



**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

**[EPA-R09-OAR-2016-0215; FRL-9954-91-Region 9]**

**Partial Approval and Partial Disapproval of California Air Plan  
Revisions; South Coast Air Quality Management District**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing a partial approval and partial disapproval of a revision to the South Coast Air Quality Management District (SCAQMD or District) portion of the California State Implementation Plan (SIP). This revision concerns the District's demonstration regarding Reasonably Available Control Technology (RACT) requirements for the 2008 8-hour ozone National Ambient Air Quality Standard (NAAQS) in the South Coast Air Basin and Coachella Valley ozone nonattainment areas. We are proposing action on a local SIP revision 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:** Any comments must arrive by [**Insert date 30 days after the date of publication in the Federal Register**].

**ADDRESSES:** Submit your comments, identified by Docket ID No.

EPA-R09-OAR-2016-0215 at <http://www.regulations.gov>, or via email to [Steckel.Andrew@epa.gov](mailto:Steckel.Andrew@epa.gov). For comments submitted at [Regulations.gov](http://www.regulations.gov), follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from [Regulations.gov](http://www.regulations.gov). For either manner of submission, 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 <http://www2.epa.gov/dockets/commenting-epa-dockets>.

**FOR FURTHER INFORMATION CONTACT:** Stanley Tong, EPA Region IX, (415) 947-4122, [tong.stanley@epa.gov](mailto:tong.stanley@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 document did the State submit?*

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

TABLE 1 - SUBMITTED DOCUMENT

Local Agency	Document	Adopted	Submitted
SCAQMD	SCAQMD 2016 Air Quality	06/06/14	07/18/14

Local Agency	Document	Adopted	Submitted
	Management Plan (AQMP) Reasonably Available Control Technology (RACT) Demonstration "2016 AQMP RACT SIP"		

On January 18, 2015, the submittal for the SCAQMD 2016 AQMP RACT SIP 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 document?*

There is no previous version of this document in the SCAQMD portion of the California SIP for the 2008 8-hour ozone standard.

*C. What is the purpose of the RACT SIP submission?*

Volatile Organic Compounds (VOCs) and nitrogen oxides (NOx) help produce 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 VOC and NOx emissions. Sections 182(b)(2) and (f) require that SIPs for ozone nonattainment areas classified as moderate or above implement RACT for any source covered by a Control Techniques Guidelines (CTG) document and for any major source of VOCs or NOx.

The SCAQMD is subject to the RACT requirement as it is authorized under state law to regulate stationary sources in the South Coast Air Basin ("South Coast"), which is classified as an extreme nonattainment area, and in the Coachella Valley portion of Riverside County ("Coachella Valley"), which is classified as a severe-15 nonattainment area for the 2008 8-hour ozone NAAQS (40 CFR 81.305); 77 FR 30088 at 30101 and 30103 (May 21, 2012). Therefore, the SCAQMD must, at a minimum, adopt RACT-level controls for all sources covered by a CTG document and for all major non-CTG sources of VOCs or NO<sub>x</sub> within the two nonattainment areas. Any stationary source that emits or has the potential to emit at least 10 tons per year of VOCs or NO<sub>x</sub> is a major stationary source in an extreme ozone nonattainment area (CAA section 182(e) and (f)), and any stationary source that emits or has the potential to emit at least 25 tons per year of VOCs or NO<sub>x</sub> is a major stationary source in a severe ozone nonattainment area (CAA section 182(d) and (f)).

Section III.D of the preamble to the EPA's final rule to implement the 2008 ozone NAAQS (80 FR 12264, March 6, 2015) discusses RACT requirements. It states in part that RACT SIPs must contain adopted RACT regulations, certifications where appropriate that existing provisions are RACT, and/or negative declarations that there are no sources in the nonattainment area

covered by a specific CTG source category and that states must submit appropriate supporting information for their RACT submissions as described in the EPA's implementation rule for the 1997 ozone NAAQS. *See id.*, at 12278; 70 FR 71612, at 71652 (November 29, 2005). The submitted document provides SCAQMD's analyses of its compliance with the CAA section 182 RACT requirements for the 2008 8-hour ozone NAAQS. The EPA's technical support document (TSD) has more information about the District's submission and the EPA's evaluation thereof.

## **II. The EPA's Evaluation and Proposed Action**

### *A. How is the EPA evaluating the RACT SIP submission?*

SIP rules 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 RACT for each category of sources covered by a CTG document as well as each major source of VOCs or NO<sub>x</sub> in ozone nonattainment areas classified as moderate or above (see CAA section 182(b)(2)). The SCAQMD regulates an extreme ozone nonattainment area (i.e., the South Coast Air Basin) and a severe ozone nonattainment area

(i.e., Coachella Valley) (see 40 CFR 81.305), so the District's rules must implement RACT.

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

1. "Final Rule to Implement the 8-hour Ozone National Ambient Air Quality Standard - Phase 2" (70 FR 71612; November 29, 2005).
2. "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).
3. "Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations," EPA, May 25, 1988 (the Bluebook, revised January 11, 1990).
4. "Guidance Document for Correcting Common VOC & Other Rule Deficiencies," EPA Region 9, August 21, 2001 (the Little Bluebook).
5. "State Implementation Plans; Nitrogen Oxides Supplement to the General Preamble; Clean Air Act Amendments of 1990 Implementation of Title I; Proposed Rule," (the NOx Supplement), 57 FR 55620, November 25, 1992.

6. Memorandum from William T. Harnett to Regional Air Division Directors, (May 18, 2006), "RACT Qs & As - Reasonably Available Control Technology (RACT) Questions and Answers".
  7. RACT SIPs, Letter dated March 9, 2006 from EPA Region IX (Andrew Steckel) to CARB (Kurt Karperos) describing Region IX's understanding of what constitutes a minimally acceptable RACT SIP.
  8. RACT SIPs, Letter dated April 4, 2006 from EPA Region IX (Andrew Steckel) to CARB (Kurt Karperos) listing EPA's current CTGs, ACTs, and other documents which may help to establish RACT.
  9. "Implementation of the 2008 National Ambient Air Quality Standards for Ozone: State Implementation Plan Requirements" (80 FR 12264; March 6, 2015).
- B. *Does the RACT SIP submission meet the evaluation criteria?*
- The 2016 AQMP RACT SIP (submitted July 18, 2014) builds on the District's previous RACT SIP demonstrations: the 2006 RACT SIP (73 FR 76947, December 18, 2008), the 2007 AQMP (77 FR 12674, March 1, 2012) and the 2012 AQMP (79 FR 52526, September 3, 2014). The 2016 AQMP RACT SIP concludes, after a review and evaluation of more than 30 rules recently developed by other ozone nonattainment air districts, that SCAQMD's current rules meet the EPA's criteria for RACT acceptability and inclusion in

the SIP for the 2008 8-hour ozone NAAQS. A RACT SIP should consider requirements that apply to CTG source categories and all major stationary sources of VOC or NO<sub>x</sub> emissions.

With regard to CTG and non-CTG source categories, based on its research of the District's permit databases and telephone directories for sources in the District for the 2007 AQMP, the 2012 AQMP, and the 2016 AQMP RACT SIP, the SCAQMD concluded that all identified sources have applicable RACT rules. As such, we characterize the 2016 AQMP RACT SIP as a certification-type of RACT SIP submittal. Because the District's VOC and NO<sub>x</sub> rules apply equally in both the South Coast and Coachella Valley, the District's certification in this regard extends to both ozone nonattainment areas.

Where there are no existing sources covered by a particular CTG document, states may, in lieu of adopting RACT requirements for those sources, adopt negative declarations certifying that there are no such sources in the relevant nonattainment area. The 2007 AQMP indicates there are existing sources for each CTG document issued before 2006, and the 2012 AQMP indicates there are existing sources for each CTG document issued from 2006 to 2008. The EPA has not issued any CTGs since 2008. The SCAQMD did not report any negative declarations in the 2016 AQMP RACT SIP as well.

However, subsequent to its 2016 AQMP RACT SIP submittal, the EPA had several discussions with the SCAQMD and concluded there may be two CTG categories where the District has no sources applicable to the CTGs. For the Paper, Film and Foil coatings CTG, it appears from a review of: the standard industrial codes (SIC) applicable to the CTG, the CARB's emissions inventory, and discussion with the SCAQMD permit engineer, that the SCAQMD has no paper coating sources with coating lines exceeding the CTG's applicability threshold (EPA 453/R-07-003). For the Surface Coating Operations at Shipbuilding and Repair Facilities CTG (61 FR-44050, August 27, 1996 and EPA-453/R-94-032), the SCAQMD indicates it only has one active title V shipyard facility that is subject to Rule 1106, Marine Coating Operations. The one coating category in Rule 1106 that exceeds the CTG's VOC content limit is inorganic zinc and the District indicates inorganic zinc coating is not used at the facility. Consequently, the EPA recommends that the SCAQMD evaluate, and adopt where appropriate, negative declarations for these two CTG categories. The EPA concurs that there are no other negative declarations.

Based on our review and evaluation of the documentation provided by the SCAQMD in the 2016 AQMP RACT SIP and earlier plans, we agree that existing District rules approved in the SIP meet or are more stringent than the corresponding CTG limits and

exemption thresholds for each category of VOC sources covered by a CTG document, and given that the CTG documents represent presumptive RACT level of control, we conclude that existing District rules require the implementation of RACT for each category of VOC sources covered by a CTG document located in the South Coast and Coachella Valley.

With respect to major stationary sources of VOC or NO<sub>x</sub> emissions, the District provided supplemental information identifying 21 new major title V sources since its 2006 RACT SIP certification and provided a list of equipment at these facilities that emit greater than 5 tpy. The District concluded that the equipment were covered by rules that implement RACT. The District's efforts to identify all new major sources appears to be thorough, and we agree that existing District rules approved in the SIP require implementation of RACT for all major non-CTG VOC sources in the South Coast and Coachella Valley. We disagree that all major NO<sub>x</sub> sources in the South Coast are subject to SIP-approved RACT rules or RACT-equivalent programs as explained in the following section.

*C. What are the RACT deficiencies?*

Within the South Coast, major NO<sub>x</sub> sources are included in SCAQMD's Regulation XX ("Regional Clean Air Incentives Market (RECLAIM)") program. The District adopted the RECLAIM program in

1993 to reduce emissions from the largest stationary sources of NOx and oxides of sulfur (SOx) emissions through a market-based trading program that establishes annual declining NOx and SOx allocations (also called "facility caps") and allows covered facilities to comply with their facility caps by installing pollution control equipment, changing operations, or purchasing RECLAIM trading credits (RTCs) from the RECLAIM market. Section 40440 of the California Health and Safety Code (CH&SC) requires the District to monitor advances in best available retrofit control technology (BARCT) and periodically to reassess the overall facility caps to ensure that the facility caps are equivalent, in the aggregate, to BARCT emission levels imposed on affected sources.<sup>1</sup> Facilities subject to RECLAIM are exempted from a number of District prohibitory rules that otherwise apply to sources of NOx and SOx emissions in the South Coast.<sup>2</sup> With certain exceptions, facilities located in Coachella Valley are not included in the RECLAIM program.

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<sup>1</sup> BARCT is defined as "an emission limitation that is based on the maximum degree of reduction achievable taking into account environmental, energy, and economic impacts by each class or category of source." CH&SC section 40406. For the purposes of comparison, the EPA defines RACT as the lowest emission limitation that a particular source is capable of meeting by the application of control technology that is reasonably available considering technological and economic feasibility. 44 FR 53762 (September 17, 1979). As such, we generally find that BARCT level of control meets or exceeds RACT level of control.

<sup>2</sup> District Rule 2001 ("Applicability"), as amended May 6, 2005. Facilities in Coachella Valley are prohibited from entering the RECLAIM program except as allowed under Rule 2001(i)(1)(I).

Under longstanding EPA interpretation of the CAA, a market-based cap and trade program may satisfy RACT requirements by ensuring that the level of emission reductions resulting from implementation of the program will be equal, in the aggregate, to those reductions expected from the direct application of RACT on all affected sources within the nonattainment area.<sup>3</sup> The EPA approved the RECLAIM program into the California SIP in June 1998 based in part on a conclusion that the NOx emission caps in the program satisfied the RACT requirements of CAA section 182(b) (2) and (f) for covered NOx emission sources in the aggregate.<sup>4</sup> In 2005 and 2010, the District adopted revisions to the NOx RECLAIM program, which the EPA approved in 2006 and 2011, respectively, based in part on conclusions that the revisions continued to satisfy NOx RACT requirements.<sup>5</sup> We refer to the current NOx RECLAIM program as approved into the SIP as the "2010 RECLAIM program."

The 2016 AQMP RACT SIP relies on the 2010 RECLAIM program to satisfy the RACT requirements for major NOx sources in the South Coast and Coachella Valley. However, based on new information contained in SCAQMD's December 2015 Draft Final Staff Report

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<sup>3</sup> 59 FR 16690 (April 7, 1994) and EPA, "Improving Air Quality with Economic Incentive Programs," EPA-452/R-01-001 (January 2001), at Section 16.7.

<sup>4</sup> 61 FR 57834 (November 8, 1996) and 63 FR 32621 (June 15, 1998).

<sup>5</sup> 71 FR 51120 (August 29, 2006) and 76 FR 50128 (August 12, 2011).

("2015 staff report") revising Regulation XX, we find that additional NOx reductions are now required to achieve RACT as evidenced by the lack of controls on some refinery boiler units and the District's proposal to reduce the NOx RECLAIM emissions cap.<sup>6</sup> A more detailed discussion about RECLAIM and the requirement that the program ensures, in the aggregate, NOx emissions reductions equivalent to RACT-level controls can be found in our partial approval/disapproval of the South Coast Moderate Area Plan for the 2006 PM<sub>2.5</sub> NAAQS.<sup>7</sup>

Thus, based on our evaluation discussed above, we propose to partially approve and partially disapprove the 2016 AQMP RACT SIP certification because, while we find that existing SIP-approved District rules implement RACT for all sources covered by a CTG document and for all major non-CTG VOC sources in both the South Coast and Coachella Valley, we also find that the 2010 RECLAIM program does not achieve NOx emission reductions equal, in the

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<sup>6</sup> Draft Final Staff Report, Proposed Amendments to Regulation XX Regional Clean Air Initiatives Market (RECLAIM) NOx RECLAIM, December 4, 2015 <http://www.aqmd.gov/docs/default-source/Agendas/Governing-Board/2015/2015-dec4-030.pdf?sfvrsn=9>.

<sup>7</sup> 81 FR 22025, 22027 and 22028 (April 14, 2016) discussing an absence of a demonstration that the 2010 RECLAIM program ensures, in the aggregate, NOx emission reductions equivalent to RACT-level controls.

aggregate, to those reductions expected from the direct application of RACT on all major NOx sources in the South Coast.<sup>8</sup>

We note that, on December 4, 2015, the SCAQMD adopted a new NOx emissions cap that reflects a level of 2 ppmv NOx for refinery boilers/heaters >40 MMBtu/hr indicating that controls “are either commercially available, achieved-in-practice and/or can be designed to achieve 2 ppmv NOx in a cost-effective manner.”<sup>9</sup> However, the amended RECLAIM program has not been submitted to the EPA as a SIP revision and such a submittal would need to include a demonstration of how the RECLAIM program, as amended, provides for NOx emission reductions equal, in the aggregate, to those reductions expected from the direct application of RACT on all major NOx sources in the South Coast.

*D. The EPA’s recommendations to further improve the RACT SIP*

Our TSD for the 2016 AQMP RACT SIP provides additional recommendations for future rule improvements.

*E. Proposed action and public comment*

For the reasons discussed above and explained more fully in our TSD, the EPA proposes to partially approve and partially

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<sup>8</sup> This finding does not apply to Coachella Valley because we have determined that the two RECLAIM facilities located in Coachella Valley are equipped with control technology that meets or exceeds RACT level of control.

<sup>9</sup> Draft Final Staff Report, Proposed Amendments to Regulation XX Regional Clean Air Initiatives Market (RECLAIM) NOx RECLAIM, December 4, 2015, (page 92).

disapprove the CARB's July 18, 2014 submittal of the SCAQMD 2016 AQMP RACT SIP as a revision to the California SIP. Under CAA section 110(k)(3), we propose to approve the 2016 AQMP RACT SIP, with the exception of major NO<sub>x</sub> sources in the South Coast, as satisfying the RACT requirements of CAA section 182(b)(2) and (f) for the South Coast and the Coachella Valley ozone nonattainment areas.

Also under CAA section 110(k)(3), we propose to disapprove the 2016 AQMP RACT SIP as it pertains to major NO<sub>x</sub> sources in the South Coast based on the EPA's finding that the 2010 RECLAIM program no longer ensures NO<sub>x</sub> reductions equivalent to RACT-level controls at each individual major NO<sub>x</sub> source in the South Coast.

If finalized, the partial disapproval would trigger the 2-year clock for the federal implementation plan (FIP) requirement under section 110(c). In addition, final disapproval would trigger sanctions under CAA section 179 and 40 CFR 52.31 unless the EPA approves a subsequent SIP revision that corrects the RACT SIP deficiency within 18 months of the effective date of the final action. We note that our partial disapproval of the District's Moderate Area Plan for the 2006 PM<sub>2.5</sub> NAAQS, 81 FR 22025 (April 14, 2016), has already started CAA sanction and FIP clocks for a NO<sub>x</sub> RACT deficiency. Termination of those existing

clocks by EPA approval of a SIP revision submittal addressing the NO<sub>x</sub> RACT deficiency in the Moderate Area Plan would also terminate sanction/FIP clocks associated with final partial disapproval of the RACT SIP if the SIP revision demonstrates compliance with both the Reasonably Available Control Measure (RACM)/RACT requirement for PM<sub>2.5</sub> and the section 182 RACT requirement for ozone with respect to stationary NO<sub>x</sub> sources in the South Coast.

We will accept comments from the public on the proposed partial approval and partial disapproval for the next 30 days.

### **III. Statutory and Executive Order Reviews**

Additional information about these statutes and Executive Orders can be found at <http://www2.epa.gov/laws-regulations/laws-and-executive-orders>.

*A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review*

This proposed action is not a significant regulatory action and was therefore not submitted to the Office of Management and Budget (OMB) for review.

*B. Paperwork Reduction Act (PRA)*

This proposed action does not impose an information collection burden under the PRA because this action does not

impose additional requirements beyond those imposed by state law.

*C. Regulatory Flexibility Act (RFA)*

I certify that this proposed action will not have a significant economic impact on a substantial number of small entities under the RFA. This action will not impose any requirements on small entities beyond those imposed by state law.

*D. Unfunded Mandates Reform Act (UMRA)*

This proposed action does not contain any unfunded mandate as described in UMRA, 2 U.S.C. 1531-1538, and does not significantly or uniquely affect small governments. This action does not impose additional requirements beyond those imposed by state law. Accordingly, no additional costs to state, local, or tribal governments, or to the private sector, will result from this action.

*E. Executive Order 13132: Federalism*

This proposed action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

*F. Executive Order 13175: Coordination with Indian Tribal*

*Governments*

This proposed action does not have tribal implications, as specified in Executive Order 13175, because 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, and will not impose substantial direct costs on tribal governments or preempt tribal law. Thus, Executive Order 13175 does not apply to this action.

*G. Executive Order 13045: Protection of Children from Environmental Health Risks and Safety Risks*

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that the EPA has reason to believe may disproportionately affect children, per the definition of "covered regulatory action" in section 2-202 of the Executive Order. This proposed action is not subject to Executive Order 13045 because it does not impose additional requirements beyond those imposed by state law.

*H. Executive Order 13211: Actions that Significantly Affect Energy Supply, Distribution, or Use*

This proposed action is not subject to Executive Order 13211, because it is not a significant regulatory action under Executive Order 12866.

I. *National Technology Transfer and Advancement Act (NTTAA)*

Section 12(d) of the NTTAA directs the EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. The EPA believes that this proposed action is not subject to the requirements of section 12(d) of the NTTAA because application of those requirements would be inconsistent with the CAA.

J. *Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Population*

The EPA lacks the discretionary authority to address environmental justice in this rulemaking.

**List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Oxides of sulfur, Volatile organic compounds.

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

Dated: October 19, 2016.                      Alexis Strauss,  
Acting Regional Administrator,  
Region IX.

[FR Doc. 2016-26613 Filed: 11/2/2016 8:45 am; Publication Date: 11/3/2016]