



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R09-OAR-2023-0157]; FRL-10778-01-R9

Air Plan Approval; California; San Diego County Air Pollution Control District; Oxides of Nitrogen

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve a revision to the San Diego County Air Pollution Control District (SDCAPCD) portion of the California State Implementation Plan (SIP). This revision concerns emissions of oxides of nitrogen (NO_x) from small boilers, process heaters, steam generators, and large water heaters. We are proposing to approve a local rule to regulate these emission sources under the Clean Air Act (CAA or the “Act”). The California Air Resources Board (CARB) submitted the rule, on behalf of SDCAPCD, to the EPA as part of the requirement to implement reasonably available control technology (RACT) for major sources of NO_x for the San Diego County ozone nonattainment area. We are taking comments on this proposal and plan to follow with a final action.

DATES: Comments must be received on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R09-OAR-2023-0157 at <https://www.regulations.gov>. For comments submitted at Regulations.gov, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from Regulations.gov. 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 <https://www.epa.gov/dockets/commenting-epa-dockets>. 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: Alina Batool, EPA Region IX, 75 Hawthorne St., San Francisco, CA 94105. By phone: (415) 972-3345 or by email at batool.alina@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 rule did the State submit?*

Table 1 lists the rule addressed by this proposal with the date that it was adopted by the SDCAPCD and submitted by the California Air Resources Board (CARB).

TABLE 1 - SUBMITTED RULE

Local Agency	Rule #	Rule Title	Adopted	Submitted
SDCAPCD	69.2.1	Small Boilers, Process Heaters, Steam Generators, and Large Water Heaters	07/08/20 ^a	09/21/20

^a SDCAPCD locally adopted Rule 69.2.1 on March 25, 2009, and locally amended the rule on July 8, 2020. CARB submitted the version of the rule that SDCAPCD amended on July 8, 2020, for inclusion in the California SIP.

Pursuant to CAA section 110(k)(1)(B) and 40 CFR part 51, appendix V, the EPA determined that the submittal for SDCAPCD Rule 69.2.1 met the completeness criteria on March 21, 2021.

B. Are there other versions of this rule?

There are no previous versions of Rule 69.2.1 in the SIP. The SDCAPCD locally adopted Rule 69.2.1 on March 25, 2009, and an amended version of the rule (amendment date of July 8, 2020) was submitted by CARB to the EPA on September 21, 2020, as an attachment to a letter dated September 18, 2020.

C. What is the purpose of the submitted rule?

Emissions of NO_x contribute to the production of ground-level ozone and smog, which harms human health and the environment. Section 110(a) of the CAA requires states to submit plans that provide for implementation, maintenance, and enforcement of the National Ambient Air Quality Standards (NAAQS). Rule 69.2.1 is a new rule that controls NO_x emissions from new units that are manufactured, sold, offered for sale or distribution, or installed for use within San Diego County with a heat input rating from 75,000 British thermal units (Btu) per hour to 2 million Btu per hour. Units of this size are commonly used at commercial facilities such as restaurants, laundromats, hotels, apartment buildings, and dry cleaners. The emissions from the use of these units can result in the formation of ozone. When inhaled, ozone and NO_x adversely affect people's health. Symptoms can include chest pain, shortness of breath, worsening of bronchitis and asthma, and nausea.

Rule 69.2.1 requires new units that operate on natural gas at a heat input rating from 75,000 to 400,000 Btu per hour or from 400,000 to 2,000,000 Btu per hour to meet a NO_x emission limit of 20 parts per million by volume (ppmv). New pool heaters that operate on

natural gas at a heat input rating from 75,000 to 400,000 Btu per hour have a NO_x emission limit of 55 ppmv. New units that operate on non-public utility commission (PUC) gas or liquid fuel at a heat input rating from 75,000 to 400,000 Btu per hour have a NO_x emission limit of 77 ppmv, and units with a heat input rating greater than 400,000 to 2,000,000 Btu per hour have a NO_x emission limit of 30 ppmv. All emission limits are calculated at three percent oxygen (O₂). Test methods are provided in Rule 69.2.1 for new unit compliance testing and certification for sale in San Diego County. Test methods are also provided for new natural gas-fired units to ensure compliance with the NO_x emissions limits. The EPA's technical support document (TSD) has more information about this rule.

II. The EPA's Evaluation and Action

A. How is the EPA evaluating the rule?

Rules in the SIP must be enforceable (CAA section 110(a)(2)) and must not interfere with applicable requirements concerning attainment and reasonable further progress or other CAA requirements (CAA section 110(l)).

Generally, SIP rules must require RACT for sources subject to the Control Techniques Guidelines (CTGs) as well as each major source of VOCs and NO_x in ozone nonattainment areas classified as moderate or above (CAA section 182(b)(2)). The SDCAPCD regulates an ozone nonattainment area classified as Severe for both the 2008 and 2015 8-hour ozone NAAQS (40 CFR 81.305; 86 FR 29522 (June 2, 2021)). Rule 69.2.1 regulates equipment operating at major NO_x sources in the San Diego County ozone nonattainment area.¹ Because the State submitted the rule to fulfill the obligation to implement RACT in a nonattainment area for the 2008 and 2015 ozone NAAQS, the EPA's evaluation focused on whether the rule implements RACT.

Guidance and policy documents that we used to evaluate enforceability, revision or relaxation, and rule stringency requirements for the applicable criteria pollutants include the

¹ SDCAPCD, "2020 Reasonably Available Control Technology Demonstration for the National Ambient Air Quality Standards for Ozone in San Diego County," ("2020 RACT SIP"). Adopted by the SDCAPCD on October 14, 2020.

following:

1. “Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations,” EPA Office of Air Quality Planning and Standards, May 25, 1988 (“the Bluebook,” revised January 11, 1990).
 2. “Guidance Document for Correcting Common VOC & Other Rule Deficiencies,” EPA Region IX, August 21, 2001 (“the Little Bluebook”).
 3. “NO_x Emissions from Industrial/Commercial/Institutional (ICI) Boilers,” EPA Region V, March 1994.
 4. “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. *Does the rule meet the evaluation criteria?*

Rule 69.2.1 establishes stringent emission limits for NO_x and includes testing, certification, labeling, and recordkeeping requirements to assist in ensuring compliance with emissions standards. Rule 69.2.1 is a new rule that regulates units that are not currently regulated in the SDCAPCD portion of the California SIP, thereby strengthening it. The rule is consistent with CAA requirements and relevant guidance regarding enforceability, RACT, and SIP revisions. Additionally, all test records for oxides of nitrogen and carbon monoxide emissions and certification records must be retained for as long as the new unit model is sold, or for three calendar years after the date of manufacture. The rule requirements are discussed in greater detail in the TSD, which is available in the docket for this action.

Rule 69.2.1 is at least as stringent as the EPA's 1994 Alternative Control Technology (ACT) document and CARB's RACT/BARCT guidance. The EPA also evaluated the stringency of the rule's emission limits compared to other California SIP-approved rules that regulate NO_x emissions from small boilers, process heaters, steam generators, and large water heaters, including Ventura County Air Pollution Control District Rule 74.11.1, South Coast Air Quality

Management District Rule 1146.2, and San Joaquin Valley Unified Air Pollution Control District Rule 4308. As described in further detail in the TSD, the EPA's analysis shows that the submitted rule is as stringent as analogous SIP-approved California air district rules. As a result of our evaluation, we are proposing to determine that the rule limits implement RACT.

C. *The EPA's recommendations to further improve the rule*

The TSD includes a recommendation to clarify a testing requirement for the next time SDCAPCD modifies the rule.

D. *Public comment and proposed action*

As authorized in section 110(k)(3) of the Act, the EPA proposes to fully approve the submitted rule because it fulfills 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 rule, our final action will incorporate this rule 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 San Diego County Air Pollution Control District Rule 69.2.1, "Small Boilers, Process Heaters, Steam Generators, and Large Water Heaters," locally amended on July 8, 2020, which regulates NO_x and CO from small boilers, process heaters, steam generators, and large water heaters, as described in Table 1 of this document. The EPA has made, and will continue to make, these materials available through <https://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, the 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 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.

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. 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.” 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.”

Under the CAA, 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 review state choices, and approve those choices if they meet the minimum criteria of the Act. Accordingly, this proposed action approves state law as meeting federal requirements and does not impose additional requirements beyond those imposed by state law.

The air agency 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. 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. 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, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Nitrogen oxides, Ozone, Reporting and recordkeeping requirements.

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

Dated: July 17, 2023.

Martha Guzman Aceves,

Regional Administrator,

Region IX.

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