



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R09- OAR-2019-0147; FRL-10001-32-Region 9]

Air Plan Approval; California; Calaveras County Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking final action to approve a revision to the Calaveras County Air Pollution Control District (CCAPCD) portion of the California State Implementation Plan (SIP). This revision concerns reporting of emissions of volatile organic compounds (VOCs) and oxides of nitrogen (NO_x) in ozone nonattainment areas. We are approving a local rule that applies to certain emission sources under the Clean Air Act (CAA or the Act).

DATES: This rule will be effective on [**Insert date 30 days after date of publication in the *Federal Register***].

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA-R09-OAR-2019-0147. All documents in the docket are listed on the <https://www.regulations.gov> web site. Although listed in the index, some information is not publicly available, *e.g.*, Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available

through <https://www.regulations.gov>, or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional availability information.

FOR FURTHER INFORMATION CONTACT: Nancy Levin, EPA Region IX, 75 Hawthorne Street, San Francisco, CA 94105. By phone: (415) 972-3848 or by email at levin.nancy@epa.gov.

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

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I. Proposed Action

The CCAPCD is a “Marginal” nonattainment area for the 2008 and 2015 ozone national ambient air quality standards (NAAQS). CAA section 182(a)(3)(B)(i) requires states with ozone nonattainment areas to require certified emission statements from stationary sources of VOC and NO_x. Pursuant to this requirement, the EPA proposed to approve the following rule submitted by the CCAPCD into the California SIP on May 8, 2019 (84 FR 20071).

Local Agency	Rule #	Rule Title	Adopted	Submitted
CCAPCD	513	Source Recordkeeping and Emission Statement	06/26/2018	11/21/2018

Rule 513 requires the owner or operator of any stationary source that emits or may emit VOC or NO_x to provide the District Air Pollution Control Officer with a certified, written emissions statement showing actual emissions or operational data allowing the District to estimate actual emissions from that source. We proposed to approve this rule because we determined that it complies with the relevant CAA requirements. We approved an earlier version of Rule 513, then numbered Rule 408 “Source Recordkeeping and Reporting,” into the SIP on May 11, 1977 (42 FR 23804). Our proposed action contains more information on the rule and our evaluation.

II. Public Comments and EPA Responses

The EPA’s proposed action provided a 30-day public comment period that closed on June 7, 2019. During this period, we received two comments. One comment supported the proposed action, and the EPA does not provide a response to this comment. The remaining comment is summarized below, with the EPA response:

Comment: The commenter states that the EPA should not approve the rule because it does not require recordkeeping retention. The commenter states that New Source Performance Standard (NSPS) and National Emission Standards for Hazardous Air Pollutants (NESHAP) rules require a 5-year record retention period, and that guidance documents we reference say that records should be kept for five years. Commenter cites a prior version of the proposed rule that required a 2-year record retention period.

Response: Generally, the EPA requires records retention periods for certain types of rules (such as NSPS and NESHAP) so that an inspector can review records at a later date if any compliance issues arise with required emission limits, control measures, or test methods. For example, if a landfill facility claimed to have been complying with the Municipal Solid Waste Landfill NSPS (40 CFR part 60, subpart WWW) in the last 5 years by routing all of its collected

gas to a control system designed and operated to reduce nonmethane organic compounds (NMOC) by 98%,¹ an inspector would need records to verify the percentage reduction of NMOC achieved by the control device during that time,² and records of the average combustion temperature measured at least every 15 minutes to compare to the temperature during the performance test.³

However, unlike a rule that is prohibitory in nature, i.e., that limits or controls the activity of a source of air pollution and requires recordkeeping to verify compliance with CAA requirements, Calaveras County Rule 513 is an annual emissions reporting rule that is administrative in nature and does not require recordkeeping to verify compliance. While the EPA generally recommends recordkeeping as a best practice, the measure of compliance for the source per Rule 513 is whether the source reports its emissions annually to the District (or State); therefore, a records retention period is not required to determine compliance with the rule. Further, the text of CAA section 182(a)(3)(B)(i) does not mention records retention requirements and the EPA is aware of no regulations or guidance, including the guidance cited in our proposed rulemaking, mandating that states must impose records retention requirements on sources in their SIP submission addressing emissions statements under CAA section 182(a)(3)(B)(i).

III. EPA Action

No comments were submitted that change our assessment of the rule as described in our proposed action. Therefore, as authorized in section 110(k)(3) of the Act, the EPA is fully approving this rule into the California SIP.

¹ 40 CFR part 60, subpart WWW - Standards of Performance for Municipal Solid Waste Landfills at §60.752(b)(2)(iii)(B)

² 40 CFR 60.758(b)(2)(ii)

³ 40 CFR 60.758(b)(2)(i)

IV. Incorporation by Reference

In this rule, the EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is finalizing the incorporation by reference of the Calaveras County rule described in the amendments to 40 CFR part 52 set forth below. The EPA has made, and will continue to make, these documents available through *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).

V. 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 action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this 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, as appropriate, disproportionate human health or environmental effects, using practicable 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 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).

The Congressional Review Act, 5 U.S.C. section 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the *Federal Register*. A major rule cannot take effect until 60 days after it is published in the *Federal Register*. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, 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 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 dioxide, Ozone, Reporting and recordkeeping
requirements, Volatile organic compounds.

Dated: October 4, 2019.

Deborah Jordan,
Acting Regional Administrator,
Region IX.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52 - APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for part 52 continues to read as follows:

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

Subpart F– California

2. Section 52.220 is amended by adding paragraphs (c)(28)(iv)(E) and (c)(527) to read as follows:

§52.220 Identification of plan-in part.

* * * * *

(c) * * *

(28) * * *

(iv) * * *

(E) Previously approved on May 11, 1977 in paragraph (c)(28)(iv)(A) of this section and now deleted with replacement in paragraph (c)(527)(i)(A)(I) of this section, Rule 408, “Source Recordkeeping and Reporting,” effective December 16, 1974.

* * * * *

(527) New regulations for the following APCDs were submitted on November 21, 2018 by the Governor’s designee.

(i) *Incorporation by reference.* (A) Calaveras County Air Pollution Control District.

(I) Rule 513, “Source Recordkeeping and Emission Statement,” adopted on June 26, 2018.

(2) [Reserved]

(B) [Reserved]

(ii) [Reserved]