



## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R09-OAR-2025-0058; FRL-12609-01-R9]

### Air Plan Approval; California; Eastern Kern Air Pollution Control District; Portland Cement Kilns

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

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing to approve a revision to the Eastern Kern Air Pollution Control District (EKAPCD or “District”) portion of the California State Implementation Plan (SIP). This revision concerns emissions of oxides of nitrogen (NO<sub>x</sub>) from Portland cement kilns. We are proposing to approve a local rule to regulate these emission sources under the Clean Air Act (CAA or “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-2025-0058 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:** Elijah Gordon, EPA Region IX, 75 Hawthorne St., San Francisco, CA 94105; telephone number: (415) 972-3158; email address: [gordon.elijah@epa.gov](mailto:gordon.elijah@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 date that it was adopted by the local air agency and submitted to the EPA by the California Air Resources Board (CARB).

**Table 1-Submitted Rule**

Local Agency	Rule #	Rule Title	Amended	Submitted
EKAPCD	425.3	Portland Cement Kilns (Oxides of Nitrogen)	11/13/2024	12/12/2024

The EPA has reviewed the SIP submittal containing the document listed in table 1 and finds that it fulfills the completeness criteria in 40 CFR part 51, appendix V.

*B. Are there other versions of this rule?*

On June 5, 2023 (88 FR 36479), we finalized a limited approval and limited disapproval of Rule 425.3 as amended on March 8, 2018. The EKAPCD adopted revisions to the SIP-approved version on November 13, 2024, and CARB submitted them to us on December 12, 2024. If we take final action to approve the November 13, 2024 version of Rule 425.3, this version will replace the previously approved version of this rule in the SIP.

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

Emissions of NO<sub>x</sub> 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). CAA sections 182(b)(2) and 182(f) in combination require that SIPs for ozone nonattainment areas classified as “Moderate” or higher implement Reasonably Available Control Technology (RACT) for any category of sources covered by a Control Techniques Guidelines (CTG) document and for any major source of volatile organic compounds (VOCs) or NO<sub>x</sub>. The EKAPCD has jurisdiction over the Kern County (Eastern Kern) ozone nonattainment area. The area is classified as “Moderate” for the 1997 8-hour ozone NAAQS, “Severe-15” for the 2008 8-hour ozone NAAQS, and “Serious” for the 2015 8-hour ozone NAAQS.<sup>1</sup> Therefore, EKAPCD must implement RACT in this area consistent with CAA sections 182(b)(2) and 182(f). The District relies on Rule 425.3 to establish RACT-level controls for Portland cement kilns at major sources of NO<sub>x</sub> within the ozone nonattainment area.

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<sup>1</sup> See 40 CFR 81.305. For the 2008 ozone NAAQS, EKAPCD’s voluntary reclassification to “Serious” from “Moderate” was finalized on July 5, 2018 (83 FR 31334) and the voluntary reclassification to “Severe-15” was finalized on June 7, 2021 (86 FR 30204). EKAPCD’s voluntary reclassification to “Serious” for the 2015 ozone NAAQS was finalized on October 28, 2021 (86 FR 59648).

In our June 5, 2023 limited approval and limited disapproval of the 2018 version of Rule 425.3, the EPA evaluated the RACT stringency of Rule 425.3 with respect to the Portland cement kilns covered by the rule, and the limited disapproval portion of that action started a sanctions clock based on the deficient portion of that rule. The present submission was submitted in order to address that deficiency.

Rule 425.3 establishes NO<sub>x</sub> emission limitations for the operation of Portland cement kilns within the nonattainment area under the EKAPCD's jurisdiction. The EKAPCD revised Rule 425.3 in order to correct the deficiencies identified in our June 5, 2023 limited approval and limited disapproval. The revised rule requires all kilns to comply with the 2.8 lb of NO<sub>x</sub>/ton of clinker over a 30-operating day rolling average limit, replaces exemptions from NO<sub>x</sub> emission limitations during startup and shutdown operations with new alternative NO<sub>x</sub> emission limitations, and removes the exemption from NO<sub>x</sub> emission limitations during breakdown conditions. The EKAPCD also removed the less stringent alternative emission limitation (3.4 lb of NO<sub>x</sub>/ton of clinker over a 30-operating day rolling average) during periods of normal operation for low NO<sub>x</sub> burners or low NO<sub>x</sub> precalciner kilns installed and made operational by January 1, 2007. The EKAPCD added a recordkeeping requirement for Portland cement kilns, which must now record startup and shutdown daily NO<sub>x</sub> emission rates. Finally, the EKAPCD revised the definitions of "startup" and "shutdown" to align with 40 CFR part 63, subpart LLL—National Emission Standards for Hazardous Air Pollutants From the Portland Cement Manufacturing Industry (see 40 CFR 63.1341). 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)) and must not interfere with applicable requirements concerning attainment and reasonable further progress or other CAA requirements (see CAA section 110(l)). Additionally, as explained above, EKAPCD must

implement RACT in this area pursuant to CAA sections 182(b)(2) and (f), and the District relies on Rule 425.3 to establish RACT-level controls for Portland cement kilns at major sources of NO<sub>x</sub> within the Kern County (Eastern Kern) ozone nonattainment area. In our June 5, 2023 action, we found that Rule 425.3 was largely consistent with the relevant CAA requirements. However, in that final rulemaking, we identified certain deficiencies that prevented full approval of Rule 425.3. This rulemaking focuses on the deficiencies identified in that June 5, 2023 limited disapproval and proposes to determine that the revisions to Rule 425.3 correct those identified deficiencies.

Guidance and policy documents that we used to evaluate enforceability, interference under CAA section 110(l), and rule stringency 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).
4. “State Implementation Plans; Nitrogen Oxides Supplement to the General Preamble; Clean Air Act Amendments of 1990 Implementation of Title I; Proposed Rule,” (the NO<sub>x</sub> Supplement), 57 FR 55620, November 25, 1992.
5. “NO<sub>x</sub> Emissions from Cement Manufacturing,” EPA-453/R-94-004, March 1994.
6. “Air Plan Limited Approval and Limited Disapproval; California; Eastern Kern Air Pollution Control District,” 88 FR 36479, June 5, 2023.

*B. Does the rule meet the evaluation criteria?*

Based on our evaluation, this rule meets CAA requirements and is consistent with

relevant guidance regarding enforceability, RACT, and SIP revisions. In our June 5, 2023 final rule, we determined that the NO<sub>x</sub> emission limitation of 2.8 lb of NO<sub>x</sub>/ton of clinker over a 30-operating day rolling average, excluding periods of startup and shutdown, implements RACT-level stringency. We have not identified any information since our June 5, 2023 final action to alter this determination. We also determined in that final action that sections (IV)(A) and (IV)(B) of Rule 425.3, which contained exemptions from emission limitations for Portland cement kiln sources during periods of startup, shutdown, and breakdown conditions, were deficient because “[a]n emission limitation or requirement that exempts a period of source operation, such as startup or shutdown, cannot be considered continuous and is not consistent with CAA requirements.”<sup>2</sup> See, e.g., CAA section 302(k). These deficiencies were the only identified deficiencies that were the basis for our limited disapproval. Our proposed approval of the present submission of Rule 425.3 does not otherwise alter our previous determination that Rule 425.3 establishes RACT-level controls for all sources subject to the rule, except for the identified deficiencies. As a result, in this action, we focus our analysis primarily on the revisions that have been made to the rule and supporting analysis to cure the previously identified deficiencies and serve as the basis for now proposing to approve the rule.

In response to our limited disapproval of Rule 425.3, the EKAPCD removed sections (IV)(A) and (IV)(B) of Rule 425.3, added alternative emission limitations during startup and shutdown, and added recordkeeping requirements during startup and shutdown. The alternative emission limitations during startup and shutdown of 21,528 lb of NO<sub>x</sub> per day is similar to the NO<sub>x</sub> alternative emission limitations during startup and shutdown required in Mojave Desert Rule 1161 – Portland Cement Kilns, which was SIP-approved on June 2, 2023 (see 88 FR 36249).<sup>3</sup> Based on our previous determination that the stringency of the NO<sub>x</sub> emission

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<sup>2</sup> See 88 FR 36479.

<sup>3</sup> During periods of startup and shutdown, little to no clinker is produced while NO<sub>x</sub> emissions are generated. Therefore, NO<sub>x</sub> emissions during these periods are characterized by lb of NO<sub>x</sub>/ton of clinker values that can vary significantly based on varying clinker production values during these periods of operation.

limitations during periods of normal operations contained in Rule 425.3 implement RACT, combined with the revised numerical alternative emission NO<sub>x</sub> mass limits that apply during periods of startup and shutdown in the updated rule, we are proposing to determine that the District has established emission limitations in the SIP that are continuous and implement RACT for Portland cement kilns subject to Rule 425.3. Our evaluation of the remainder of the rule remains unchanged from our 2023 analysis. The TSD has more information on our evaluation.

Considering the most recent revisions to Rule 425.3, we propose to fully approve Rule 425.3 as meeting all applicable CAA requirements and being consistent with relevant guidance regarding enforceability, RACT, and SIP revisions.

### *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. If we finalize approval of the submitted rule, our final action will incorporate this rule into the federally enforceable SIP. 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 finalize this rulemaking as proposed, EKAPCD will have corrected the deficiencies identified in our prior June 5, 2023 limited disapproval, and all associated sanctions and Federal implementation plan clocks would be permanently stopped, and any already applied sanctions would permanently be lifted. We are concurrently making an interim final determination to stay and defer the CAA section 179 sanctions associated with our June 5, 2023 limited disapproval of Rule 425.3. Consistent with our order of sanction regulations,<sup>4</sup> this determination is based on this proposed approval of SIP revisions to resolve the deficiencies that were the basis of our prior June 5, 2023 limited disapproval.

### **III. Incorporation by Reference**

In this document, the EPA is proposing to include in a final EPA rule regulatory text that

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<sup>4</sup> See 40 CFR 52.31.

includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is proposing to incorporate by reference the EKAPCD Rule 425.3, “Portland Cement Kilns (Oxides of Nitrogen),” amended on November 13, 2024, which establishes NO<sub>x</sub> emission limitations from the operation of Portland cement kilns. 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 CAA. 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 Order 12866 (58 FR 51735, October 4, 1993);
- Is not subject to Executive Order 14192 (90 FR 9065, February 6, 2025) because SIP actions are exempt from review 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 (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).

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

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

Dated: **May 21, 2025**.

**Joshua F. W. Cook,**  
*Regional Administrator, Region IX.*

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