

to, the transactions described in paragraph (c) of this section as listed transactions for purposes of § 1.6011-4(b)(2) effective on [date of publication of final regulations in the **Federal Register**].

(2) *Obligations of participants with respect to prior periods.* Taxpayers who have filed a tax return (including an amended return) reflecting their participation in transactions described in paragraph (a) of this section prior to [date of publication of final regulations in the **Federal Register**], must disclose the transactions as required by § 1.6011-4(d) and (e) provided that the period of limitations for assessment of tax (as determined under section 6501 of the Code, including section 6501(c)) for any taxable year in which the taxpayer participated has not ended on or before [date of publication of final regulations in the **Federal Register**]. However, taxpayers who have filed a disclosure statement regarding their participation in the transaction with the Office of Tax Shelter Analysis pursuant to Notice 2015-73, 2015-46 I.R.B. 660, will be treated as having made the disclosure with respect to the transaction pursuant to the final regulations for the taxable years for which the taxpayer filed returns before [date of publication of final regulations in the **Federal Register**]. If a taxpayer described in the preceding sentence participates in the basket contract listed transaction in a taxable year for which the taxpayer files a return on or after [date of publication of final regulations in the **Federal Register**], the taxpayer must file a disclosure statement with the Office of Tax Shelter Analysis at the same time the taxpayer files its return for the first such taxable year.

(3) *Obligations of material advisors with respect to prior periods.* Material advisors defined in § 301.6111-3(b) of this chapter who have previously made a tax statement with respect to a transaction described in paragraph (a) of this section have disclosure and list maintenance obligations as described in §§ 301.6111-3 and 301.6112-1 of this chapter, respectively. Notwithstanding § 301.6111-3(b)(4)(i) and (iii) of this chapter, material advisors are required to disclose only if they have made a tax statement on or after the date that is six

years before [date of publication of final regulations in the **Federal Register**].

Douglas W. O'Donnell,
Deputy Commissioner.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R09-OAR-2023-0625; FRL-11613-01-R9]

Air Plan Revisions; California; Eastern Kern Air Pollution Control District; Tehama County Air Pollution Control District; San Diego County Air Pollution Control District Emissions Statement Requirements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve revisions, under the Clean Air Act (CAA or “Act”), to portions of the California State Implementation Plan (SIP) regarding emissions statements (ES) requirements for the 2015 ozone national ambient air quality standards (NAAQS). In addition, we are proposing that the following California nonattainment areas (NAAs) meet the ES requirements for the 2015 ozone NAAQS: Tuscan Buttes, Kern County (Eastern Kern), and San Diego County. We are taking comments on this proposal and plan to follow with a final action.

DATES: Comments must be received on or before August 12, 2024.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R09-OAR-2023-0625 at <https://www.regulations.gov>. For comments submitted at [Regulations.gov](https://www.regulations.gov), follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from [Regulations.gov](https://www.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 (e.g., audio or video) 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: Sina Schwenk-Mueller, EPA Region IX, 75 Hawthorne St., San Francisco, CA 94105. By phone: (415) 947-4100 or by email at schwenkmueller.sina@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 rules did the State submit?

The California Air Resources Board submitted rules for the the Eastern Kern Air Pollution Control District (APCD), Tehama County APCD, and San Diego County APCD portions of the California SIP.

Table 1 lists the rules submitted for approval into the SIP with the dates that the rules were adopted or revised by the local or State air agencies and submitted by the States to fulfill CAA section 182(a)(3)(B) Emissions Statements (“section 182(a)(3)(B)”) requirements.

TABLE 1—SUBMITTED RULES

Agency	Rule No.	Rule title	Amended/adopted	Submitted	Deemed complete
Eastern Kern APCD	Rule 108.2	Emission Statement Requirements.	8/4/22	12/7/22	Complete by Operation of Law (COL) 6/7/23.
Tehama County APCD	Rule 2:20	Emission Statement	3/1/22	7/5/22	COL 1/5/23.
San Diego County APCD	Rule 19.3	Emission Information	12/9/21	3/9/22	COL 9/9/22.

Table 1 also list the dates that the EPA determined that the submittals met the completeness criteria in 40 Code of Federal Regulations (CFR) part 51, appendix V or were deemed by operation of law to meet the completeness criteria in 40 CFR part 51, appendix V (“complete by operation of law” or COL), which must be met before formal EPA review.

B. Are there other versions of these rules?

There is no previous version of Tehama County APCD Rule 2:20 in the SIP. We approved an earlier version of Eastern Kern APCD Rule 108.2 into the SIP on May 26, 2004 (69 FR 29880). If we take final action to approve the submitted version of Rule 108.2, it will replace the existing SIP-approved version. We approved an earlier version of San Diego APCD Rule 19.3 into the SIP on March 9, 2000 (65 FR 12472). If we take final action to approve the submitted version of Rule 19.3, it will replace the existing SIP-approved version.

C. What is the purpose of the submitted rules or rule revisions?

Under the CAA, a SIP must require stationary sources in ozone NAAs classified as “Marginal” or above to report annual emissions of nitrogen oxides (NO_x) and volatile organic compounds (VOCs). See CAA section 182(a)(3)(B). Whenever the EPA promulgates a new ozone NAAQS, the State and/or air district must submit a new or amended rule to ensure that the section 182(a)(3)(B) requirements are met.

Section 182(a)(3)(B)(i) requires States to submit a SIP revision that requires that owners or operators of stationary sources provide the State with a statement of actual emissions of VOCs and NO_x at least annually. Such statements must also include a certification that the information is accurate to the best knowledge of the individual certifying the statement.¹

¹ Section 182(a)(3)(B)(ii) “The State may waive the application of clause (i) to any class or category of stationary sources which emit less than 25 tons per year of volatile organic compounds or oxides of nitrogen if the State, in its submissions under

In lieu of submitting a new or amended rule, the State and/or air district may submit for SIP approval a certification that an existing SIP-approved rule satisfies the emissions statement requirements of CAA section 182(a)(3)(B) for the relevant ozone NAAQS. Specifically, the preamble to the EPA’s “Implementation of the 2015 National Ambient Air Quality Standards for Ozone: Nonattainment Area State Implementation Plan Requirements” states that “[W]here an air agency determines that an existing regulation is adequate to meet applicable nonattainment area planning requirements of CAA section 182 . . . for a revised ozone NAAQS, that air agency’s SIP revision may provide a written statement certifying that determination in lieu of submitting new revised regulations.”² The EPA’s technical support document (TSD), which is in the docket for this rulemaking, has more information about these rules.

II. The EPA’s Evaluation and Action

A. How is the EPA evaluating the rules?

Rules in the SIP 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). Areas classified as Marginal nonattainment or higher are subject to the requirements of CAA section 182(a)(3)(B).

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

subparagraphs (1) or (3)(A), provides an inventory of emissions from such class or category of sources, based on the use of the emission factors established by the Administrator or other methods acceptable to the Administrator.”

² “Implementation of the 2015 National Ambient Air Quality Standards for Ozone: Nonattainment Area State Implementation Plan Requirements,” 83 FR 62998 (December 6, 2018).

1. “Implementation of the 2015 National Ambient Air Quality Standards for Ozone: Nonattainment Area State Implementation Plan Requirements,” 83 FR 62998 (December 6, 2018).

2. “(Draft) Guidance on the Implementation of an Emission Statement Program,” EPA, July 1992.

3. “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).

4. “Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations,” EPA, May 25, 1988 (the Bluebook, revised January 11, 1990).

5. “Guidance Document for Correcting Common VOC & Other Rule Deficiencies,” EPA Region 9, August 21, 2001 (the Little Bluebook).

B. Do the rules meet the evaluation criteria?

These rules meet CAA requirements and are consistent with relevant guidance regarding enforceability, SIP revisions, and emissions statement requirements. The TSD has more information on our evaluation.

C. The EPA’s Recommendations To Further Improve the Rule(s)

The TSD includes recommendations for the next time the local agency modifies the rules or submit certifications.

D. Proposed Action and Public Comment

As authorized in section 110(k)(3) of the Act, the EPA proposes to fully approve the submitted rules because they fulfill all relevant requirements. We are also proposing that the following 2015 ozone nonattainment areas have met CAA section 182(a)(3)(B) requirements: Kern County (Eastern Kern), CA, Tuscan Buttes, CA, San Diego, CA. We will accept comments from the public on this proposal until August 12, 2024. If we take final action to approve the submitted rules, our final action will incorporate these rules into the federally enforceable SIP.

III. Incorporation by Reference

In this rule, the EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is proposing to incorporate by reference the rules described in table 1, which require sources to submit emission statements. 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 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 14094 (88 FR 21879, April 11, 2023);
- 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 Clean Air Act.

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 rulemaking 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).

Executive Order 12898 (Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations, 59 FR 7629, February 16, 1994) directs Federal agencies to identify and address “disproportionately high and adverse

human health or environmental effects” of their actions on minority populations and low-income populations to the greatest extent practicable and permitted by law. The EPA defines environmental justice (EJ) as “the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies.” The EPA further defines the term fair treatment to mean that “no group of people should bear a disproportionate burden of environmental harms and risks, including those resulting from the negative environmental consequences of industrial, governmental, and commercial operations or programs and policies.”

The State did not evaluate EJ considerations as part of its SIP submittal; the CAA and applicable implementing regulations neither prohibit nor require such an evaluation. The EPA did not perform an EJ analysis and did not consider EJ in this action.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen oxides, Ozone, Particulate matter, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: July 2, 2024.

Martha Guzman Aceves,

Regional Administrator, Region IX.

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