



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R09-OAR-2023-0568; FRL-11558-01-R9]

Air Plan Revision: California; 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 volatile organic compounds (VOCs) and oxides of nitrogen (NO_x) from refinery flares. We are proposing action on a local rule 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.

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-2023-0568 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 (e.g., audio or video) 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: Donnique Sherman, EPA Region IX, 75 Hawthorne St., San Francisco, CA 94105. By phone: (415) 947-4129 or by email at sherman.donique@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 dates that it was adopted by the local air agency and submitted by the California Air Resources Board (CARB).

TABLE 1 - SUBMITTED RULE

Local Agency	Rule #	Rule Title	Amended	Submitted
SCAQMD	1118	Control of Emissions from Refinery Flares	01/06/23	05/11/23

On November 11, 2023, the submittal for SCAQMD Rule 1118 was deemed by operation of law to meet the completeness criteria in 40 CFR part 51 Appendix V, which must be met before formal EPA review.

B. Are there other versions of this rule?

On September 22, 2022, in a limited approval and limited disapproval action, the EPA finalized inclusion of an earlier version of Rule 1118 into the SIP (87 FR 57838). The SCAQMD adopted revisions to the SIP-approved version of Rule 1118 on January 6, 2023, and CARB submitted them to us on May 11, 2023. If we finalize our proposed approval, the January 6, 2023 version of Rule 1118 will replace the previously approved version of this rule in the SIP.

C. What is the purpose of the submitted rule?

Emissions of NO_x and VOCs 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 CAA requires states to submit regulations that control NO_x and VOC emissions. Rule 1118 Control of Emissions from Refinery Flares is designed to monitor and record data on refinery and related flaring operations, and to control and minimize flaring and flare related emissions. The EPA's technical support document (TSD) for this action 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 (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 category of sources covered by a Control Techniques Guidelines (CTG) document as well

as each major source of NO_x and VOCs in ozone nonattainment areas classified as moderate or above (see CAA section 182(b)(2)). The SCAQMD regulates an ozone nonattainment area classified as “Extreme” for the 2015 8-hour ozone NAAQS (40 CFR 81.305). Therefore, this rule must ensure the applicable sources implement RACT-level controls for that ozone standard.

Our September 22, 2022 action on Rule 1118 evaluated the rule using this criteria. We finalized a limited approval and limited disapproval of Rule 1118 (amended July 7, 2017) on the basis that the rule allowed the Executive Officer the authority to approve other test methods for determining compliance than those identified in the rule. This deficiency undermined the enforceability of the rule by allowing revisions to the requirements in the SIP without the EPA’s approval. In this current action, Rule 1118 was amended by SCAQMD to solely address the limited disapproval. The changes to Rule 1118 in this submittal have not relaxed or removed any of the main stringency rule provisions, including control requirements, nor have we identified any new information to alter our prior evaluation of Rule 1118. Therefore, our evaluation of the January 6, 2023 amended version of Rule 1118 is focused on the correction of the previously identified deficiency.

Guidance and policy documents that we used to evaluate enforceability and revision/relaxation 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).

B. Does the rule meet the evaluation criteria?

The revisions to Rule 1118 in this submittal correct the deficiency identified in the EPA’s

previous limited approval and limited disapproval of the rule. The new version of Rule 1118 improves the SIP by including the EPA as an approving authority for use of alternative test methods when determining rule compliance. The rule is now largely consistent with CAA requirements and relevant guidance regarding enforceability, RACT, and SIP revisions, and fully approvable.

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

The TSD includes recommendations for the next time SCAQMD 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 fulfill(s) 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 approve the submitted rule in our final action, then 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 SCAQMD rule listed in Table 1 of this preamble, which is designed to decrease NO_x and VOC emissions from industries such as petroleum refineries, sulphur recovery plants, and hydrogen production plants by controlling and minimizing flaring and flare related emissions in the South Coast Air Basin. 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 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 Executive Order 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 dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: February 29, 2024.

Martha Guzman Aceves,
Regional Administrator,

