



This document is scheduled to be published in the Federal Register on 11/01/2011 and available online at <http://federalregister.gov/a/2011-28246>.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R09-OAR-2011-0382; FRL-9477-4]

Revisions to the California State Implementation Plan, Placer County Air Pollution Control District and Sacramento Metro Air Quality Management District

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

**ACTION:** Direct final rule.

**SUMMARY:** EPA is taking direct final action to approve revisions to the Placer County Air Pollution Control District (PCAPCD) and Sacramento Metro Air Quality Management District (SMAQMD) portions of the California State Implementation Plan (SIP). These revisions concern oxides of nitrogen (NO<sub>x</sub>) emissions from industrial, institutional and commercial boilers, stationary internal combustion engines and water heaters. We are approving local rules that regulate these emission sources under the Clean Air Act as amended in 1990 (CAA or the Act).

**DATES:** This rule is effective on [Insert date 60 days from the date of publication in the Federal Register] without further notice, unless EPA receives adverse comments by [Insert date 30 days from the date of publication in the Federal Register]. If we receive such comments, we will publish a timely withdrawal in

the Federal Register to notify the public that this direct final rule will not take effect.

**ADDRESSES:** Submit comments, identified by docket number EPA-R09-OAR-2011-0382, by one of the following methods:

1. Federal eRulemaking Portal: [www.regulations.gov](http://www.regulations.gov). Follow the on-line instructions.
2. E-mail: [steckel.andrew@epa.gov](mailto:steckel.andrew@epa.gov).
3. Mail or deliver: Andrew Steckel (Air-4), U.S. Environmental Protection Agency Region IX, 75 Hawthorne Street, San Francisco, CA 94105-3901.

*Instructions:* All comments will be included in the public docket without change and may be made available online at [www.regulations.gov](http://www.regulations.gov), including any personal information provided, unless the comment includes Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Information that you consider CBI or otherwise protected should be clearly identified as such and should not be submitted through [www.regulations.gov](http://www.regulations.gov) or e-mail.

[www.regulations.gov](http://www.regulations.gov) is an "anonymous access" system, and EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send e-mail directly to EPA, your e-mail address will be automatically captured and included as part of the public comment. If EPA cannot read your comment due to technical difficulties and cannot contact you for

clarification, EPA may not be able to consider your comment.

Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

*Docket:* Generally, documents in the docket for this action are available electronically at [www.regulations.gov](http://www.regulations.gov) and in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California. While all documents in the docket are listed at [www.regulations.gov](http://www.regulations.gov), some information may be publicly available only at the hard copy location (e.g., copyrighted material, large maps), and some may not be publicly available in either location (e.g., CBI). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

**FOR FURTHER INFORMATION CONTACT:** Idalia Pérez, EPA Region IX, (415) 972-3248, [perez.idalia@epa.gov](mailto:perez.idalia@epa.gov).

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

## Table of Contents

- I. The State's Submittal
  - A. What rules did the State submit?
  - B. Are there other versions of these rules?
  - C. What is the purpose of the submitted rules?
- II. EPA's Evaluation and Action.

- A. How is EPA evaluating the rules?
- B. Do the rules meet the evaluation criteria?
- C. EPA recommendations to further improve the rules.
- D. Public comment and final action.

### III. Statutory and Executive Order Reviews

#### I. The State's Submittal

- A. What rules did the State submit?

Table 1 lists the rules we are approving with the dates that they were adopted or amended by the local air agency and submitted by the California Air Resources Board (CARB).

Table 1 - Submitted Rules

Local Agency	Rule #	Rule Title	Adopted/ Amended	Submitted
PCAPCD	231	Industrial, Institutional and Commercial Boiler, Steam Generator and Process Heaters	10/09/97	03/17/09
PCAPCD	242	Stationary Internal Combustion Engines	04/10/03	12/07/10
PCAPCD	246	Natural Gas-Fired Water Heaters	06/19/97	12/07/10
SMAQMD	414	Water Heaters, Boilers and Process Heaters Rated Less Than 1,000,000 BTU per hour	03/25/10	04/05/11

On April 20, 2009, EPA determined that the submittal for PCAPCD Rule 231 met the completeness criteria in 40 CFR Part 51 Appendix V, which must be met before formal EPA review. On January 13, 2011, EPA determined that the submittal for PCAPCD Rules 242 and 246 met the completeness criteria in 40 CFR Part 51 Appendix V, which must be met before formal EPA review. On May 6, 2011, EPA determined that the submittal for SMAQMD Rule 414 met the completeness criteria in 40 CFR Part 51 Appendix V, which must be met before formal EPA review.

B. Are there other versions of these rules?

There are no previous versions of Rules 231, 242 and 246 in the SIP. The PCAPCD adopted an earlier version of Rule 231 on October 17, 1994, and CARB submitted it to us on October 19, 1994 but it was later withdrawn. We approved an earlier version of SMAQMD Rule 414 into the SIP on April 20, 1999 (64 FR 19277).

C. What is the purpose of the submitted rules?

NO<sub>x</sub> helps produce ground-level ozone, smog and particulate matter, which harm human health and the environment. Section 110(a) of the CAA requires States to submit regulations that control NO<sub>x</sub> emissions. Rule 231 limits emission of NO<sub>x</sub> and carbon monoxide (CO) from boilers, steam generators and process heaters fueled on liquid or gas fuels that are 5 MMBtu/hour or larger. Rule 242 regulates emissions of NO<sub>x</sub> and CO from internal combustion engines with a rated brake horse power of 50 or

greater. Rule 246 limits NOx emissions from natural gas water heaters rated below 75,000 btu/hour. Rule 414 limits NOx and CO emissions from boilers rated below 1 MMBtu/hour. EPA's technical support documents (TSD) have more information about these rules.

## **II. EPA's Evaluation and Action**

### **A. How is EPA evaluating the rules?**

Generally, SIP rules must be enforceable (see section 110(a) of the Act), must require Reasonably Available Control Technology (RACT) for each category of sources covered by a Control Techniques Guidelines (CTG) document as well as each NOx or VOC major source in ozone nonattainment areas classified as moderate or above (see sections 182(b)(2) and 182(f)), and must not relax existing requirements in violation of CAA sections 110(l) and 193. SIP rules must also implement Reasonably Available Control Measures (RACM), including such reductions in emissions from existing sources in the area as may be obtained through the adoption, at a minimum, of reasonably available control technology (RACT), as expeditiously as practicable for nonattainment areas (see CAA section 172(c)(1)). The PCAPCD and SMAQMD regulate ozone nonattainment areas classified as severe for the 8-hour ozone NAAQS (40 CFR 81.305), so Rules 231, 242, 246 and 414 must fulfill RACT and RACM for NOx.

Guidance and policy documents that we use to evaluate enforceability, RACT and RACM requirements consistently include

the following:

1. "State Implementation Plans; General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990," 57 FR 13498 (April 16, 1992); 57 FR 18070 (April 28, 1992).
2. "State Implementation Plans; Nitrogen Oxides Supplement to the General Preamble; Clean Air Act Amendments of 1990 Implementation of Title I; Proposed Rule," (the NOx Supplement), 57 FR 55620, November 25, 1992.
3. "Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations," EPA, May 25, 1988 (the Bluebook).
4. "Guidance Document for Correcting Common VOC & Other Rule Deficiencies," EPA Region 9, August 21, 2001 (the Little Bluebook).
5. "Determination of Reasonably Available Control Technology and Best Available Retrofit Control Technology for Industrial, Institutional, and Commercial Boilers, Steam Generators, and Process Heaters", CARB (July 18, 1991).
6. "Alternative Control Techniques Document-- NOx Emissions from Industrial/Commercial/Institutional (ICI) Boilers", US EPA 453/R-94-022 (March 1994).
7. "Alternative Control Techniques Document-- NOx Emissions from Utility Boilers", US EPA 452/R-93-008 (March 1994).
8. "Alternative Control Techniques Document - NOx Emissions

from Stationary Reciprocating Internal Combustion Engines",  
US EPA 453/R-93-032 (July 1993)

9. "Determination of Reasonably Available Control Technology and Best Available Retrofit Control Technology for Stationary Spark-Ignited Internal Combustion Engines", CARB (November 2001).

- B. Do the rules meet the evaluation criteria?

We believe these rules are consistent with the relevant policy and guidance regarding enforceability and SIP relaxations. We are not evaluating the RACM requirement in this action but believe that PCAPCD and SMAQMD are required to evaluate any reasonably available control measures for the sources covered by these rules. We believe Rule 231 implements RACT. We believe there are no sources subject to Rule 242 that exceed the major source threshold (25 tpy), thus it is not required to meet RACT for NOx. For this reason, we are not making a determination on RACT for Rule 242 in this action. Rules 246 and 414 are not subject to RACT requirements because they are applicable to sources that are too small to exceed the major source threshold.

The TSDs have more information on our evaluation.

- C. EPA recommendations to further improve the rules.

The TSDs describe additional rule revisions that we recommend for the next time the local agencies modify the rules.

- D. Public comment and final action.

As authorized in section 110(k)(3) of the Act, EPA is fully approving the submitted rules because we believe they fulfill all relevant requirements. We do not think anyone will object to this approval, so we are finalizing it without proposing it in advance. However, in the Proposed Rules section of this Federal Register, we are simultaneously proposing approval of the same submitted rules. If we receive adverse comments by [Insert date 30 days from date of publication in the Federal Register], we will publish a timely withdrawal in the Federal Register to notify the public that the direct final approval will not take effect and we will address the comments in a subsequent final action based on the proposal. If we do not receive timely adverse comments, the direct final approval will be effective without further notice on [Insert date 60 days from date of publication in the Federal Register]. This will incorporate these rules into the federally enforceable SIP.

Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

### **III. 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, 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 Order 12866 (58 FR 51735, October 4, 1993);
- 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 (Public Law 104-4);
- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);

- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- 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; and
- does not provide EPA with the discretionary authority to address disproportionate human health or environmental effects with practical, appropriate, and legally permissible methods under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the State, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which

includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the Federal Register. A major rule cannot take effect until 60 days after it is published in the Federal Register. 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 [FEDERAL REGISTER OFFICE: insert date 60 days from date of publication of this document in the Federal Register]. 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. Parties with objections to this direct final rule are encouraged to file a comment in response to the parallel notice of proposed rulemaking for this action published in the Proposed Rules section of today's Federal Register, rather than file an immediate petition for judicial review of this direct final rule, so that EPA can withdraw this



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

PART 52 -- [AMENDED]

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) (363) (i) (D), (388) (i) (D) (2), and (389) (i) (B) (2) and (3) to read as follows:

§52.220 Identification of plan.

\* \* \* \* \*

(c) \* \* \*

(363) \* \* \*

(i) \* \* \*

(D) Placer County Air Pollution Control District.

(1) Rule 231, "Industrial, Institutional and Commercial Boiler, Steam Generator and Process Heaters," amended on October 9, 1997.

\* \* \* \* \*

(388) \* \* \*

(i) \* \* \*

(D) \* \* \*

(2) Rule 414, "Water Heaters, Boilers and Process Heaters Rated Less Than 1,000,000 BTU per hour," amended on March 25, 2010.

\* \* \* \* \*

(389) \* \* \*

(i) \* \* \*

(B) \* \* \*

(2) Rule 242, "Stationary Internal Combustion Engines," adopted on April 10, 2003.

(3) Rule 246, "Natural Gas-Fired Water Heaters," adopted on June 19, 1997.

\* \* \* \* \*