



## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R09-OAR-2016-0444; FRL-9952-48-Region 9]

### Approval of California Air Plan Revisions, South Coast Air Quality Management District

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

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing to approve revisions to the South Coast Air Quality Management District (SCAQMD) portion of the California State Implementation Plan (SIP). These revisions concern emissions of oxides of nitrogen (NO<sub>x</sub>) from ovens, dryers, dehydrators, heaters, kilns, calciners, furnaces, crematories, incinerators, heated pots, cookers, roasters, smokers, fryers, closed and open heated tanks and evaporators, distillation units, afterburners, degassing units, vapor incinerators, catalytic or thermal oxidizers, soil and water remediation units, and other combustion equipment. We are proposing to approve local rules to regulate these emission sources under the Clean Air Act (CAA or the Act). We are taking comments on this proposal and plan to follow with a final action.

**DATE:** Any comments must arrive by [insert date 30 days after date of publication in the Federal Register].

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R09-OAR-2016-0444 at <http://www.regulations.gov>, or via email to Andrew Steckel, Rulemaking Office Chief at [steckel.andrew@epa.gov](mailto:steckel.andrew@epa.gov). For comments submitted at Regulations.gov, follow the online

instructions for submitting comments. Once submitted, comments cannot be removed or edited from Regulations.gov. For either manner of submission, the EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure 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://www2.epa.gov/dockets/commenting-epa-dockets>.

**FOR FURTHER INFORMATION CONTACT:** Nicole Law, EPA Region IX, (415) 947-4126, [law.nicole@epa.gov](mailto:law.nicole@epa.gov).

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

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**I. The State's Submittal**

A. *What rules did the State submit?*

Table 1 lists the rules addressed by this action with the dates that they were adopted by the local air agency and submitted by the California Air Resources Board (CARB).

TABLE 1 - SUBMITTED RULES

| Local Agency | Rule # | Rule Title   | Adopted/<br>Amended | Submitted  |
|--------------|--------|--|---------------------|------------|
| SCAQMD       | 1147   | NO <sub>x</sub> Reductions from Miscellaneous Sources      | 09/09/2011          | 02/06/2013 |
| SCAQMD       | 1153.1 | Emissions of Oxides of Nitrogen from Commercial Food Ovens | 09/07/2014          | 04/07/2015 |

On April 9, 2013 and April 30, 2015, the EPA determined that the submittals for SCAQMD Rule 1147 and SCAQMD Rule 1153.1 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 Rule 1153.1. We approved an earlier version of Rule 1147 into the SIP on August 4, 2010 (75 FR 46845).

C. *What is the purpose of the submitted rules and rule revisions?*

NO<sub>x</sub> helps produce ground-level ozone, smog and PM, 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. The revisions made to SCAQMD Rule 1147 are administrative amendments that delay compliance dates. SCAQMD Rule 1153.1 is a new rule that carves out the category of commercial food ovens from Rule 1147. Rule 1153.1 delays compliance and contains different NO<sub>x</sub> emission limits than were required under rule 1147. The EPA's technical support documents (TSDs) have more information about these rules.

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

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

SIP rules must be enforceable (see CAA section 110(a)(2)), must not interfere with applicable requirements concerning attainment and reasonable further progress or other CAA requirements (see CAA section 110(l)), and must not modify certain SIP control requirements in nonattainment areas without ensuring equivalent or greater emissions reductions (see CAA section 193).

Generally, SIP rules must require Reasonably Available Control Technology (RACT) for

each major source of NO<sub>x</sub> in ozone nonattainment areas classified as moderate or above (see CAA sections 182(b)(2) and 182(f)). The SCAQMD regulates an ozone nonattainment area classified as extreme for the 1-hour ozone standard, the 8-hour 1997 ozone standard, and the 8-hour 2008 ozone standard (40 CFR 81.305). Therefore, these rules must implement RACT. Additionally, SIP rules must implement Best Available Control Measures (BACM), including Best Available Control Technology (BACT), in serious PM<sub>2.5</sub> nonattainment areas (see CAA section 189(b)(1)(B)). The SCAQMD regulates a PM<sub>2.5</sub> nonattainment area classified as serious for the 2006 24-hr PM<sub>2.5</sub> standard. (40 CFR 81.305). Therefore, although these rules must implement BACM and BACT, the BACM and BACT evaluation is generally performed in context of a broader plan and is not part of this rule evaluation.

Guidance and policy documents that we use to evaluate enforceability, revision/relaxation and rule stringency requirements for the applicable criteria pollutants 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. "Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations," EPA, May 25, 1988 (the Bluebook, revised January 11, 1990).
3. "Guidance Document for Correcting Common VOC & Other Rule Deficiencies," EPA Region 9, August 21, 2001 (the Little Bluebook).
4. "State Implementation Plans; Nitrogen Oxides Supplement to the General Preamble; Clean Air Act Amendments of 1990 Implementation of Title I; Proposed Rule," (the NO<sub>x</sub>

Supplement), 57 FR 55620, November 25, 1992.

5. “NO<sub>x</sub> Emissions from Industrial/Commercial/Institutional (ICI) Boilers,” EPA, March 1994, (EPA-453/R-94-022, March 1994).
6. “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.

B. *Do the rules meet the evaluation criteria?*

We believe these rules are consistent with CAA requirements and relevant guidance regarding enforceability, RACT and SIP revisions. SCAQMD previously adopted stringent future-effective emission limits that had not been widely implemented for all affected sources. SCAQMD intended to encourage wider adoption of low-emitting technology, but understood that some sources might not be able to comply on schedule for these and similar future-effective limits in other rules. As a result, SCAQMD did not take credit for (“set aside”) some emission reductions in certain attainment demonstrations. SCAQMD subsequently determined that some sources cannot comply with Rules 1147 and 1153.1 on schedule despite reasonable efforts and therefore delayed certain compliance dates. We do not believe that these changes impact the 2015 impracticability demonstration for the 2006 NAAQS for PM<sub>2.5</sub>, the 2022 attainment demonstration for 1-hour ozone, or the 2023 attainment demonstration for the 1997 8-hour ozone standard because the forgone emission reductions are less than a one ton per day set aside by SCAQMD in their 2014 inventory used to model attainment and beyond 2020 there are no emissions forgone due to the rule amendments. 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 agency modifies the rules but are not currently the basis for rule disapproval.

D. *Public comment and proposed action*

As authorized in section 110(k)(3) of the Act, the EPA proposes to fully approve the submitted rules because we believe they fulfill all relevant requirements. We will accept comments from the public on this proposal until **[insert date 30 days after date of publication in the Federal Register]**. If we take final action to approve the submitted rules, our final action will incorporate these rules into the federally enforceable SIP.

### **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 SCAQMD rules 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 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**

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 proposed action

merely proposes to approve State law as meeting federal requirements and does not impose additional requirements beyond those imposed by State law. For that reason, this proposed 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, 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).

#### **List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

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

Dated: August 24, 2016.

Alexis Strauss,  
Acting Regional Administrator,  
Region IX.