



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R09-OAR-2025-0058; FRL-12609-02-R9]

Determination To Defer Sanctions; California; Eastern Kern Air Pollution Control

District; Portland Cement Kilns

AGENCY: Environmental Protection Agency (EPA).

ACTION: Interim final determination.

SUMMARY: The Environmental Protection Agency (EPA) is making an interim final determination that the California Air Resources Board (CARB) has submitted a revised rule on behalf of the Eastern Kern Air Pollution Control District (EKAPCD) that addresses deficiencies in its Clean Air Act (CAA or “Act”) State Implementation Plan (SIP) concerning reasonably available control technology (RACT) ozone nonattainment requirements for controlling emissions of oxides of nitrogen (NO_x) from Portland cement kilns. This determination is based on a proposed approval of the submitted revised rule, published elsewhere in this issue of the *Federal Register*. The effect of this interim final determination is that the application of offset sanctions that was triggered by a previous limited disapproval by the EPA in 2023 is now stayed, and the application of highway sanctions is now deferred. If the EPA finalizes its proposed approval of EKAPCD’s submittal, relief from these sanctions will become permanent.

DATES: This interim final determination is effective [insert date of publication in the Federal Register]. However, comments will be accepted 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.

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

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I. Background

On June 5, 2023, the EPA issued a final rule (88 FR 36479) promulgating a limited approval and limited disapproval for the EKAPCD rule listed in table 1, which was submitted by CARB to the EPA for inclusion into the California SIP (“2023 final rule”).

Table 1-District Rule With Previous EPA Action

Local Agency	Rule #	Rule Title	Amended	Submitted	EPA action in 2023
EKAPCD	425.3	Portland Cement Kilns (Oxides of Nitrogen)	03/08/2018	08/22/2018	Limited Approval and Limited Disapproval

Sections 182(b)(2) and 182(f) of the CAA 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 volatile organic compounds (VOCs) or NO_x. The EKAPCD must implement RACT-level controls because it regulates the Kern County (Eastern Kern) ozone nonattainment area that is classified as “Moderate” for the 1997 8-hour National Ambient Air Quality Standards (NAAQS), “Severe-15” for the 2008 8-hour NAAQS, and “Serious” for the 2015 8-hour ozone NAAQS.¹

In the 2023 final rule, we determined that although the EKAPCD rule strengthened the SIP and was largely consistent with the requirements of the CAA, the submitted rule contained deficiencies that precluded our full approval of the rule into the SIP. More specifically, sections (IV)(A) and (IV)(B) of the EKAPCD’s previously submitted Rule 425.3 contained NO_x emission limitation exemptions for Portland cement kiln sources during periods of startup, shutdown, and breakdown conditions. The EPA determined these provisions created deficiencies in the rule 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.”²

Pursuant to section 179 of the CAA and our regulations at 40 CFR part 52, the limited disapproval action on EKAPCD’s previously submitted Rule 425.3 under title I, part D, of the Act started a sanctions clock for imposition of offset sanctions under the nonattainment new

¹ See 40 CFR 81.305.

² See 88 FR 36479.

source review program 18 months after the action’s effective date of July 5, 2023, and highway sanctions six months later.

On November 13, 2024, the EKAPCD revised Rule 425.3, and on December 12, 2024, CARB submitted it to the EPA for approval into the California SIP, as shown in table 2 below.

Table 2-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 revised EKAPCD Rule 425.3 in table 2 of this document is intended to address deficiencies identified in our June 5, 2023 final limited disapproval. In the Proposed Rules section of this *Federal Register*, we have proposed approval of the revised EKAPCD Rule 425.3. Based on the proposed action approving Rule 425.3 into the California SIP, we believe that it is more likely than not that the State’s submittal now meets the applicable CAA requirements. Therefore, the EPA is making this interim final determination based on our concurrent proposal to approve the State’s December 12, 2024 SIP submission to correct the deficiencies identified in the June 5, 2023 limited approval and limited disapproval of Rule 425.3. This interim final determination, effective on publication, stays the application of offset sanctions and defers the application of highway sanctions that were triggered by our June 5, 2023 final limited approval and limited disapproval of Rule 425.3.

While the EPA is not providing an opportunity for public comment before the deferral of CAA section 179 sanctions is effective, the EPA is providing the public with an opportunity to comment on this stay and deferral of sanctions after the fact. In the event the EPA reverses its preliminary determination that the State has corrected the deficiencies (as explained in the proposed approval), sanctions would become effective pursuant to 40 CFR 52.31(d)(2)(i). Additionally, the EPA is providing an opportunity to comment on the concurrent proposed approval that is the basis for this interim final determination, so the public has an opportunity to

comment on that action before any sanctions clock could be permanently stopped or any already applied sanctions are permanently terminated. If the EPA finalizes the approval as proposed, then all sanctions and any sanction clocks triggered by our June 5, 2023 final limited approval and limited disapproval would be permanently terminated on the effective date of our final approval of Rule 425.3.

II. The EPA's Evaluation and Action

We are making an interim final determination to stay and defer CAA section 179 sanctions associated with our limited disapproval action on June 5, 2023, of EKAPCD Rule 425.3. This determination is based on our concurrent proposal to fully approve EKAPCD Rule 425.3, which, if finalized, would resolve the deficiencies identified in our limited disapproval that triggered sanctions under section 179 of the CAA.

The basis for allowing such an interim final action stems from section 553(b)(B) of the Administrative Procedures Act (APA), which provides that the notice and opportunity for comment requirements do not apply when the Agency finds that those procedures are “impracticable, unnecessary, or contrary to the public interest.” Because the EPA has preliminarily determined that EKAPCD Rule 425.3, amended on November 13, 2024, addresses the deficiencies identified in the limited disapproval under part D of title I of the CAA, and we are proposing to determine that the amended rule is now fully approvable, relief from sanctions should be provided as quickly as possible. In the case of sanctions, the EPA believes it would be both impracticable and contrary to the public interest to have to propose and provide an opportunity to comment before any relief is provided from the effect of sanctions. The EPA believes it would be unfair to the State and its citizens, and thus not in the public interest, for sanctions to remain in effect following the proposed approval, since the EPA has completed a thorough evaluation of the State's SIP revision and publicly stated its belief that the submittal is approvable. Therefore, the EPA is invoking the good cause exception under the APA in not providing an opportunity for comment before this action takes effect (5 U.S.C. 553(b)(B)).

However, the EPA is still providing the public with a chance to comment on the EPA's determination after the effective date, and the EPA will consider any comments received in determining whether to reverse such action.

Section 553(d)(1) of the APA provides that final rules shall not become effective until 30 days after publication in the *Federal Register* "except . . . a substantive rule which grants or recognizes an exemption or relieves a restriction." The purpose of this provision is to "give affected parties a reasonable time to adjust their behavior before the final rule takes effect."³ However, when the agency grants or recognizes an exemption or relieves a restriction, affected parties do not need a reasonable time to adjust because the effect is not adverse. Because this rule relieves a restriction, EPA finds good cause under 5 U.S.C. 553(d)(1) for this action to become effective on the **date** of publication of this action.

III. Statutory and Executive Order Reviews

This action defers sanctions and imposes no additional requirements. For that reason, this 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.*);

³ *Omnipoint Corp. v. Fed. Comm'n Comm'n*, 78 F.3d 620, 630 (D.C. Cir. 1996); see also *United States v. Gavrilovic*, 551 F.2d 1099, 1104 (8th Cir. 1977) (quoting legislative history)

- 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 approves 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).

This action is subject to the Congressional Review Act (CRA), and the EPA will submit a rule report to each House of the Congress and to the Comptroller General of the United States. The CRA allows the issuing agency to make a rule effective sooner than otherwise provided by the CRA if the agency makes a good cause finding that notice and comment rulemaking procedures are impracticable, unnecessary, or contrary to the public interest (5 U.S.C. 808(2)). The EPA has made a good cause finding for this action as discussed in section II. of this preamble, including the basis for that finding.

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[insert date 60 days**

after date of publication in the Federal Register]. Filing a petition for reconsideration by the EPA Administrator of this final rule does not affect the finality of this action for the purposes of judicial review, nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements (see section 307(b)(2)).

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.

[FR Doc. 2025-10037 Filed: 6/3/2025 8:45 am; Publication Date: 6/4/2025]