

**SUPPLEMENTARY INFORMATION:****Background**

The final regulations that are the subject of this correction are under sections 170, 642, 664, 2031, 2512 and 7520 of the Internal Revenue Code.

**Need for Correction**

As published, TD 8630 contains a typographical error that is in need of clarification.

**Correction of Publication**

Accordingly, the publication of the final regulations which is the subject of FR Doc. 95-30272, is corrected as follows:

On page 63913, column 1, in the preamble in the caption **EFFECTIVE DATE**, line 2, the language "effective December 13, 1995." is corrected to read "effective December 13, 1995, and applicable for transfers after December 13, 1995".

Cynthia E. Grigsby,

*Chief, Regulations Unit, Assistant Chief Counsel (Corporate).*

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**ENVIRONMENTAL PROTECTION AGENCY****40 CFR Part 52**

[CA 71-8-6938a; FRL-5423-9]

**Approval and Promulgation of Implementation Plans; California State Implementation Plan Revision; Kern County Air Pollution Control District, Sacramento Metropolitan Air Quality Management District**

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

**ACTION:** Direct final rule.

**SUMMARY:** EPA is taking direct final action to approve revisions to the California State Implementation Plan (SIP). The revisions concern rules from the following districts: the Kern County Air Pollution Control District (KCAPCD) and the Sacramento Metropolitan Air Management Control District (SMAQMD). This approval action will incorporate two rules into the federally approved SIP and remove one rule from the SIP. The two rules control oxides of nitrogen (NO<sub>x</sub>) emissions from the operations of stationary gas turbines and the rule to be removed controls NO<sub>x</sub> emissions from steam generators used in the oil production operations.

The intended effect of approving these rules is to regulate emissions of NO<sub>x</sub> in accordance with the requirements of the Clean Air Act, as

amended in 1990 (CAA or the Act). In addition, the final action on these rules serves as a final determination that the findings of nonsubmittal for these rules have been corrected and that on the effective date of this action, any Federal Implementation Plan (FIP) clock is stopped. Thus, EPA is finalizing the approval of these revisions into the California SIP under provisions of the CAA regarding EPA action on SIP submittals, SIPs for national primary and secondary ambient air quality standards and plan requirements for nonattainment areas.

**DATES:** This action is effective on April 30, 1996 unless adverse or critical comments are received by April 1, 1996. If the effective date is delayed, a timely notice will be published in the Federal Register.

**ADDRESSES:** Copies of the rules and EPA's evaluation report of each rule are available for public inspection at EPA's Region IX office during normal business hours. Copies of the submitted rules are also available for inspection at the following locations:

Rulemaking Section (A-5-3), Air and Toxics Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

Environmental Protection Agency, Air Docket (6102), 401 "M" Street SW., Washington, D.C. 20460.

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 "L" Street, Sacramento, CA 95814.

Kern County Air Pollution Control District, 2700 "M" Street, Suite 290, Bakersfield, CA 93301.

Sacramento Metropolitan Air Quality Management District, 8411 Jackson Road, Sacramento, CA 95826.

**FOR FURTHER INFORMATION CONTACT:**

Daniel A. Meer, Rulemaking Section (A-5-3), Air and Toxics Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105-3901, Telephone: (415) 744-1185.

**SUPPLEMENTARY INFORMATION:****Applicability**

The rules being approved into the California SIP include: KCAPCD, Rule 425, Cogeneration Gas Turbine Engines (Oxides of Nitrogen), and SMAQMD, Rule 413, Stationary Gas Turbines. The rule being removed from the SIP is KCAPCD Rule 425, Oxides of Nitrogen Emissions from Steam Generators Used in Thermally Enhanced Oil Recovery—Western Kern County Fields. The KCAPCD rules were submitted by the California Air Resources Board (CARB)

to EPA on November 18, 1993 and the SMAQMD rule was submitted on June 16, 1995.

**Background**

On November 15, 1990, the Clean Air Act Amendments of 1990 (CAA or the Act) were enacted. Public Law 101-549, 104 Stat. 2399, codified at 42 U.S.C. 7401-7671q. The air quality planning requirements for the reduction of NO<sub>x</sub> emissions through reasonably available control technology (RACT) are set out in section 182(f) of the CAA. On November 25, 1992, EPA published a Notice of Proposed Rulemaking (NPRM) entitled "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) which describes and provides guidance on the requirements of section 182(f). The NO<sub>x</sub> Supplement should be referred to for further information on the NO<sub>x</sub> requirements and is incorporated into this proposal by reference.

Section 182(f) of the Clean Air Act requires States to apply the same requirements to major stationary sources of NO<sub>x</sub> ("major" as defined in section 302 and section 182(c), (d), and (e)) as are applied to major stationary sources of volatile organic compounds (VOCs), in moderate or above ozone nonattainment areas. The Kern County area is classified as serious; the Sacramento Metro Area is classified as severe;<sup>1</sup> therefore these areas were subject to the RACT requirements of section 182(b)(2), cited below.

Section 182(b)(2) requires submittal of RACT rules for major stationary sources of VOC emissions (not covered by a pre-enactment control techniques guidelines (CTG) document or a post-enactment CTG document) by November 15, 1992. There were no NO<sub>x</sub> CTGs issued before enactment and EPA has not issued a CTG document for any NO<sub>x</sub> sources since enactment of the CAA. The RACT rules covering NO<sub>x</sub> sources and submitted as SIP revisions, are expected to require final installation of the actual NO<sub>x</sub> controls as expeditiously as practicable, but not later than May 31, 1995.

The State of California submitted many revised RACT rules for incorporation into its SIP on November 18, 1993 and June 16, 1995, including the rules being acted on in this

<sup>1</sup> Kern County retained its designation of nonattainment and was classified by operation of law pursuant to sections 107(d) and 181(a) upon the date of enactment of the CAA. See 55 FR 56694 (November 6, 1991). The Sacramento Metro Area was reclassified from serious to severe on June 1, 1995. See 60 FR 20237 (April 25, 1995).

document. This document addresses EPA's direct-final action for KCAPCD Rule 425, Cogeneration Gas Turbine Engines (Oxides of Nitrogen), and SMAQMD Rule 413, Stationary Gas Turbines. KCAPCD adopted Rule 425 on August 16, 1993 and SMAQMD adopted Rule 413 on April 6, 1995. These submitted rules were found to be complete on December 27, 1993 and June 30, 1995 pursuant to EPA's completeness criteria that are set forth in 40 CFR part 51, appendix V<sup>2</sup> and are being finalized for approval into the SIP. This document also addresses the State of California's request that Rule 425, Oxides of Nitrogen Emissions from Steam Generators Used in Thermally Enhanced Oil Recovery—Western Kern County Fields, be removed from the SIP.

Rules 425 and 413 control the emissions of NO<sub>x</sub> from stationary gas turbine operations; rescinded Rule 425 controls emissions from steam generators used in the oil production operations. NO<sub>x</sub> emissions contribute to the production of ground level ozone and smog. The rules were adopted as part of KCAPCD's and SMAQMD's efforts to achieve the National Ambient Air Quality Standards (NAAQS) for ozone and in response to the CAA requirements cited above. The following is EPA's evaluation and final action for these rules.

#### EPA Evaluation and Action

In determining the approvability of a NO<sub>x</sub> rule, EPA must evaluate the rule for consistency with the requirements of the CAA and EPA regulations, as found in section 110, and part D of the CAA and 40 CFR part 51 (Requirements for Preparation, Adoption and Submittal of Implementation Plans). EPA's interpretation of these requirements, which forms the basis for this action, appears in the NO<sub>x</sub> Supplement (57 FR 55620) and various other EPA policy guidance documents.<sup>3</sup> Among these provisions is the requirement that a NO<sub>x</sub> rule must, at a minimum, provide for the implementation of RACT for stationary sources of NO<sub>x</sub> emissions.

For the purposes of assisting state and local agencies in developing NO<sub>x</sub> RACT rules, EPA prepared the NO<sub>x</sub>

Supplement to the General Preamble, cited above. In the NO<sub>x</sub> Supplement, EPA provides guidance on how RACT will be determined for stationary sources of NO<sub>x</sub> emissions. While most of the guidance issued by EPA on what constitutes RACT for stationary sources has been directed towards application for VOC sources, much of the guidance is also applicable to RACT for stationary sources of NO<sub>x</sub> (see section 4.5 of the NO<sub>x</sub> Supplement). In addition, pursuant to section 183(c), EPA has issued alternative control technique documents (ACTs), that identify alternative controls for all categories of stationary sources of NO<sub>x</sub>. The ACT documents provide information on control technology for stationary sources that emit or have the potential to emit 25 tons per year or more of NO<sub>x</sub>. However, the ACTs do not establish a presumptive norm for what is considered RACT for stationary sources of NO<sub>x</sub>. In general, the guidance documents cited above, as well as other relevant and applicable guidance documents, have been set forth to ensure that submitted NO<sub>x</sub> RACT rules meet Federal RACT requirements and are fully enforceable and strengthen or maintain the SIP.

KCAPCD's submitted Rule 425, Cogeneration Gas Turbine Engines (Oxides of Nitrogen), is a new rule that will control NO<sub>x</sub> emissions from cogeneration gas turbines with rating equal to or greater than 10 megawatts (MW) used in producing steam and generate electric power for use in industrial and power utility operations. The rule limits NO<sub>x</sub> emissions from units using selective catalytic reduction (SCR) to 9 parts per million by volume (ppmv) when operated on gaseous fuel and to 25 ppmv when operated on oil fuel. For the same size units (i.e., Westinghouse 251B10) using dry low-NO<sub>x</sub> combustors, the rule limits NO<sub>x</sub> emissions to 20 ppmv for units operating on gaseous fuel and 42 ppmv for units operating on oil fuel. The limits are corrected to 15 percent oxygen on dry basis.

SMAQMD's submitted Rule 413, Stationary Gas Turbines, is a new rule that will control NO<sub>x</sub> emissions from cogeneration units with ratings equal to or greater than 0.3 MW output, or 3 million BTU/hr (MMBTU/hr) input used to generate electricity, supply steam for industrial processes and provide heating supply for buildings. The rule specifies emission limits of 42 ppmv (gas fired) and 65 ppmv (oil fired) for units rated less than or equal to 2.9 MW and operating at less than 877 hours per year. For all other units operating at greater than or equal to 877 hours per year, the rule specifies the

following emission limits: (i) 25 ppmv (gas fired) and 65 ppmv (oil fired) for units rated less than 10 MW; (ii) 15 ppmv (gas fired) and 42 ppmv (oil fired) for units rated greater than 10 MW with no SCR; and (iii) 9 ppmv (gas fired) and 25 ppmv (oil fired) for units rated greater than 10 MW with SCR.

KCAPCD's Rule 425, Oxides of Nitrogen Emissions from Steam Generators Used in Thermally Enhanced Oil Recovery—Western Kern County Fields, was submitted to be removed from the SIP. This rule was adopted to control NO<sub>x</sub> emissions from steam generators used in the oil production at the western portion of Kern County. KCAPCD, at that time, had jurisdiction over the San Joaquin Valley Air Basin and the Southeast Desert Air Basin. However, on March 20, 1991, the San Joaquin Valley Unified Air Pollution Control District (SJVUAPCD) was formed. This newly formed unified district took over the responsibility and authority over the San Joaquin Valley Air Basin which includes all of the eight counties except the Southeast Desert Air Basin portion of Kern County. As a result of the above delineation of geographical boundaries, KCAPCD (Southeast Desert portion) ceased its authority over the oil production operation at the western portion of Kern County. Consequently, KCAPCD is rescinding Rule 425 because the sources subject to this rule are no longer under its authority. The removal of Rule 425 from the SIP is consistent with EPA's policy requirements and removes an extraneous rule that serves no purpose.

The California Air Resources Board (CARB) has issued a reasonably available control technology/best available retrofit control technology (RACT/BARCT) determination for stationary source gas turbines with a rating of greater than or equal to 0.3 megawatts. The RACT limits are 42 ppmv for gas fired units and 65 ppmv for oil fired units. BARCT limits for units with SCR are 9 ppmv and 25 ppmv for gas fired units and oil fired units respectively. For units without SCR, the BARCT limits are 15 ppmv (gas fired units) and 42 ppmv (oil fired units). The limits in Rule 425 and Rule 413 exceed California and Federal RACT limits by a significant margin.

In evaluating the rules, EPA must determine whether the requirement for RACT implementation by May 31, 1995 is met. Under certain circumstances, the determination of what constitutes RACT could include consideration of advanced control technologies, i.e., California's requirement for BARCT. In this case the CAA's May 1995 date for RACT implementation may be satisfied

<sup>2</sup>EPA adopted the completeness criteria on February 16, 1990 (55 FR 5830) and, pursuant to section 110(k)(1)(A) of the CAA, revised the criteria on August 26, 1991 (56 FR 42216).

<sup>3</sup>Among other things, the pre-amendment guidance consists of those portions of the proposed post-1987 ozone and carbon monoxide policy that concern RACT, 52 FR 45044 (November 24, 1987); "Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations, Clarification to Appendix D of November 24, 1987 Federal Register Notice" (Blue Book) (notice of availability was published in the Federal Register on May 25, 1988).

in BARCT rules that establish "interim RACT" by May 1995, and require emission limitations based on advanced control technologies such as BARCT be met after May 1995. Rule 425 and Rule 413 require final compliance with BARCT limits by January 1997 and May 1997 respectively. The rules also require that interim measures (submission of compliance plans, and applying for authority to construct) be met by May 31, 1995 to ensure progress toward the final compliance. A more detailed discussion of the sources controlled, the controls required, and the justification for why these controls represent RACT can be found in the Technical Support Documents (TSDs) for Rule 425 and Rule 413, dated November 28, 1995.

EPA has evaluated the submitted rules and has determined that they are consistent with the CAA, EPA regulations, and EPA policy. Therefore, KCAPCD's Rule 425, Cogeneration Gas Turbine Engines (Oxide of Nitrogen), and SMAQMD's Rule 413, Stationary Gas Turbines are being approved under section 110(k)(3) of the CAA as meeting the requirements of section 110(a), section 182(b)(2), section 182(f) and the NO<sub>x</sub> Supplement to the General Preamble. Furthermore, EPA is removing applicable Rule 425 consistent with the requirements of sections 110 (l) and 193.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic and environmental factors and in relation to relevant statutory and regulatory requirements.

EPA is publishing this document without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in a separate document in this Federal Register publication, the EPA is proposing to approve the SIP revision should adverse or critical comments be filed. This action will be effective April 30, 1996, unless, by April 1, 1996, adverse or critical comments are received.

If the EPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on this action serving as a proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in

commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective April 30, 1996.

#### Regulatory Process

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, Part D of the CAA do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP-approval does not impose any new requirements, I certify that it does not have a significant impact on affected small entities. Moreover, due to the nature of the Federal-state relationship under the CAA, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The CAA forbids EPA to base its actions concerning SIPs on such grounds.

*Union Electric Co. v. U.S. E.P.A.*, 427 U.S. 246, 256-66 (S.Ct. 1976); 42 U.S.C. 7410(a)(2).

#### Unfunded Mandates

Under Sections 202, 203, and 205 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must undertake various actions in association with proposed or final rules that include a Federal mandate that may result in estimated costs of \$100 million or more to the private sector, or to State, local, or tribal governments in the aggregate.

Through submission of this state implementation plan or plan revision, the State and any affected local or tribal governments have elected to adopt the program provided for under Part D of the Clean Air Act. These rules may bind State, local and tribal governments to perform certain actions and also require the private sector to perform certain duties. To the extent that the rules being approved by this action will impose no new requirements; such sources are already subject to these regulations under State law. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action. EPA has also

determined that this final action does not include a mandate that may result in estimated costs of \$100 million or more to State, local, or tribal governments in the aggregate or to the private sector.

This action has been classified as a Table 3 action for signature by the Regional Administrator under the procedures published in the Federal Register on January 19, 1989 (54 FR 2214-2225), as revised by a July 10, 1995 memorandum from Mary Nichols, Assistant Administrator for Air and Radiation. The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866 review.

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

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compound.

Dated: January 30, 1996.

Felicia Marcus,

*Regional Administrator.*

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

#### PART 52—[AMENDED]

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

Authority: 42 U.S.C. 7401-7671q.

#### Subpart F—California

2. Section 52.220 is amended by adding paragraphs (c)(194)(i)(B) (2) and (3) and (222)(i)(C)(2) to read as follows:

#### § 52.220 Identification of plan.

\* \* \* \* \*

(c) \* \* \*

(194)\* \* \*

(i) \* \* \*

(B) \* \* \*

(2) Rule 425, adopted on August 16, 1993.

(3) Previously submitted to EPA on June 28, 1982 and approved in the Federal Register on May 3, 1984 and now removed without replacement, Rule 425.

\* \* \* \* \*

(222) \* \* \*

(i) \* \* \*

(C) \* \* \*

(2) Rule 413, adopted on April 6, 1995.

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[FR Doc. 96-4571 Filed 2-29-96; 8:45 am]

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