



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R09-OAR-2019-0431; FRL-9999-65-Region 9]

Approval and Conditional Approval of California Air Plan Revision, Imperial County Air

Pollution Control District, Reasonably Available Control Technology

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve in part and conditionally approve in part revisions to the Imperial County Air Pollution Control District (ICAPCD or “District”) portion of the California State Implementation Plan (SIP). These revisions concern the ICAPCD’s Reasonably Available Control Technology (RACT) requirements for the 2008 8-hour ozone National Ambient Air Quality Standard (NAAQS) and negative declarations for several source categories. 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-2019-0431 at <http://www.regulations.gov>. For comments submitted at Regulations.gov, follow the online instructions for submitting comments. Once submitted, comments cannot be removed or edited from 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: Eugene Chen, EPA Region IX, (415) 947-4304, 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?*

On September 12, 2017, the ICAPCD adopted the “Reasonably Availability Control Technology Analysis for the 2017 Imperial County State Implementation Plan for the 2008 8-hr Ozone Standard” (2017 RACT SIP), and on November 14, 2017, the California Air Resources Board (CARB) submitted it to the EPA for approval as a revision to the California SIP. The submittal also included ICAPCD’s Minute Order No. 20, adopting the 2017 RACT SIP and negative declarations for the 2017 RACT SIP.

On May 14, 2018, the submittals for ICAPCD’s 2017 RACT SIP and negative declarations were deemed complete by operation of law to meet the completeness criteria in 40 CFR part 51 Appendix V, which must be met before formal EPA review.

In addition to these SIP submittals, the District and CARB transmitted commitment letters on May 8, 2019 and May 28, 2019 to the EPA to adopt and submit specific enforceable measures within 12 months of the effective date of EPA’s final action on ICAPCD’s RACT SIP.¹

B. *Are there other versions of these documents?*

There are no previous versions of the RACT SIP and negative declarations in the ICAPCD portion of the California SIP for the 2008 8-hour ozone NAAQS.

¹ Letter dated May 8, 2019, from Matt Desert (ICAPCD), to Carol Sutkus, (CARB), and Doris Lo, (EPA Region IX); Letter dated May 28, 2019, from Dr. Michael Benjamin (CARB), to Michael Stoker, (EPA Region IX).

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

Volatile Organic Compounds (VOCs) and oxides of nitrogen (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 regulations that control VOC and NO_x 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 NO_x. The ICAPCD is subject to this requirement as it regulates a nonattainment area that is currently designated and classified as a Moderate nonattainment area for the 2008 8-hour ozone NAAQS. Therefore, the ICAPCD 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_x within the ozone nonattainment area that it regulates. Any stationary source that emits or has the potential to emit at least 100 tons per year (tpy) of VOCs or NO_x is a major stationary source in a Moderate ozone nonattainment area.²

Section III.D of the preamble to the EPA's final rule to implement the 2008 ozone NAAQS discusses RACT requirements.³ 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 no sources in the nonattainment area are covered by a specific CTG.

² CAA section 182(b)(2), (f) and 302(j).

³ 80 FR 12264 (March 6, 2015).

Id. at 12278. It also provides that states must submit appropriate supporting information for their RACT submissions as described in the EPA's implementation rule for the 1997 ozone NAAQS.⁴

The submitted 2017 RACT SIP and negative declarations provide ICAPCD'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 Action

A. How is the EPA evaluating the rules?

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_x in ozone nonattainment areas classified as Moderate or above (see CAA section 182(b)(2)). On May 21, 2012, the EPA designated Imperial County as "Marginal" nonattainment for the 2008 8-hr ozone NAAQS.⁵ On May 4, 2016, the EPA finalized a proposed determination that 11 areas, among them Imperial County, were previously classified as "Marginal" nonattainment and had failed to attain the 2008 ozone NAAQS by the applicable attainment date. These 11 areas were reclassified as "Moderate" nonattainment areas.⁶ The states containing these areas were required to submit revised SIPs that addressed the requirements applicable to "Moderate" nonattainment areas, including a RACT SIP demonstration. As a result, the ICAPCD regulates a Moderate ozone nonattainment area⁷ so the District's rules must implement RACT.

⁴ *Id.* and 70 FR 71612, 71652 (November 29, 2005).

⁵ 77 FR 30088 (May 21, 2012).

⁶ 81 FR 26697 (May 4, 2016).

⁷ See, 40 CFR 81.305.

States should also submit for SIP approval negative declarations for those source categories for which they have not adopted CTG-based regulations (because they have no sources above the CTG-recommended applicability threshold) regardless of whether such negative declarations were made for an earlier SIP.⁸ The submittal should provide reasonable assurance that no sources subject to the CTG requirements currently exist in the District.

The District's analysis must also demonstrate that each major source of VOCs or NO_x in the ozone nonattainment area is covered by a RACT-level rule. In addition, for each CTG source category, the District must either demonstrate that a RACT-level rule is in place, or submit a negative declaration.

Guidance and policy documents that we use to evaluate CAA section 182 RACT requirements 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. EPA Office of Air Quality Planning and Standards, "Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations," May 25, 1988 ("the Bluebook," revised January 11, 1990).
3. EPA Region IX, "Guidance Document for Correcting Common VOC & Other Rule Deficiencies," August 21, 2001 ("the Little Bluebook").

⁸ 57 FR 13498, 13512 (April 16, 1992).

4. “State Implementation Plans; Nitrogen Oxides Supplement to the General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990,” (“the NO_x Supplement”), 57 FR 55620 (November 25, 1992).
5. Memorandum dated May 18, 2006, from William T. Harnett, Director, Air Quality Policy Division, to Regional Air Division Directors, Subject: “RACT Qs & As – Reasonably Available Control Technology (RACT) Questions and Answers.”
6. “Final Rule to Implement the 8-Hour Ozone National Ambient Air Quality Standard – Phase 2,” 70 FR 71612 (November 29, 2005).
7. “Implementation of the 2008 National Ambient Air Quality Standards for Ozone: State Implementation Plan Requirements,” 80 FR 12264 (March 6, 2015).

B. *Do the documents meet the evaluation criteria?*

ICAPCD’s 2017 RACT SIP provides the District’s demonstration that the applicable SIP for the ICAPCD satisfies CAA section 182 RACT requirements for the 2008 8-hour ozone NAAQS. The District based its conclusion on its analysis of SIP-approved requirements that apply to: (1) Source categories for which a CTG has been issued, and (2) Major non-CTG stationary sources of VOC or NO_x emissions.

With respect to CTG source categories, ICAPCD identified several CTG categories with covered sources (i.e. sources covered by the CTG and operating within the nonattainment area), and provided an evaluation of the local rules it relies upon to meet RACT for these categories. We reviewed the District’s evaluation and agree that, with one exception, its rules implement RACT for the applicable CTG categories. The rule that does not implement RACT for the

applicable CTG category is Rule 415 (Transfer and Storage of Gasoline). By letter dated May 8, 2019, the District committed to adopt a revised Rule 415 that will resolve the identified issue by establishing a more stringent VOC emission standard for gasoline terminals, and to transmit this rule to CARB within 11 months of the effective date of the EPA's final action on this submittal. By letter dated May 28, 2019, CARB committed to submit this rule to the EPA within 12 months of the effective date of the EPA final action on this submittal. These letters commit the District to adopt specific enforceable measures to address the identified issue, commit the State to submit them to the EPA by a date certain, and are clear and enforceable. Accordingly, we believe these commitments from the District and State are consistent with CAA section 110(k)(4)'s requirements regarding conditional approval for the 2017 RACT SIP with respect to the source category regulated by Rule 415.

With regard to non-CTG major stationary sources, the ICAPCD identified five major stationary sources of NO_x and one major stationary source of VOC not covered by a CTG document. The 2017 RACT SIP identifies the local RACT rules applicable to these sources, as well as the District's evaluation that these local rules implement RACT. We reviewed the District's evaluation and agree that the applicable local rules implement RACT for these sources.

In addition, 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. Appendix B of the District's submittal lists the District's negative declarations that it has no sources subject to the applicable CTG. These negative declarations are listed in Table 1 below. The District concludes that it has no sources subject to these CTGs based on a review of its permit files, emission

inventories, and District staff knowledge. The EPA reviewed CARB’s emission inventory database, as well as business listings and the Chamber of Commerce directory for Imperial County. Based upon our review, we did not identify any facilities that would be subject to the CTG source categories for which the ICAPCD submitted negative declarations, and conclude that these negative declarations are consistent with the relevant policy and guidance regarding RACT.

TABLE 1 – ICAPCD NEGATIVE DECLARATIONS

EPA Document Number	Document Title
EPA-450/2-77-008	Control of Volatile Organic Emissions from Existing Stationary Sources – Volume II: Surface Coating of Cans, Coils, Paper, Fabrics, Automobiles, and Light-Duty Trucks
EPA-450/2-77-022	Control of Volatile Organic Emissions from Solvent Metal Cleaning
EPA-450/2-77-025	Control of Refinery Vacuum Producing Systems, Wastewater Separators, and Process Unit Turnarounds
EPA-450/2-77-032	Control of Volatile Organic Emissions from Existing Stationary Sources – Volume III: Surface Coating of Metal Furniture
EPA-450/2-77-033	Control of Volatile Organic Emissions from Existing Stationary Sources – Volume IV: Surface Coating of Insulation of Magnet Wire
EPA-450/2-77-034	Control of Volatile Organic Emissions from Existing Stationary Sources – Volume V: Surface Coating of Large Appliances
EPA-450/2-78-015	Control of Volatile Organic Emissions from Existing Stationary Sources – Volume VI: Surface Coating of Miscellaneous Metal Parts and Products
EPA-450/2-78-029	Control of Volatile Organic Emissions from Manufacture of Synthesized Pharmaceutical Products
EPA-450/2-78-030	Control of Volatile Organic Emissions from Manufacture of Pneumatic Rubber Tires
EPA-450/2-78-032	Control of Volatile Organic Emissions from Existing Stationary Sources – Volume VII: Factory Surface Coating of Flat Wood Paneling
EPA-450/2-78-033	Control of Volatile Organic Emissions from Existing Stationary Sources – Volume VIII: Graphic Arts-Rotogravure and Flexography
EPA-450/2-78-036	Control of Volatile Organic Compound Leaks from Petroleum Refinery Equipment
EPA-450/3-82-009	Control of Volatile Organic Compound Emissions from Large Petroleum Dry Cleaners

EPA-450/3-83-006	Control of Volatile Organic Compound Leaks from Synthetic Organic Chemical Polymer and Resin Manufacturing Equipment
EPA-450/3-83-007	Control of Volatile Organic Compound Equipment Leaks from Natural Gas/Gasoline Processing Plants
EPA-450/3-83-008	Control of Volatile Organic Compound Emissions from Manufacture of High-Density Polyethylene, Polypropylene, and Polystyrene Resins
EPA-450/3-84-015	Control of Volatile Organic Compound Emissions from Air Oxidation Processes in Synthetic Organic Chemical Manufacturing Industry
EPA-450/4-91-031	Control of Volatile Organic Compound Emissions from Reactor Processes and Distillation Operations in Synthetic Organic Chemical Manufacturing Industry
EPA-453/R-96-007	Control of Volatile Organic Compound Emissions from Wood Furniture Manufacturing Operations
EPA-453/R-94-032 61 FR 44050; 8/27/96	Control Techniques Guidelines for Shipbuilding and Ship Repair Operations (Surface Coating)
EPA-453/R-97-004 59 FR 29216; 6/06/94	Aerospace (CTG & MACT)
EPA-453/R-06-001	Control Techniques Guidelines for Industrial Cleaning Solvents
EPA-453/R-06-002	Control Techniques Guidelines for Offset Lithographic Printing and Letterpress Printing
EPA-453/R-06-003	Control Techniques Guidelines for Flexible Package Printing
EPA-453/R-06-004	Control Techniques Guidelines for Flat Wood Paneling Coatings
EPA 453/R-07-003	Control Techniques Guidelines for Paper, Film, and Foil Coatings
EPA 453/R-07-004	Control Techniques Guidelines for Large Appliance Coatings
EPA 453/R-07-005	Control Techniques Guidelines for Metal Furniture Coatings
EPA 453/R-08-003	Control Techniques Guidelines for Miscellaneous Metal and Plastic Parts Coatings, Table 2 – Metal Parts and Products
EPA 453/R-08-003	Control Techniques Guidelines for Miscellaneous Metal and Plastic Parts Coatings, Table 3 – Plastic Parts and Products
EPA 453/R-08-003	Control Techniques Guidelines for Miscellaneous Metal and Plastic Parts Coatings, Table 4 - Automotive/Transportation and Business Machine Plastic Parts
EPA 453/R-08-003	Control Techniques Guidelines for Miscellaneous Metal and Plastic Parts Coatings, Table 5 – Pleasure Craft Surface Coating
EPA 453/R-08-003	Control Techniques Guidelines for Miscellaneous Metal and Plastic Parts Coatings, Table 6 – Motor Vehicle Materials
EPA 453/R-08-004	Control Techniques Guidelines for Fiberglass Boat Manufacturing Materials
EPA 453/R-08-005	Control Techniques Guidelines for Miscellaneous Industrial Adhesives
EPA 453/R-08-006	Control Techniques Guidelines for Automobile and Light-Duty Truck Assembly Coatings
EPA 453/B16-001	Control Techniques Guidelines for the Oil and Natural Gas Industry

Please consult our TSD for more information on our evaluation of the submitted 2017 RACT SIP.

C. *Proposed action and public comment*

If a portion of a plan revision meets all the applicable CAA requirements, section 110(k)(3) authorizes the EPA to approve the plan revision in part.⁹ In addition, section 110(k)(4) 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.¹⁰ In this instance, the enforceable measures that the state must submit are new or revised rules that correct the rule issues identified above. On May 8, 2019, the District transmitted to CARB and the EPA a commitment to adopt a revised Rule 415 (Transfer and Storage of Gasoline), that will resolve the identified issue, and to transmit this rule to CARB within 11 months of the effective date of the EPA's final action on this submittal. On May 28, 2019, CARB committed to submit this rule to the EPA within 12 months of the effective date of the EPA final action on this submittal. If the ICAPCD or CARB fail to fulfill this commitment, this proposed conditional approval would convert to a disapproval and start an 18-month clock for sanctions under CAA section 179(a)(2) and a two-year clock for a federal implementation plan under CAA section 110(c)(1).

Based on our evaluation of the submitted documents, and as authorized in section 110(k)(3) and (4) of the Act, the EPA is proposing to conditionally approve the ICAPCD's 2017 RACT SIP with respect to the source category regulated by Rule 415 (Transfer and Storage of Gasoline). Simultaneously, the EPA proposes to fully approve the remainder of the ICAPCD's

⁹ 42 U.S.C. 7410(k)(3).

¹⁰ 42 U.S.C. 7410(k)(4).

2017 RACT SIP, and to fully approve the ICAPCD's negative declaration, submitted on November 14, 2017.

We will accept comments from the public on this proposal until [**Insert date 30 days after the date of publication in the Federal Register**]. If we take final action to approve the submitted documents, our final action will incorporate them into the federally enforceable SIP.

III. 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 13563 (76 FR 3821, January 21, 2011);
- is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866;
- 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 an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- 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; and
- does not provide the EPA with the discretionary authority to address disproportionate human health or environmental effects with practical, appropriate, and legally permissible methods under Executive Order 12898 (59 FR 7629, February 16, 1994).

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 proposed 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).

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.

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

Dated: August 29, 2019.

Deborah Jordan,
Acting Regional Administrator,
Region IX.

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