



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R09-OAR-2024-0563; FRL-12442-01-R9]

Air Plan Approval; California; Mojave Desert Air Quality Management 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 Mojave Desert Air Quality Management District (MDAQMD) portion of the California State Implementation Plan (SIP). This revision concerns emissions of oxides of nitrogen (NO_x) from industrial, institutional, and commercial boilers, steam generators, and process heaters. We are proposing to approve 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-2024-0563 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: La Kenya Evans-Hopper, EPA Region IX, 75 Hawthorne St., San Francisco, CA 94105; phone: (415) 972-3245; email: evanshopper.lakenya@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document, “we,” “us,” and “our” refer to the EPA.

Table of Contents

- I. The State’s Submittal
 - A. What rule did the State submit?
 - B. Are there other versions of this rule?
 - C. What is the purpose of the submitted rule revision?
- II. The EPA’s Evaluation and Action
 - A. How is the EPA evaluating the rule?
 - B. Does the rule meet the evaluation criteria?
 - C. Proposed action and public comment
- III. Incorporation by Reference
- IV. Statutory and Executive Order Reviews

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 Control Board (CARB).

TABLE 1 - SUBMITTED RULE

Local Agency	Rule #	Rule Title	Amended	Submitted
MDAQMD	1157	Boilers and Process Heaters	09/25/23	01/10/24

On July 10, 2024, the submittal for MDAQMD Rule 1157 was deemed by operation of law to meet the completeness criteria in 40 CFR part 51 appendix V.

B. Are there other versions of this rule?

On June 16, 2023, (88 FR 39366), we finalized a limited approval and limited disapproval of Rule 1157 as adopted on January 22, 2018. The MDAQMD adopted revisions to the SIP-approved version on September 25, 2023, and CARB submitted them to us on January 10, 2024. If we take final action to approve the September 25, 2023 version of Rule 1157, this version will replace the previously approved version of this rule in the SIP.

C. What is the purpose of the submitted rule revision?

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 CAA requires States to submit plans that provide for implementation, maintenance, and enforcement of the national ambient air quality standards (NAAQS). In addition, CAA section 182(b)(2) requires that SIPs for ozone nonattainment areas classified as “Moderate” or higher implement RACT for sources covered by a control techniques guidelines (CTG) document. The MDAQMD relies on Rule 1157 to establish RACT level controls for covered sources within the MDAQMD portion of the West Mojave Desert ozone nonattainment area.

Revised Rule 1157 establishes emission limits of NO_x and carbon monoxide (CO) for boilers, steam generators, and process heaters (units) with rated heat inputs of greater than or equal to 5 million Btu per hour (MMBtu/hr). Rule 1157 is applicable to new and existing boilers, steam generators, and process heaters within the Mojave Desert portion of the West Mojave Desert ozone nonattainment area. The updated rule removed section (E)(1)(b)(iii), allowing the rule to be consistent with EPA’s startup, shutdown, and malfunction (SSM) policy and the Credible Evidence Rule. The rule revisions also made several clarifying and enforceability-enhancing edits. The updated rule added a definition for “Gas Curtailment” to clarify that the rule exempts times of unexpected gaseous fuel delivery prevention and does not include

increases in the market prices of gaseous fuel. The rule also corrected the sample calculation in section (C)(3)(a)(iv) to reflect the current rule's emission limits that would be used to calculate a weighted average. Finally, Rule 1157 was revised to update test methods for the determination of the higher heating value to the most recent EPA-approved methods.

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 (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)).

Generally, SIP rules must require reasonably available control technology (RACT) for each major source of NO_x in ozone nonattainment areas classified as "Moderate" or above (see CAA section 182(b)(2) and (f)). The MDAQMD regulates ozone nonattainment areas classified as Severe for the 1979 1-hour ozone standard (the Southeast Desert Modified Air Quality Management Area) as well as for the 1997, 2008, and 2015 8-hour ozone NAAQS (the Western Mojave Desert ozone nonattainment area) (see 40 CFR 81.305). Therefore, this rule must implement RACT.

In our June 16, 2023 action, we found that Rule 1157 was largely consistent with the relevant CAA requirements, including RACT. However, in that rulemaking we identified certain deficiencies that prevented full approval of Rule 1157. As a result, in this rulemaking, we focus our analysis primarily on the revisions that have recently been made to Rule 1157.

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 [volatile organic compound] 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 Region 9, August 21, 2001 (the Little Bluebook).
 3. “NO_x Emissions from Industrial/Commercial/Institutional (ICI) Boilers,” EPA 453/R-94-022, March 1994.
 4. “Withdrawal of the October 9, 2020, Memorandum Addressing Startup, Shutdown, and Malfunctions in State Implementation Plans and Implementation of the Prior Policy,” EPA, September 30, 2021.
 5. “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,” EPA, June 12, 2015, 80 FR 33839.
 6. “Inclusion of Provisions Governing Periods of Startup, Shutdown, and Malfunctions in State Implementation Plans,” EPA October 9, 2020.
 7. “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?

In our 2023 action, we determined that section (E)(1)(b)(iii) of Rule 1157, which provided that “[n]o compliance determination shall be established based on data obtained from compliance testing, including integrated sampling methods, during a start-up period or shut-down period,” was not consistent with the EPA’s SSM policy and Credible Evidence Rule because it forbids the use of credible evidence (compliance testing data generated during startup and shutdown periods) in establishing violations of the applicable emissions limit. In addition, the rule revision removed the definitions of “start-up period” and “shut-down period,” making the scope of this provision unclear. The District has corrected this deficiency by removing

section (E)(1)(b)(iii) from Rule 1157. In addition, the District made other improvements to Rule 1157 based on EPA's prior recommendations. The TSD has more information on our evaluation.

Considering the most recent revisions to Rule 1157, we propose to fully approve Rule 1157 because it meets all applicable CAA requirements and is consistent with relevant guidance regarding enforceability, RACT, and SIP revisions. If we finalize this rulemaking as proposed, MDAQMD will have corrected the deficiencies identified in our prior action, and all sanction and Federal implementation plan clocks started by our June 16, 2023 action would be permanently stopped. We are concurrently making an interim final determination to defer CAA section 179 sanctions associated with our June 16, 2023 rulemaking finalizing a limited approval and limited disapproval of Rule 1157. Consistent with our order of sanction regulations,¹ this determination is based on this proposal to approve SIP revisions from the District that resolve the deficiencies that were the basis of our prior disapproval that triggered sanctions under section 179 of the CAA.

C. Proposed action and public comment

As authorized in section 110(k)(3) of the Act, the EPA proposes to 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. In addition, it will permanently stop the sanctions and Federal implementation plan (FIP) clocks started by our June 16, 2023 final action.

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 MDAQMD Rule 1157, "Boilers and Process Heaters,"

¹ 40 CFR 52.31.

amended on September 25, 2023, which regulates NO_x and CO emissions from industrial, institutional, and commercial boilers, steam generators, and process heaters, as described 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 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 approve State choices, provided that they meet the 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 (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(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 CAA.

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, February 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 Executive Order 12898 and defines EJ as, among other things, “the just treatment and meaningful involvement of all people, regardless of income, race, color, national origin, Tribal affiliation, or disability, in agency decision-making and other Federal activities that affect human health and the environment.”

The State did not evaluate EJ 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. 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 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, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Nitrogen oxides, Ozone, Reporting and recordkeeping requirements.

Dated: **December 13, 2024.**

Martha Guzman Aceves,
Regional Administrator,
Region IX.

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