



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R09-OAR-2023-0590; FRL-11615-01-R9]

Air Plan Approval; California; Yolo-Solano Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve, through parallel processing, state implementation plan (SIP) revisions from the Yolo-Solano Air Quality Management District (YSAQMD or “District”) to address Clean Air Act (CAA or “Act”) requirements related to the 2008 8-hour ozone national ambient air quality standards (NAAQS or “standards”). These revisions concern emissions of oxides of nitrogen (NO_x) from biomass boilers, and also address reasonably available control technology (RACT) requirements for major sources of NO_x in the portion of the Sacramento Metro, CA, nonattainment area that is subject to YSAQMD jurisdiction. 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-2023-0590 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 a disability 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: Eugene Chen, EPA Region IX, 75 Hawthorne Street (AIR-3-3), San Francisco, CA 94105. By phone: (415) 947-4304 or by email at chen.eugene@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 documents did the State submit?*

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

TABLE 1 - SUBMITTED DOCUMENTS

Local Agency	Document/ Rule No.	Document Title	Revised	Submitted
YSAQMD	--	Reasonably Available Control Technology (RACT) State Implementation Plan (SIP) Analysis for the 2008 Federal Ozone Standard (“2017 RACT SIP”)	09/13/2017	11/13/2017
YSAQMD	2.43	Biomass Boilers (public draft version submitted for parallel processing)		11/27/2023

On September 13, 2017, the YSAQMD adopted the “Reasonably Available Control Technology (RACT) State Implementation Plan (SIP) Analysis for the 2008 Federal Ozone Standard” (“2017 RACT SIP”) to demonstrate that its stationary sources are subject to RACT rules for the 2008 8-hour ozone NAAQS. On November 13, 2017, the California Air Resources Board (CARB) submitted the 2017 RACT SIP to the EPA for approval as a revision to the California SIP. The EPA determined that the negative declarations portion of the 2017 RACT SIP met the SIP submittal completeness criteria in 40 CFR part 51, Appendix V on April 11, 2018.¹ The EPA determined that the remaining elements of the 2017 RACT SIP met the SIP completeness criteria on August 23, 2018.²

On November 27, 2023, CARB submitted a public draft version of amendments to Rule 2.43, “Biomass Boilers,” along with a request for parallel processing.³ The EPA has reviewed the submitted public draft version of Rule 2.43 and finds that it fulfills the completeness criteria of

¹ Letter dated April 11, 2018, from Elizabeth J. Adams, Acting Director, Air Division, EPA Region IX, to Richard Corey, Executive Officer, CARB. A “negative declaration” is an assertion by a state or district that a nonattainment area contains no sources covered by a particular control techniques guidelines (CTG) document.

² Letter dated August 23, 2018, from Elizabeth J. Adams, Acting Director, Air Division, EPA Region IX, to Richard Corey, Executive Officer, CARB.

³ “Parallel processing” refers to a process established under section 2.3 of Appendix V to 40 CFR part 51 that utilizes concurrent state and federal proposed rulemaking actions. Generally, the state submits a copy of the proposed regulation or other revisions to the EPA before conducting its public hearing and completing its public comment process under state law. The EPA reviews this proposed state or district action and prepares a notice of proposed rulemaking under federal law. In some cases, the EPA publishes its notice of proposed rulemaking in the *Federal Register* during the same timeframe that the state or District is holding its own public hearing and public comment process. If, after completing its public comment process and after the EPA’s public comment process has run, the state materially changes its final SIP submission to the EPA from the initial proposed submission, the EPA evaluates those changes and decides whether to publish another notice of proposed rulemaking in light of those changes or to proceed to taking final action on its proposed action with a description of the state’s changes. Any final rulemaking action by the EPA will occur only after the state formally adopts and submits its final submission to the EPA.

appendix V, with the exception of the requirements of paragraphs 2.1(e)–2.1(h), which do not apply to rules submitted for parallel processing. CARB’s November 27, 2023 letter states that the YSAQMD Governing Board was scheduled to consider adoption of the amended rule on December 13, 2023, and that if it was approved, CARB would submit the final package to the EPA as a revision to the SIP. While our evaluation of Rule 2.43 herein is based on the public draft of the rule submitted by CARB on November 27, 2023, the YSAQMD Governing Board has since approved the rule amendments from this draft, and the EPA is now awaiting the final rule submittal from CARB.

B. *Are there other versions of the submitted documents?*

On June 30, 2023, we took final action to partially approve and partially disapprove the 2017 RACT SIP.⁴ Our partial disapproval related solely to the RACT element for major sources of NO_x that we are now proposing to approve in this action.

We approved an earlier version of Rule 2.43 into the SIP on July 2, 2012.⁵ The District adopted amendments to the SIP-approved version of Rule 2.43 on April 12, 2023, and CARB submitted these amendments to the EPA on June 8, 2023. We will consider this earlier submittal to be superseded, by the time of our final action, by the version of Rule 2.43 that has been submitted for parallel processing once it is submitted to the EPA as a SIP revision. Therefore, we are proposing to act only on the version of the rule submitted on November 27, 2023, which includes all revisions made in the June 8, 2023 submittal. However, we have reviewed materials provided with the June 8, 2023 submittal, and our evaluation below considers the amendments made in that version of the rule.

C. *What is the purpose of the submitted documents?*

Emissions of NO_x contribute to the production of ground-level ozone, smog and particulate matter (PM), which harm human health and the environment. Section 110(a) of the

⁴ 88 FR 42252.

⁵ 77 FR 39181. The EPA published a correcting amendment on March 28, 2018 (83 FR 13190) that corrected an error in the regulatory text of the July 2, 2012 final action.

CAA requires states to submit plans that provide for implementation, maintenance, and enforcement of the NAAQS. In addition, CAA sections 182(b)(2) and (f) require that SIPs for ozone nonattainment areas classified as “Moderate” or higher implement RACT for any category of sources covered by a control techniques guidelines (CTG) document and for any major source of volatile organic compounds (VOCs) or NO_x. The YSAQMD regulates the Yolo and Solano County portions of the Sacramento Metro, CA, ozone nonattainment area, which is classified as “Severe” nonattainment for the 2008 ozone NAAQS.⁶ Therefore, the YSAQMD must, at a minimum, ensure that all categories of sources covered by a CTG document and all major sources of VOCs or NO_x within the District implement RACT-level controls. Any stationary source that emits or has the potential to emit at least 25 tons per year (tpy) of VOCs or NO_x in a Severe ozone nonattainment area is considered a major stationary source.

The YSAQMD relies upon Rule 2.43 to implement RACT for major sources of NO_x.⁷ As we explained in our June 30, 2023 final action on the 2017 RACT SIP, the current SIP-approved version of Rule 2.43 contains a provision that explicitly exempts affected units from complying with rule standards during periods of startup and shutdown and does not provide for an alternative emission limitation during such periods. This provision is inconsistent with the EPA’s Startup, Shutdown, and Malfunction (SSM) Policy as established in the EPA’s 2015 SSM SIP Action.⁸ This deficiency was the basis for our disapproval of the major source NO_x element of the 2017 RACT SIP. The Rule 2.43 amendments adopted on April 12, 2023, are intended to address this by establishing numeric NO_x and carbon monoxide (CO) limits that apply during periods of startup and shutdown. The Rule 2.43 amendments that YSAQMD has proposed, will also establish additional recordkeeping and periodic reporting requirements. Our technical support document (TSD) has more detailed information about these rule revisions.

⁶ May 21, 2012 (77 FR 30088).

⁷ 2017 RACT SIP, pages 5 and 45.

⁸ “State Implementation Plans: Response to Petition for Rulemaking; Restatement and Update of EPA’s SSM Policy Applicable to SIPs; Findings of Substantial Inadequacy; and SIP Calls To Amend Provisions Applying to Excess Emissions During Periods of Startup, Shutdown and Malfunction,” 80 FR 33840 (June 12, 2015).

II. The EPA's Evaluation and Proposed Action

A. *How is the EPA evaluating the submitted documents?*

Rules in the SIP 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 the implementation of RACT for each category of sources covered by a CTG, as well as each major source of NO_x or VOC in ozone nonattainment areas classified as Moderate or higher (see CAA section 182(b)(2)). The YSAQMD regulates a portion of an ozone nonattainment area classified as "Severe" for the 2008 ozone NAAQS and is therefore responsible for ensuring the applicable sources implement RACT-level controls for that ozone standard. The YSAQMD relies upon Rule 2.43 to require the applicable sources to implement RACT-level controls to fulfill the requirements associated with the major source NO_x element for the 2008 ozone NAAQS.

We note that the April 12, 2023 amendments to Rule 2.43 also establish emission standards for CO, which is not an ozone precursor, and therefore we are not assessing in this action whether the CO standard implements RACT-level controls. As a result, we have not evaluated CO emission standards in Rule 2.43 for stringency, but we have evaluated them under the enforceability and SIP relaxation criteria.

B. Do the submitted documents meet the evaluation criteria?

In our June 30, 2023 final action on the 2017 RACT SIP, we evaluated the stringency of the 90 parts per million (ppm) (24-hour block average) NO_x emissions limit established by the SIP-approved version of Rule 2.43.⁹ However, the 90 ppm limit did not apply during periods of startup and shutdown. As a result, we determined that the emission limits in SIP-approved Rule

⁹ 88 FR 42252. See also TSD for that action, which is available in the docket for this rulemaking.

2.43 achieve RACT-level stringency but found that the lack of a continuous emissions limit that applies at all times (including periods of startup and shutdown) precluded us from determining that Rule 2.43 implemented RACT. We have not identified any information since our June 30, 2023 approval to alter our evaluation of the stringency of the SIP-approved NO_x emission limits.

The April 12, 2023 amendments to Rule 2.43 established a NO_x limit of 215 ppm on a 24-hour block average that applies during periods of startup and shutdown. We consider this emission limit to be consistent with the use of either combustion controls or good combustion practices that are the most stringent control measures that can be feasibly utilized during periods of startup and shutdown. In addition, the YSAQMD identified other California air district rules for biomass boilers and indicated that these rules either exempted periods of startup and shutdown or had startup/shutdown limits that are less stringent than those in Rule 2.43. This supports an EPA determination that the amended rule establishes a RACT-level of control. Finally, we determined that the amended Rule 2.43 is consistent with each of the seven specific criteria recommended in the EPA's SSM Policy as appropriate considerations for developing emission limitations in SIP provisions applicable during startup and shutdown. Additional information regarding our evaluation of Rule 2.43 with the seven criteria is discussed in greater detail in our TSD for this action.

The Rule 2.43 amendments adopted by YSAQMD on December 13, 2023, explicitly require that the results of any relative accuracy test audit (RATA) performed be maintained by the source as required records, and will also establish a requirement for the owner/operator of an affected source to submit all records required by the recordkeeping provisions of the rule to the EPA at least once every six months.¹⁰ These reporting provision amendments will assist in ensuring compliance with emission standards and other rule requirements, and will also ensure

¹⁰ The amendments require that these records be submitted to the EPA via the Compliance and Emissions Data Reporting Interface (CEDRI) or an analogous EPA electronic submission system. CEDRI is an internet-based service maintained by the EPA that allows regulated sources to submit various reports for purposes of demonstrating compliance with federal requirements. In addition to regulated sources, state and local agency personnel may create user accounts on CEDRI and access the information submitted by sources located within their agency's jurisdiction. Additional information can be found at <https://www.epa.gov/electronic-reporting-air-emissions/cedri>.

that Rule 2.43 is enforceable by the District and the EPA as well as by members of the public.

Based on the stringency of the existing SIP-approved NO_x limits, combined with the NO_x limits established for periods of startup and shutdown, we propose to approve Rule 2.43 as complying with EPA's SSM policy and as implementing RACT for this source category. As discussed previously, the absence of an emission limit during startup and shutdown was the basis for our disapproval of the major source NO_x element of the 2017 RACT SIP. Since we are proposing to determine that Rule 2.43 satisfies the requirement to implement RACT, we are also proposing to determine that the District implements RACT for major sources of NO_x associated with the area's Severe classification for the 2008 ozone NAAQS.

The existing SIP-approved version of the rule contains several monitoring, recordkeeping, and reporting provisions, including a requirement to operate continuous emission monitoring systems (CEMS) for NO_x and CO; performance specification and calibration requirements for the CEMS; and requirements to maintain daily logs of emissions, fuel usage, and startup/shutdown durations. The amendments adopted on December 13, 2023 establish a new requirement for all records required by this rule to be submitted to the EPA at least once every six months. We consider these provisions adequate to ensure that compliance with rule requirements can be clearly determined, and that the rule is enforceable by the District and the EPA, as well as by members of the public. We are also proposing to determine that our approval of these amendments would comply with CAA section 110(l) because the proposed SIP revision would not interfere with any applicable CAA requirements. In addition, CAA section 193 does not apply to this action because Rule 2.43 is not a SIP-approved control requirement that was in effect before November 15, 1990. Additional information regarding our evaluation is discussed in greater detail in our TSD for this action.

C. *Public comment and proposed action*

As authorized in section 110(k)(3) of the Act, the EPA proposes to approve Rule 2.43, as amended on April 12, 2023, and as further amended on December 13, 2023, into the California

SIP. Based on our discussion in Section II.B of this document, we propose to determine that Rule 2.43 as amended will comply with the EPA’s SSM policy and other applicable CAA requirements and will implement RACT for this source category. In addition, we propose to approve the major source NO_x RACT element of the 2017 RACT SIP. Because our proposed approval relies upon our evaluation of the public draft version of the Rule 2.43 amendments, subsequently adopted on December 13, 2023, but not yet formally submitted by CARB, we will not take final action until these amendments are submitted to us as a revision to the California SIP. If Rule 2.43 is not submitted in the form adopted on December 13, 2023, we will reconsider our proposed action accordingly. 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 documents, 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 YSAQMD Rule 2.43, “Biomass Boilers,” amended on December 13, 2023, which regulates NO_x and CO emissions from biomass-fueled boilers. 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 CAA, the Administrator is required to approve a SIP submission that complies with the provision of the Act and applicable federal regulations. 42 U.S.C. 740(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 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 14094 (88 FR 21879, April 11, 2023);
- 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 subject to Executive Order 13045 (62 FR 19885, April 23, 1997) because it proposes to approve a state program;
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001); and
- 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.

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).

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. The 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.” The 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.”

The State 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. The EPA did not perform an EJ analysis and did not consider EJ in this action. 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 EO 12898 of achieving environmental justice for people of color, low-income populations, and Indigenous peoples.

List of Subjects in 40 CFR Part 52

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

Dated: December 20, 2023.

Martha Guzman Aceves,
Regional Administrator,
Region IX.

[FR Doc. 2023-28525 Filed: 12/26/2023 8:45 am; Publication Date: 12/27/2023]