



## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R09-OAR-2016-0444; FRL-9955-94-Region 9]

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

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

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is taking final action 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 finalizing our approval of local rules that regulate these emission sources under the Clean Air Act (CAA or the Act).

**DATES:** These rules will be effective on [**Insert date 30 days after the date of publication in the Federal Register**].

**ADDRESSES:** The EPA has established a docket for this action under Docket ID No. EPA-R09-OAR-2016-0444. All documents in the docket are listed on the <http://www.regulations.gov> web site. Although listed in the index, some information is not publicly available, e.g., confidential business information or other information whose disclosure 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 <http://www.regulations.gov>, or please contact the person identified in the “**FOR FURTHER INFORMATION CONTACT**” section for additional availability information. **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. Proposed Action**

On September 16, 2016, the EPA proposed to approve the following rules into the California SIP. 81 FR 63732

Local Agency	Rule #	Rule Title	Adopted/ Amended/ Revised	Submitted
SCAQMD	1147	NOx Reductions from Miscellaneous Sources	09/09/2011	02/06/2013
SCAQMD	1153.1	Emissions of Oxides of Nitrogen from	09/07/2014	04/07/2015

Local Agency	Rule #	Rule Title	Adopted/ Amended/ Revised	Submitted
		Commercial Food Ovens		

We proposed to approve these rules because we determined that they complied with the relevant CAA requirements. Our proposed action contains more information on the rules and our evaluation.

## II. Public Comments and EPA Responses

The EPA's proposed action provided a 30-day public comment period. During this period, we received one comment regarding EPA's proposed approval of Rule 1153.1 that was submitted anonymously.

**Comment:** The comment generally supports EPA's proposal to approve Rule 1153.1. The commenter acknowledges Rule 1153.1 was designed to address delays in emission reduction technology development. However, the comment letter expressed a concern regarding the exemption for units with daily NO<sub>x</sub> emissions of 1 pound per day or less. The commenter states, "burners could be replaced with larger emission burners and it could easily go unknown by the enforcing agency." Additionally, the commenter makes a recommendation for "a testing schedule that is less strict for the small emission burners compared to the larger ones."

**Response:** The EPA appreciates the comment letter's general support of our approval of Rule 1153.1. The exemption discussed in the comment is found in section (g)(2) of Rule 1153.1. Sections (g)(2)(A)-(g)(2)(E) of Rule 1153.1 describe the documentation required of units with

daily NO<sub>x</sub> emissions of 1 pound per day or less. These requirements ensure the exempted units are rated at a heat input capacity of less than 325,000 BTU per hour, comply with a permit condition limiting NO<sub>x</sub> emissions to 1 pound per day or less, and keep daily records of unit operation and fuel gas consumption. Because of these requirements, we disagree that the enforcing agency would not know about these units. The rule exempts these units from requirements to comply with the limits for larger units and testing requirements associated with those units. The testing required is used to confirm compliance with the limits in Table 1 of the rule. If the commenter's recommendation for a less strict testing schedule were implemented for the smaller units, it is unclear what would be tested, since the exempted units do not have emissions limits in the rule to comply with. As noted above, the comment letter generally supports our approval of Rule 1153.1 and does not request or recommend any specific changes to our proposed action. The comment letter recognizes that Rule 1153.1 will decrease NO<sub>x</sub> emissions. For these reasons, the EPA is finalizing its proposed approval of Rule 1153.1 without change based on the comment.

### **III. EPA Action**

No comments were submitted that change our assessment of the rules as described in our proposed action. Therefore, as authorized in section 110(k)(3) of the Act, the EPA is fully approving these rules into the California SIP.

### **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 finalizing the incorporation by reference of the SCAQMD rules described in the amendments to 40 CFR part 52 set forth below.

The EPA has made, and will continue to make, these documents 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).

## **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 13563 (76 FR 3821, January 21, 2011);
- 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 the EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable 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).

The Congressional Review Act, 5 U.S.C. section 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. The 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 [**Insert date 60 days after date of publication 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. 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 dioxide, Ozone, Reporting and recordkeeping requirements.

Dated: November 21, 2016.

Alexis Strauss,  
Acting Regional Administrator,  
Region IX.

Part 52, Chapter I, Title 40 of the Code of Federal Regulations is amended 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 paragraphs (c)(379)(i)(A)(Z), (c)(428)(i)(D)(2), and (c)(461)(i)(C)(3) to read as follows:

§52.220 Identification of plan – in part.

(c) \* \* \*

(379) \* \* \*

(i) \* \* \*

(A) \* \* \*

(Z) Previously approved on August 4, 2010 in paragraph (c)(379)(i)(A)(4) of this section and now deleted with replacement in paragraph (c)(428)(i)(D)(2), Rule 1147, “NOx Reductions from Miscellaneous Sources,” adopted on December 5, 2008.

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(428) \* \* \*

(i) \* \* \*

(D) \* \* \*

(2) Rule 1147, “NOx Reductions from Miscellaneous Sources,” amended on September 9, 2011.

\* \* \* \* \*

(461) \* \* \*

(i) \* \* \*

(C) \* \* \*

(3) Rule 1153.1, “Emissions of Oxides of Nitrogen from Commercial Food Ovens,” adopted on November 7, 2014.

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