



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R09-OAR-2024-0417; FRL-12279-01-R9]

Air Plan Conditional Approval; California; Bay Area Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to conditionally approve revisions to the Bay Area Air Quality Management District (BAAQMD) portion of the California State Implementation Plan (SIP). These revisions concern emissions of oxides of nitrogen (NO_x) from natural gas-fired furnaces and water heaters. We are proposing to approve local rules to regulate these emission sources under the Clean Air Act (CAA). 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-2024-0417 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: Allison Kawasaki, EPA Region IX, 75 Hawthorne St., San Francisco, CA 94105; phone: (415) 972-3922; email: kawasaki.allison@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 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 RULES

Local Agency	Rule #	Rule Title	Adopted/Amended	Submitted
BAAQMD	9-4	Nitrogen Oxides from Natural Gas-Fired Furnaces	(Amended) 03/15/23	01/10/2024

Local Agency	Rule #	Rule Title	Adopted/Amended	Submitted
BAAQMD	9-6	Nitrogen Oxides from Natural Gas-Fired Boilers and Water Heaters	(Adopted) 03/15/23	01/10/2024

On July 10, 2024, the submittal for BAAQMD Rule 9-4 and Rule 9-6 were deemed complete by operation of law to meet the completeness criteria in 40 CFR part 51, appendix V.

B. Are there other versions of these rules?

We approved an earlier version of Rule 9-4 into the SIP on January 7, 1986 (47 FR 29231). The BAAQMD adopted revisions to the SIP-approved version on March 15, 2023, and CARB submitted them to us on January 10, 2024. If we take final action to approve the March 15, 2023 version of Rule 9-4, this version will replace the previously approved version of this rule in the SIP.

There is no previous version of Rule 9-6 in the SIP. The BAAQMD locally adopted an earlier version of Rule 9-6 on April 1, 1992, and an amended version of the rule (amended March 15, 2023) was submitted by CARB to the EPA on January 10, 2024.

C. What is the purpose of the submitted rules?

Emissions of NO_x contribute to the production of ground-level ozone, smog and particulate matter, which harm 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 NAAQS. The CAA section 172(c)(1) and section 182 requires areas that are designated as “Moderate” or above for ozone nonattainment to implement Reasonably Available Control Technology (RACT) for specific sources. The San Francisco Bay Area is designated as “Marginal” nonattainment for the 2015, 2008, and 1997 8-hour ozone National Ambient Air Quality Standards (NAAQS).¹ The San Francisco Bay Area is a Marginal ozone nonattainment area, which is a less severe classification than Moderate, and thus is not required to implement

¹ 40 CFR 81.305. See 83 FR 25776 (June 04, 2018); 77 FR 30088 (May 21, 2012); 69 FR 23858 (June 15, 2004).

RACT for the sources regulated by the submitted rules.

CAA section 189 requires areas that are designated Moderate or above for particulate matter nonattainment to assure that reasonably available control measures (RACM) are being implemented within the nonattainment area. The San Francisco Bay Area was designated as Moderate nonattainment for the 2006 24-hour PM_{2.5} NAAQS (74 FR 58688, November 13, 2009). In 2017, the EPA made a determination of attainment by the attainment date (December 31, 2015) for this standard based on air monitoring data.² The EPA generally evaluates PM_{2.5} RACM requirements in the context of broader attainment planning actions as opposed to individual rule submissions. Nonetheless, pursuant to 40 CFR 51.1015(a), an EPA determination that a Moderate PM_{2.5} nonattainment area has attained the PM_{2.5} NAAQS suspends the requirement for the State to demonstrate RACM. Thus, although the State may choose to rely on reductions from these rules in a future plan or RACM demonstration, we will not evaluate the rules for PM_{2.5} RACM in this rulemaking. Accordingly, Rules 9-4 and 9-6 are not being evaluated for RACT or RACM at this time.

BAAQMD Rule 9-4 is an amended rule that sets emission limits for natural gas-fired furnaces sold, installed, or offered for sale within the District. Amended Rule 9-4 instates more stringent emission requirements that prohibit the sale or installation of natural gas-fired furnaces manufactured after January 1, 2024, that emit more than 14 ng/J (nanograms per Joule) of NO_x and natural gas-fired furnaces manufactured after January 1, 2029, that emit more than 0.0 ng/J of NO_x. All natural gas-fired furnaces must be certified for sale, installation, or offering for sale within the District. Test methods and procedures are provided in Rule 9-4 for compliance demonstrations.

BAAQMD Rule 9-6 is a locally adopted rule that has not been previously approved into the SIP. The rule applies similar emission limit timelines for natural gas-fired water heaters and boilers, where appliances with higher heat input ratings receive a lower NO_x emission limit at a

² See 74 FR 58688 (June 02, 2014); 82 FR 21711 (May 10, 2017).

later date. Natural gas-fired appliances with a 75,000 British Thermal Unit (BTU)/hour or less rated heat input capacity manufactured after January 1, 2027, cannot be sold, installed, or offered for sale within the district if the appliance emits more than 0 ng/J of NO_x. Mid-range and large appliances (75,001 BTU/hour – 2,000,000 BTU/hour) manufactured after January 1, 2031, cannot be sold, installed, or offered for sale within the district if the appliance emits more than 0.0 ng/J of NO_x.³ Mobile Home Water Heaters manufactured after January 1, 2008, cannot emit more than 40 ng/J of NO_x. Pools and Spa Heaters manufactured after January 1, 2008, cannot emit more than 40 ng/J of NO_x and units manufactured after January 1, 2013, cannot emit more than 14 ng/J of NO_x. Appliances subject to Rule 9-6 must be certified for sale or installation within the District. Test methods and procedures are provided for certification for compliance demonstration. The EPA’s technical support document (TSD) has more information about these rules.

II. The EPA’s Evaluation and Action

A. How is the EPA evaluating the rules?

Rules in the SIP must be enforceable (see CAA section 110(a)(2)), and must not interfere with applicable requirements concerning attainment and reasonable further progress or other CAA requirements (see CAA section 110(l)). As discussed above, these rules are not being evaluated for RACT or RACM in this rulemaking.

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

1. “Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations,” EPA, May 25, 1988 (the Bluebook, revised January 11, 1990).
2. “Guidance Document for Correcting Common VOC & Other Rule Deficiencies,” EPA

³ Note: the emission limits for different sized appliances are different (0 ng/J vs. 0.0 ng/J) due to different rounding conventions.

Region 9, August 21, 2001 (the Little Bluebook).

B. Do the rules meet the evaluation criteria?

Rule 9-4 and Rule 9-6 improve the SIP by establishing more stringent emission limits. The rules are largely consistent with CAA requirements and relevant guidance regarding enforceability and SIP revisions. Rule provisions which do not meet the evaluation criteria are summarized below and discussed further in the TSD.

The District has committed to adopt specific enforceable measures to remedy the identified deficiencies within one year of the EPA's action, and CARB has committed to submit the adopted revisions to the EPA within 12 months of the effective date of the EPA's final conditional approval. These commitment letters are included in the docket for the action, and are described in the TSD.

C. What are the rule deficiencies?

The EPA is proposing to determine that the following provisions in Rule 9-4 and Rule 9-6 do not satisfy the requirements of section 110 of the CAA.

1. Rule 9-4 section 201 contains an outdated reference to "Section 4.2.35 of the Code of Federal Regulations (CFR), Title 10, Part 430, Subpart B, Appendix N." This reference does not exist in the current version of the CFR and thus, does not properly define a variable used in calculating emissions.
2. Rule 9-4 section 401 contains an outdated reference to "Section 3.1 of the Code of Federal Regulations, Title 10, Part 430, Subpart B, Appendix N." This reference does not exist in the current version of the CFR and as a consequence does not contain any test method language to verify compliance.
3. Rule 9-4 section 402.2 references South Coast Air Quality Management District (SCAQMD) Rule 1111 certification methods for compliance determination purposes. These certification methods have not been submitted for approval into the SIP and Rule 9-4 does not reference an EPA approved version of the rule. As a result, the certification

methods in section 402.2 cannot be utilized to ensure enforceability under the CAA.

4. Rule 9-4 Section 402 does not require emissions test results used for certifications to be reported to the Air Pollution Control Officer (APCO) when certification takes place through the District. The rule also allows for the use of SCAQMD's certification method. Although, as discussed in the previous deficiency, that manner in which that method is referenced is not approvable, we note that the SCAQMD method requires submittal of the test results, in contrast to the District-only certification option. As a result, the District's certification method does not provide a sufficiently enforceable means for determining compliance.
5. Rule 9-4 Section 601.3 and 601.4 contain references to Method ST-5 and Method ST-14 from the Bay Area Manual of Procedures. The procedures and test methods have not previously been EPA approved and Rule 9-6 does not reference an EPA approved version of the rule.
6. Rule 9-6 Section 205 contains an outdated reference to "Section 6.1.3 of the Code of Federal Regulation, Title 10, Part 430, Subpart B, Appendix E." However, section 6.1.3 does not exist in the current CFR.
7. Rule 9-6 Section 402.2 references certification methods from SCAQMD Rule 1121 and 1146.2. These methods have not been previously EPA approved and lie outside the SIP.

D. The EPA's recommendations to further improve the rules

The TSD includes recommendations for the next time BAAQMD amends the rules.

E. Public comment and proposed action

Section 110(k)(4) of the CAA authorizes the EPA to conditionally approve a plan revision based on a commitment by the State to adopt specific enforceable measures by a date certain but not later than one year after the date of the plan approval. 42 U.S.C. 7410(k)(4). In this instance, the enforceable measures that the State must submit are new or revised rules that correct the rule deficiencies identified above. On October 30, 2024, the State transmitted a

commitment letter, dated October 2, 2024, from the BAAQMD committing to correct the deficiencies identified in this proposed action. The State also submitted a letter, dated October 30, 2024, from CARB committing to submit the revised rules to the EPA within 12 months of the publication of the final conditional approval by the EPA. As authorized in section 110(k)(4) of the CAA, the EPA proposes to conditionally approve the submitted rules based on the commitment by the state to adopt specific enforceable measures by a date certain but not later than one year after the date of the plan approval.

If this proposed conditional approval is finalized as proposed, and the BAAQMD or the State fail to comply with this commitment, the conditional approval would convert to a disapproval.

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 BAAQMD, Rule 9-4, Nitrogen Oxides from Natural Gas-Fired Furnaces, amended on March 15, 2023 and BAAQMD, Rule 9-6, Nitrogen Oxides from Natural Gas-Fired Boilers and Water Heaters, adopted March 15, 2023, as discussed in section I. 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 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 (Pub. L. 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(ds) 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 rulemaking 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 communities with environmental justice (EJ) concerns to the greatest extent practicable and permitted by law. Executive Order 14096 (Revitalizing Our Nation's Commitment to Environmental Justice for All, 88 FR 25251, April 26, 2023) builds on and supplements EO 12898 and defines EJ as, among other things, “the just treatment and meaningful involvement of all people, regardless of income, race, color, national origin, or Tribal affiliation, or disability in agency decision-making and other Federal activities that affect human health and the environment.”

The air agency evaluated EJ considerations as part of its rule development process even though the CAA and applicable implementing regulations neither prohibit nor require an evaluation. The EPA is taking action under the CAA on bases independent of the air agency's evaluation of EJ. 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. In addition, there is no information in the record upon which this decision is based that is inconsistent with the stated goal of Executive Orders 12898 and 14096 of achieving EJ for communities with EJ concerns.

List of Subjects in 40 CFR Part 52

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

Dated: November 18, 2024.

Martha Guzman Aceves,

Regional Administrator, Region IX.

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