

Emissions Reporting and Malfunctions; 3D .0914 Determination of VOC Emission Control System Efficiency; 3D .0927 Bulk Gasoline Terminals; 3D .0938 Perchloroethylene Dry Cleaning System (Repealed); 3D .0953 Vapor Return Piping for Stage II Vapor Recovery 3Q .0101 Required Air Quality Permits; 3Q .0102 Activities Exempted From Permit Requirements; 3Q .0103 Definitions; 3Q .0207 Annual Emissions Reporting; 3Q .0301 Applicability; 3Q .0302 Facilities not Likely to Contravene Demonstration; 3Q .0306 Permits Requiring Public Participation; 3Q .0312 Application Processing Schedule; 3Q .0607 Application Processing Schedule; 3Q .0805 Grain Elevators; 3Q .0806 Cotton Gin; and 3Q .0807 Emergency Generators effective on September 14, 1998.

(ii) Other material. None.

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[CA-226-0172a; FRL-6534-2]

#### Approval and Promulgation of Implementation Plans; California State Implementation Plan Revision; South Coast 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) which concern the control of particulate matter (PM) emissions. The revisions amend Rules 403 and 1186 adopted by the South Coast Air Quality Management District (SCAQMD). The intended effect of these SIP revisions is to regulate PM emissions in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). This action will incorporate these rules into the Federally approved SIP. 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 rule is effective on April 17, 2000 without further notice, unless EPA receives adverse comments by March 20, 2000. If EPA receives such comments, then it will publish a timely withdrawal in the **Federal Register**

informing the public that this rule will not take effect.

**ADDRESSES:** Written comments must be submitted to Dave Jesson at the Region IX office listed below. Copies of the rules and EPA's evaluation of the rules 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:

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

South Coast Air Quality Management  
District, 21865 E. Copley Drive,  
Diamond Bar, CA 91765.

**FOR FURTHER INFORMATION CONTACT:**  
Dave Jesson, Planning Office (AIR-2),  
Air Division, U.S. Environmental  
Protection Agency, Region IX, 75  
Hawthorne Street, San Francisco, CA  
94105-3901, (415) 744-1288, or  
jesson.david@epa.gov.

#### SUPPLEMENTARY INFORMATION:

##### I. Applicability

We are approving revisions to SCAQMD Rule 403, Fugitive Dust, and SCAQMD Rule 1186, PM10 Emissions from Paved and Unpaved Roads and Livestock Operations. SCAQMD adopted the revised rules on December 11, 1998, and the California Air Resources Board (CARB) submitted the rules to EPA on May 13, 1999. We determined the submittal to be complete on June 10, 1999.<sup>1</sup> The rules establish fugitive dust controls needed to allow the area to attain the National Ambient Air Quality Standards (NAAQS) for fine particulate matter, or PM10.<sup>2</sup>

<sup>1</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>2</sup> The opinion issued by the U.S. Court of Appeals for the D.C. Circuit in *American Trucking Assoc., Inc., et al. v. USEPA*, No. 97-1440 (May 14, 1999), among other things, vacated the new standards for PM10 that were published on July 18, 1997 and became effective September 16, 1997. However, the PM10 standards promulgated on July 1, 1987 were not an issue in this litigation, and the Court's decision does not affect the applicability of those standards. Codification of those standards continues to be recorded at 40 CFR 50.6. In the notice promulgating the new PM10 standards, the EPA Administrator decided that the previous PM10 standards that were promulgated on July 1, 1987, and provisions associated with them, would continue to apply in areas subject to the 1987 PM10 standards until certain conditions specified in 40 CFR 50.6(d) are met. See 62 FR at 38701. EPA has not taken any action under 40 CFR 50.6(d) for the South Coast subject to this provision.

## II. Background

### A. Applicable Requirements

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 PM10 emissions through reasonably available control measures (RACM) and best available control measures (BACM) are set out in section 189(a)(1)(C) and 189(b)(1)(B) of the CAA.

In determining the approvability of a PM rule or ordinance, we must evaluate the measure 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). We must also ensure that measures are enforceable, and strengthen or maintain the SIP's control strategy.

For PM10 nonattainment areas classified as moderate, part D of the CAA requires that SIPs must include enforceable measures reflecting reasonably available control technology (RACT) for large stationary sources and RACM technology for other sources. The Act requires that SIPs for areas classified as serious must include measures applying best available control technology (BACT) to stationary sources and BACM technology to other sources. SCAQMD has jurisdiction over areas classified as serious for PM10.<sup>3</sup>

The statutory provisions relating to RACT, RACM, BACT, and BACM are discussed in EPA's "General Preamble," which gives the Agency's preliminary views on how we intend to act on SIPs submitted under Title I of the Act. See generally 57 FR 13498 (April 16, 1992), 57 FR 18070 (April 28, 1992), and 59 FR 41998 (August 16, 1994). In this action, EPA is applying these policies to this submittal, taking into consideration the specific factual issues presented.

### B. Evaluation of Rules

#### 1. Rule 1186—PM10 Emissions From Paves and Unpaved Roads, and Livestock Operations

On August 11, 1998 (63 FR 42786), we fully approved SCAQMD Rule 1186 as adopted on February 14, 1997. Rule

<sup>3</sup> SCAQMD has jurisdiction over the South Coast Air Basin (SCAB) and Coachella Valley PM10 serious nonattainment areas. This **Federal Register** action for SCAQMD excludes the Los Angeles County portion of the Southeast Desert AQMA, otherwise known as the Antelope Valley Region in Los Angeles County, which is now under the jurisdiction of the Antelope Valley Air Pollution Control District as of July 1, 1997.

1186 requires street cleaning of paved roads and application of fugitive dust controls on unpaved roads. The rule also limits dust emissions at livestock operations.

Our final approval of Rule 1186 noted that SCAQMD had prepared revisions to the rule because of the need for more time to complete specific technical street sweeper certification protocols. We indicated that we intended to approve the revision to Rule 1186 if adopted and submitted as a SIP revision and supported by an SCAQMD showing that the revisions will not interfere with attainment, progress, or any other applicable CAA requirements.

On December 11, 1998, SCAQMD amended section (d)(2) of Rule 1186 to delay the effective date for procurement of PM10-efficient sweepers by one year (from January 1, 1999, to January 1, 2000). SCAQMD included in the Final Staff Report for amended Rule 1186 an analysis showing that the amendment will delay approximately 1.8 tons per day (tpd) in emission reductions from 1999 through 2005, and will not result in any emission reduction shortfall in 2006, the projected attainment date in SCAQMD's PM10 attainment plan.

We agree that the delay is warranted, and we are encouraged by SCAQMD's progress during the past 6 months in developing a methodology for determining the PM10 collection efficiency of street sweepers. Based on SCAQMD's analysis of the limited impact of the one year delay, we conclude that the postponement of the compliance date is an approvable amendment to Rule 1186 and is consistent with the provisions of CAA section 110(l), which prevent our approval of a revision if it would interfere with any applicable requirement concerning attainment and reasonable further progress or any other applicable requirement of the Act.

SCAQMD also made a minor amendment to the definition of "Typical Roadway Materials." The purpose of the change was to allow use of other roadway materials of equivalent performance, in addition to concrete, asphaltic concrete, recycled asphalt, and asphalt. This minor revision requires an equivalency determination by SCAQMD, CARB, and EPA, and thus should ensure no loss of emission reduction benefit nor should it interfere with effective enforcement of the rule.

## 2. Rule 403—Fugitive Dust

On August 11, 1998, we granted limited approval and limited disapproval of SCAQMD Rule 403 as amended on February 14, 1997. As discussed in the notice of final

rulemaking (see especially pages 42788 and 42789), we concluded that the 1997 version of Rule 403 strengthens the SIP but also contains a deficiency, in allowing the SCAQMD Executive Officer and CARB the discretion to approve equivalent test methods for determining soil moisture content and soil compaction characteristics (Rule 403, Table 2, paragraphs (1a) and (1b), and Definition 17 Open Storage Pile). This discretion could result in enforceability problems and is therefore not consistent with CAA section 172(c)(6). Because of this deficiency, we could not grant full approval of Rule 403 under section 110(k)(3) and part D. Also, because the rule was not composed of separable parts that meet all the applicable CAA requirements, we could not grant partial approval of Rule 403 under section 110(k)(3). As a result, we issued simultaneously both a limited approval and limited disapproval of Rule 403.

SCAQMD adopted on December 11, 1998, the following revisions to Rule 403:

(1) Addition of a requirement in Table 2, paragraphs (1a) and (1b) that EPA approve equivalent methods for ASTM silt content and soil moisture methods;

(2) Addition of a requirement in Table 1 (1F), Table 2 (6a), and Table 3 (3), that EPA approve equivalent control measures;

(3) revised provisions affecting agricultural operations, with a 6-month extension in the effective date to July 1, 1999, in order to allow time to implement an outreach program;

(4) Addition of a "Rule 403 Agricultural Handbook";

(5) Addition of an exemption of sandblasting operations, to conform to State law (sandblasting operations will remain subject to the provisions of SCAQMD Rule 1140); and

(6) Minor amendments to other provisions to clarify the rule's original intent.

The first amendment listed above addresses our concern regarding the "director's discretion" provisions of Rule 403. This revision is approvable and allows us in this final action to rescind the limited disapproval of Rule 403. The second amendment also eliminates "director's discretion" provisions and is likewise approvable because it strengthens the federal enforceability of the rule.

In analyzing the implications of the third amendment, SCAQMD included in its Final Staff Report for amended Rule 403 a showing that the amendment will delay approximately 8.9 tpd in emission reductions for the 6 months from January 1, 1999 to July 1, 1999, and will

not result in any emission reduction shortfall in subsequent years, including the projected attainment year (2006). Based on this analysis, we conclude that the postponement of the compliance date by 6 months is an approvable amendment to Rule 403. Moreover, we agree with SCAQMD that the delay is warranted in order to facilitate compliance with the rule's provisions for agricultural operations.

The Rule 403 Agricultural Handbook allows producers to be exempted from Rule 403 requirements if they implement a specified number of conservation practices listed for the particular operation. The handbook includes conservation practices for active operations, inactive operations, farm yard areas, track-out, unpaved roads, and storage piles. We are approving the handbook because implementation of the conservation practices should achieve the emission reductions that would otherwise be accomplished through compliance with the general provisions of Rule 403.

We approve the other changes to Rule 403 as minor clarifications.

As requested by CARB and SCAQMD and consistent with our approval of the prior version of Rule 403, we are not approving into the SIP section (i) of Rule 403, which establishes fees which are enforced locally only, and we are approving only the following sections of the "Rule 403 Implementation Handbook," which was included as part of the SIP revision and which is incorporated by reference:

(1) "Soil Moisture Testing Methods"—ASTM Standard Test Method D 2216 for Laboratory Determination of Water (Moisture) Content of Soil, Rock, and Soil-Aggregate Mixtures, and ASTM Standard Test Method 1557 for Laboratory Compaction Characteristics of Soil Using Modified Effort (56,000 ft-lb/ft (2,700 kN-m/m<sup>3</sup>));

(2) "Storage Piles"—Surface-Area Calculations and ASTM

### Standard Method C-136 for Sieve Analysis of Fine and Coarse Aggregates;

(3) "Best Available Control Measures";

(4) "Reasonably Available Control Measures";

(5) "Guidance for Large Operations."

### III. Final EPA Action

We are taking final action to approve amended Rule 403 (including the above-listed portions of Rule 403 Implementation Handbook and all of Rule 403 Agricultural Handbook) and Rule 1186 under section 110(k)(3) of the CAA as meeting the requirements of

section 110(a) and part D. We are rescinding the limited disapproval of Rule 403, which was promulgated on August 11, 1998.

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.

We are publishing this rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, we are publishing a separate document that will serve as the proposal to approve SIP revision should adverse comments be filed. This rule will be effective April 17, 2000 without further notice unless we receive adverse comments by March 20, 2000.

If we receive such comments, then we will publish a timely withdrawal of the direct final rule informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. We will not institute a second comment period on this rule. Any parties interested in commenting on this rule should do so at this time. If no such comments are received, the public is advised that this action will be effective April 17, 2000 and no further action will be taken on the proposed rule.

#### IV. Administrative Requirements

##### A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866, entitled "Regulatory Planning and Review."

##### B. Executive Order 13045

Executive Order 13045, entitled Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and

explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to Executive Order 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

##### C. Executive Order 13084

Under Executive Order 13084, Consultation and Coordination with Indian Tribal Governments, EPA may not issue a regulation that is not required by statute, that significantly affects or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, EPA must provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation.

In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities." Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

##### D. Executive Order 13132

Executive Order 13121, entitled Federalism (64 FR 43255, August 10, 1999) revokes and replaces Executive Orders 12612, Federalism and 12875, Enhancing the Intergovernmental Partnership. Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of

power and responsibilities among the various levels of government." Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

##### E. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies 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 small governmental jurisdictions.

This final rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities.

Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its

actions concerning SIPs on such grounds. *Union Electric Co., v. U.S. EPA*, 427 U.S. 246, 255-66 (1976); 42 U.S.C. 7410(a)(2).

F. *Unfunded Mandates*

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated annual costs to State, local, or tribal governments in the aggregate; or to private sector, of \$100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated annual costs of \$100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

G. *Submission to Congress and the Comptroller General*

The Congressional Review Act, 5 U.S.C. 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. EPA will submit a report containing this rule 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 rule is not a "major" rule as defined by 5 U.S.C. 804(2).

H. *National Technology Transfer and Advancement Act*

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires Federal agencies to evaluate existing technical

standards when developing a new regulation. To comply with NTTAA, EPA must consider and use "voluntary consensus standards" (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical.

The EPA believes that VCS are inapplicable to this action. Today's action does not require the public to perform activities conducive to the use of VCS.

I. *Petitions for Judicial Review*

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 April 17, 2000. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule 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, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxide, Volatile organic compounds.

Dated: January 28, 2000.

**Nora L. McGee**,  
*Acting Regional Administrator, Region IX.*

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 *et seq.*

**Subpart F—California**

2. Section 52.220 is amended by adding paragraph (c)(263)(i)(A)(3) to read as follows:

**§ 52.220 Identification of plan.**

- \* \* \* \* \*
- (c) \* \* \*
- (263) \* \* \*
- (i) \* \* \*
- (A) \* \* \*

(3) Rules 403 and 1186, amended on December 11, 1998.

\* \* \* \* \*

[FR Doc. 00-3474 Filed 2-16-00; 8:45 am]

**BILLING CODE 6560-50-P**

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

[MO 092-1092; FRL-6528-7]

**Approval and Promulgation of Implementation Plans; State of Missouri**

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

**ACTION:** Final rule.

**SUMMARY:** EPA is announcing it is approving an amendment to the Missouri State Implementation Plan (SIP). EPA is approving volatile organic compound (VOC) rules which are applicable to the St. Louis nonattainment area. These rules constitute part of the St. Louis 15% Rate-of-Progress Plan (15% Plan) and were proposed for approval in the March 18, 1996, and July 2, 1997, **Federal Register**. EPA is also approving the Missouri 1990 Base Year Emissions Inventory for the St. Louis area. The Inventory was proposed for approval in the March 18, 1996, **Federal Register**.

**EFFECTIVE DATE:** This rule will be effective March 20, 2000.

**ADDRESSES:** Copies of the state submittal(s) are available at the following addresses for inspection during normal business hours: Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101; and the Environmental Protection Agency, Air and Radiation Docket and Information Center, Air Docket (6102), 401 M Street, S.W., Washington, D.C. 20460.

**FOR FURTHER INFORMATION CONTACT:** Wayne Kaiser at (913) 551-7603.

**SUPPLEMENTARY INFORMATION:**

Throughout this document whenever "we, us, or our" is used, we mean EPA.

This section provides additional information by addressing the following questions:

- What is a SIP?
- What is the Federal approval process for a SIP?
- What does Federal approval of a state regulation mean to me?
- What is being addressed in this document?
- Have the requirements for approval of a SIP revision been met?
- What action is EPA taking?