proposed source significantly outweigh the environmental and social costs imposed because of its location, construction, or modification.

3.6 – Sources Impacting Class I Areas – This subsection requires that an analysis be submitted to the APCO of impairment to visibility that would occur as a result of the source or modification.

3.7 – Application Fees – This subsection requires the applicant to pay applicable fees specified in District Rule 2:11.

Section 4, Emissions Offsets – This section contains the requirements for offsets, including how offsets may be used and credited.

Section 5, Administrative Requirements – This section contains requirements concerning visibility review and consultation, ambient air quality standards, air quality models, and stack height procedures.

Section 6, Authority to Construct - Decision – This section describes procedural and substantive requirements the APCO must follow for determining whether to approve or deny the application for an ATC. This section also specifies requirements concerning the contents of an ATC, including requirements for LAER and Emission Reduction Credits (ERC). The five subsections of Section 6 are as follows:

6.1 – Preliminary Decision – This subsection outlines the steps that the APCO will take to determine whether to issue a preliminary decision to approve, conditionally approve, or deny an ATC.

6.2 – Authority to Construct - Preliminary Decision Requirements – This subsection describes the determinations that the APCO must make prior to the issuance of a preliminary decision to issue an ATC.

6.3 – Authority to Construct Contents – This subsection describes the terms and conditions of an ATC, including requirements for LAER.

6.4 – Authority to Construct - Final Decision – This subsection provides that the APCO must consider all written comments submitted within 30 days of public notification and all written comments received at any public hearings in making a final determination on the approvability of the application and the appropriate ATC terms and conditions. It also imposes additional substantive and procedural requirements for the issuance of the final decision. In addition, it specifies procedural requirements for the public to access the comments received, the District’s response to comments, and the District’s final decision.

6.5 – Permit to Operate – This subsection requires that the applicable terms and conditions of an issued ATC shall be included in any Permit to Operate (PTO).

Section 7, Source Obligations – This section describes the conditions under which enforcement action may be taken for constructing or operating a source without an ATC or PTO, provides the conditions under which the approval of the ATC may be terminated, and specifies other requirements related to source compliance.

Section 8, Public Participation – This section includes procedural requirements governing how the APCO will inform the public of a preliminary written decision to issue an ATC and will undertake related public participation actions.

Section 9, Plant-wide Applicability Limits (PAL) – This section provides the authority under which the APCO may issue a PAL permit and incorporates by reference the requirements and definitions contained in 40 CFR 51.165(f)(1) through (14).

Section 10, Invalidation – This section preserves the rule’s and its provisions’ general application if any provision of the rule, or application of such provision, becomes invalid.

Section 11, Effective Date for Referenced Federal Regulations – This section provides that all references and citations in the rule to 40 CFR refer to the referenced federal regulation as in effect on July 1, 2019.

6 EVALUATION OF NONATTAINMENT NSR PROGRAM AND RELATED REQUIREMENTS

6.1 RULE EVALUATION CRITERIA

In analyzing Rule 2:3C, we reviewed it for compliance with the substantive CAA requirements for SIPs in general as set forth in CAA section 110(a)(2), the requirements for stationary source preconstruction permitting programs in 40 CFR 51.165 and CAA sections 172(c)(5) and 173 for ozone nonattainment areas with a Marginal classification, and the related requirements in 40 CFR 51.307. We also reviewed it for compliance with the general NSR requirements in 40 CFR

51.160-51.164 as applied to the sources and projects subject to the rule. We also evaluated the rule submittal and our action to ensure consistency with the requirements related to SIP revisions in CAA sections 110(a)(2)(E)(i), 110(l) and 193.

The EPA also relied on the following materials in our review:

- General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990 (*see* 57 FR 13498, April 16, 1992),
- The EPA's Emission Offset Interpretive Ruling (40 CFR part 51, appendix S),
- The EPA's policy document entitled, "Improving Air Quality with Economic Incentive Programs" that was published in January 2001, and
- Other materials listed in the docket for this proposed action.

6.2 NONATTAINMENT NSR EVALUATION

The EPA's detailed analysis of whether and where Rule 2:3C meets the specific elements required in 40 CFR part 51, subpart I for SIP approval of an NNSR program and related requirements, including the federal visibility requirements related to State NNSR programs in 40 CFR 51.307(b)-(d), is included in our TCAPCD Rule 2:3C Evaluation ("Evaluation"), Attachment 1 to this TSD. As noted above, this TSD provides a summary of our evaluation of Rule 2:3C and highlights the issues identified in our evaluation, as appropriate. Generally, only those issues that warrant a more detailed discussion are included in the TSD.

6.3 SUMMARY OF THE EPA'S RULE EVALUATION

As shown in our Evaluation, provided in Attachment 1, we have determined that Rule 2:3C meets the requirements for NNSR programs applicable to ozone and its precursors in areas classified as Marginal nonattainment.

Based on our determination that Rule 2:3C complies with the applicable regulatory requirements for NNSR programs, we recommend proposing approval of Rule 2:3C.

As noted above, our Evaluation also includes our review of how Rule 2:3C rule meets the relevant elements for CAA visibility provisions for sources subject to NNSR review in 40 CFR 51.307. Based on our review, we have determined that the District's NNSR program rule satisfies these elements in 40 CFR 51.307, and we are proposing to approve the District's visibility provisions for sources subject to the NNSR program under 40 CFR 51.307.

6.4 CLEAN AIR ACT SECTION 110(A)(2)(E)(I) ANALYSIS

The District's SIP submittal of Rule 2:3C provides information regarding the District's legal authority, personnel, and funding to implement the NNSR program through Rule 2:3C. In addition, we note that the District has the primary responsibility for regulating air pollution from all stationary sources within Tehama County (see California Health & Safety Code (H&SC)

Sections 39002 and 40000). (CARB oversees the District's activities and regulates mobile sources of air pollution.) Under State law, the District is required to adopt rules to achieve and maintain State and federal ambient air quality standards in the area under its jurisdiction, and to enforce the provisions of local, State and federal air quality laws (see H&SC Section 40001(a)). Rule 2:3C provides the District with specific authority to issue NNSR permits and otherwise implement and enforce the NNSR program.

The District's permitting program (which is authorized by H&SC Section 42300 and must meet the requirements of Section 42301), as approved by the EPA, currently implements requirements from both the California and federal Clean Air Acts. The District is authorized by State law to enforce its rules, regulations and orders, including conditions contained in District-issued Title V and NNSR permits (see H&SC Sections 40752(b), 41513, and 42402-42403).

Consistent with CAA Section 110(a)(2)(E)(i), the District's SIP submittal, including the staff report accompanying the rule and Rule 2:3C, and the State statutory provisions discussed above, make clear that the District has the authority under State statute and rule to administer the NNSR permit program, including but not limited to the authority to administer, process and issue any and all permit decisions, and enforce NNSR permit requirements, within the District. The District's SIP submittal, and the permit fee requirements in Rule 2:3C, also demonstrate that the District has adequate personnel and funding to administer, implement and enforce the NNSR program.

7 CLEAN AIR ACT SECTION 110(I) ANALYSIS

Rule 2:3C is a new SIP rule which imposes new requirements for any major source or major modification with a potential to emit nonattainment NAAQS pollutants or their precursors above specified thresholds. This will result in a more stringent SIP for these sources, while not relaxing any existing provision contained in the SIP. Therefore, the EPA has determined that our approval of Rule 2:3C will not interfere with any applicable requirement concerning attainment and Reasonable Further Progress or any other applicable requirement of the Act.

8 CLEAN AIR ACT SECTION 193 ANALYSIS

Section 193 of the Act, which was added by the Clean Air Act Amendments of 1990, includes a savings clause which provides, in pertinent part: "No control requirement in effect, or required to be adopted by an order, settlement agreement, or plan in effect before November 15, 1990, in any area which is a nonattainment area for any air pollutant may be modified after November 15, 1990, in any manner unless the modification insures equivalent or greater emission reductions of such air pollutant."

Our approval of Rule 2:3C will add NNSR requirements to the California SIP for the District, thereby strengthening the SIP. The addition of Rule 2:3C to the SIP 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, this action is consistent with the requirements of CAA Section 193.

9 THE EPA'S PROPOSED ACTION

Pursuant to sections 110(k)(3) and 301 of the Act, we are proposing approval of Rule 2:3C, "New and Modified Major Sources in the Tuscan Buttes Nonattainment Areas." This proposed approval action is based on our determination that the submitted rule satisfies the applicable statutory and regulatory provisions governing regulation of stationary sources under CAA section 110(a)(2)(C), including the permitting requirements for major stationary sources in part D of title I of the Act and our implementing regulations at 40 CFR 51.160-51.165, as well as the related visibility requirements in 40 CFR 51.307. In support of this proposed action, we have also concluded that our action would comply with the requirements of sections 110(a)(2)(E)(i), 110(l) and 193 of the Act, as explained above.

If we finalize this action as proposed, our action will be codified through revisions to 40 CFR 52.220 (Identification of Plan-in part). In conjunction with our SIP approval of the District's visibility provisions for major sources subject to review under the NNSR program, we also propose to revise 40 CFR 52.281(d) regarding applicability of the visibility Federal Implementation Plan (FIP) at 40 CFR 52.28 as it pertains to California. Approval of the District's visibility provisions under 40 CFR 51.307 would mean that this FIP is not needed to satisfy the CAA visibility requirements at 40 CFR 51.307 for sources subject to the District's NNSR program. This revision will clarify the application of this FIP in California following our final action.

10 REFERENCES

1. Attachment 1 – TCAPCD Rule 2:3C Evaluation
2. Excluding the Federal Register notices, copies of all documents referenced in this TSD are located in Docket No. EPA-R09-OAR-2022-0526 for this rulemaking action. The Docket may be viewed at <https://www.regulations.gov>.
3. Copies of the Federal Register notices are publicly accessible at <https://www.govinfo.gov/app/collection/FR/>.