

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.

#### J. Congressional Review Act

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. EPA will submit a report containing these rules 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. section 804(2). These rules will be effective *July 6, 2009*.

#### K. 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 *July 6, 2009*. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of these rules 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: February 10, 2009.

**Jane Diamond**,

*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)(359)(i)(A)(3), (4) and (5) to read as follows:

#### § 52.220 Identification of plan.

\* \* \* \* \*

(c) \* \* \*  
(359) \* \* \*  
(i) \* \* \*  
(A) \* \* \*

(3) Rule 100, “General Provisions,” originally adopted on November 3, 1982 and amended on May 19, 2005.

(4) Rule 101, “Definitions,” originally adopted on November 3, 1982 and amended on May 19, 2005 and May 15, 2008.

(5) Rule 108, “Severability of Rules and Regulations,” originally adopted on May 19, 2005.

\* \* \* \* \*

[FR Doc. E9–10509 Filed 5–5–09; 8:45 am]

BILLING CODE 6560–50–P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA–R09–OAR–2008–0891, FRL–8782–7]

### Revisions to the California State Implementation Plan, North Coast Unified 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 North Coast Unified Air Quality Management District (NCUAQMD) portion of the California State Implementation Plan (SIP). Under authority of the Clean Air Act as amended in 1990 (CAA or the Act), we are approving local rules that address particulate matter (PM–10) emissions from general sources, fugitive sources, and open burning and volatile organic compound (VOC) emissions from petroleum loading and storage.

**DATES:** This rule is effective on July 6, 2009 without further notice, unless EPA

receives adverse comments by June 5, 2009. If we receive such comment, we will publish a timely withdrawal in the **Federal Register** to notify the public that this rule will not take effect.

**ADDRESSES:** Submit comments, identified by docket number EPA–R09–OAR–2008–0891, by one of the following methods:

1. *Federal eRulemaking Portal:* [www.regulations.gov](http://www.regulations.gov). Follow the on-line instructions.

2. *E-mail:* [steckel.andrew@epa.gov](mailto:steckel.andrew@epa.gov).

3. *Mail or deliver:* Andrew Steckel (Air-4), U.S. Environmental Protection Agency Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

*Instructions:* All comments will be included in the public docket without change and may be made available online at [www.regulations.gov](http://www.regulations.gov), including any personal information provided, unless the comment includes Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Information that you consider CBI or otherwise protected should be clearly identified as such and should not be submitted through [www.regulations.gov](http://www.regulations.gov) or e-mail. [www.regulations.gov](http://www.regulations.gov) is an “anonymous access” system, and EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send e-mail directly to EPA, your e-mail address will be automatically captured and included as part of the public comment. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

*Docket:* The index to the docket for this action is available electronically at [www.regulations.gov](http://www.regulations.gov) and in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California. While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (e.g., copyrighted material), and some may not be publicly available in either location (e.g., CBI). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

**FOR FURTHER INFORMATION CONTACT:** Alfred Petersen, EPA Region IX, (415) 947–4118, [petersen.alfred@epa.gov](mailto:petersen.alfred@epa.gov).

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

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revised by the local air agency and submitted by the California Air Resources Board (CARB).

**I. The State's Submittal**

*A. What rules did the State submit?*

Table 1 lists the rules we are approving with the dates that they were

TABLE 1—SUBMITTED RULES

District	Rule No.	Rule title	Revised	Submitted
NCUAQMD .....	104.2	Visible Emissions .....	05/19/08	07/18/08
NCUAQMD .....	104.3	Particulate Matter .....	05/19/08	07/18/08
NCUAQMD .....	104.4	Fugitive Dist Emissions .....	05/19/08	07/18/08
NCUAQMD .....	104.10	Petroleum Loading and Storage .....	05/19/08	07/18/08
NCUAQMD .....	200	Effective Date and Definitions .....	05/15/08	07/18/08
NCUAQMD .....	201	General Prohibitions and Exemptions for Selected Open Burning	05/17/07	07/18/08
NCUAQMD .....	202	Burn Hours and Notice of Ignition .....	05/15/08	07/18/08
NCUAQMD .....	203	General Burn Practices, Requirements, and Conditions .....	05/15/08	07/18/08
NCUAQMD .....	204	Ignition Devices and Methods .....	05/15/08	07/18/08
NCUAQMD .....	205	Certificates from Department of Fish and Game .....	07/18/03	07/18/08
NCUAQMD .....	206	Burning at Disposal Sites .....	12/16/04	07/18/08
NCUAQMD .....	207	Wildland Vegetation Management Burning .....	05/15/08	07/18/08
NCUAQMD .....	208	Burn Registration Program .....	05/15/08	07/18/08

On August 22, 2008, the submittal of July 18, 2008 was found to meet the completeness criteria in 40 CFR part 51, appendix V, which must be met before formal EPA review.

*B. Are there other versions of these rules?*

We approved the Rules 410 and 420 versions of NCUAQMD Rules 104.2 and 104.3 into the SIP on October 31, 1980 (45 FR 72147). We approved the Rules 430 and 482 versions of NCUAQMD Rules 104.5 and 104.10 into the SIP on August 2, 1978 (43 FR 33912).

We approved the Rules 2–100, 2–200, 2–300, 2–400, 2–500, versions of NCUAQMD Rules 200 through 208 into the SIP on January 29, 1985 (50 FR 3907). The Appendix A, Appendix B, and Appendix C to the SIP rules were approved on April 18, 1982 (47 FR 15784).

*C. What are the purposes of the rule revisions?*

Section 110(a) of the CAA requires states to submit regulations that control volatile organic compounds, oxides of nitrogen, particulate matter, and other air pollutants which harm human health and the environment. These rules were developed as part of the local agency's program to control these pollutants.

The purpose of the amendment to NCUAQMD Rule 104.2 is as follows:

- 104.2.3: A section is added to the rule to prohibit a Kraft recovery furnace from discharging into the atmosphere gases with greater than 20% opacity, except that this does not apply during periods of start-up, shutdown, or breakdown of a Kraft recovery furnace.

The purposes of amendments to NCUAQMD Rule 104.3 are as follows:

- 104.3.4.1.2: A provision is added to the rule to prohibit the emissions of particulate matter from exceeding 0.025 grains per standard cubic foot of exhaust gas from a new or modified Kraft recovery furnace.
- 104.3.4.3.1: A provision is added to the rule to prohibit the emissions of particulate matter from exceeding 0.5 pounds per ton of Kraft pulp mill production from any Kraft smelt dissolving tank.
- 104.3.4.1.2: A provision is added to the rule to prohibit the emissions of particulate matter from exceeding 0.2 pounds per ton of black liquor solids from a new or modified Kraft smelt dissolving tank.
- 104.3.6: A formula is added to the rule to calculate limits for particulate emissions from geothermal wells.

The purpose of the amendment to NCUAQMD Rule 104.4 is as follows:

- 104.4.1: The language of the prohibition on handling materials with unnecessary emission of particulates was revised without any change in meaning.

The purposes of the amendments to NCUAQMD Rule 104.10 are as follows:

- 482.c.1 (SIP rule): The exemption for stationary tanks installed prior to December 31, 1970 is removed.
- 104.10.1: The reference to Federal New Source Performance Standards (NSPS) for all tanks in excess of 40,000 gallons is changed to Rule 104.11, "Federal New Source Performance Standards."

The purposes of the amendments to SIP NCUAQMD Rules 2–100, 2–200, 2–

300, 2–400, 2–500, Appendix A, Appendix B, and Appendix C are as follows:

- These rules are completely revised in numbering, content, and format to become NCUAQMD Rules 200 through 208.
- 102.2.01 (SIP): The exemption for an imminent fire hazard is removed.
- 102.5 (SIP): The exemption for fires conducted in a mechanized burner is removed.
- 200.2.0: Sixteen new definitions were added to clarify new features in the rule.
- 200.2.9: A limited exemption is added for fire hazard reduction by burning at multi-unit residential facilities and commercial entities.
- 200.2.9: An exemption is added for ceremonial fires.
- 201: Provisions are added to base a Permissive-Burn Day decision on meteorological conditions that will not cause a violation of the National Ambient Air Quality Standards or cause excessive transport of pollutants. A provision is added to the rules for a No-Burn Day for burn barrels if the risk of a fire hazard is too great.
- 202: Revisions to burn hours and the requirement to provide notice of ignition are added.
- 203: Prohibitions on the use of burn barrels are added in certain portions of the District. Revisions to the rules include drying requirements and the arrangement of burnable waste.
- 204: Waste ignition requirements are added to the rule.
- 205: Included is a revised requirement for a certificate from the California Fish and Game stating that

agricultural burning for the sole purpose of habitat improvement is proper.

- 206: A prohibition is added for burning rubbish or garbage at disposal sites. An allowance is added for the APCO to approve burning of natural vegetation at disposal sites.

- 207: An expanded section for Wildland Vegetation Management Burning is provided that includes (a) a burn plan, (b) an acreage limit per day, and (c) an advance permissive-burn notice.

- 208: A Burn Registration Program is added for agricultural or prescribed burning projects that includes (a) an annual registration with the District of planned burn projects, (b) a daily burn authorization system operated by the District, and (c) smoke management planning that considers possible remedial actions on various burning contingencies listed in the rule.

## II. EPA's Evaluation and Action

### A. How is EPA evaluating the rules?

Generally, SIP rules must be enforceable (see section 110(a) of the CAA), and must not relax existing requirements (see sections 110(l) and 193). NCUAQMD is an attainment area for PM-10 and for 8-hr ozone ambient air quality standards.

Evaluation of the rules follows:

- NCUAQMD Rule 104.2: The rule improves the SIP, because the rule stringency is increased by adding an opacity standard for emissions from a Kraft recovery furnace. The rule is enforceable and should be given full approval.

- NCUAQMD Rule 104.3: The rule improves the SIP, because four provisions to limit particulate matter emissions from Kraft process units and recovery wells are added to the rule to increase stringency. The rule is enforceable and should be given full approval.

- NCUAQMD Rule 104.4: The rule improves the SIP by revising language to improve clarity of requirements. The rule is enforceable and should be given full approval.

- NCUAQMD Rule 104.10: The rule improves the SIP by removing the exemption for tanks in excess of 40,000 gallons installed before December 31, 1970. The rule enforceability by EPA may be limited, because federal NSPS standards are referenced by NCUAQMD Rule 104.11, "Federal NSPS," which is not in the SIP. References to rule requirements should be in the SIP or in publications available to the public. This enforceability issue also existed in the current SIP rule approved by EPA. Therefore, we will make a

recommendation for correction of the enforceability issue in a future revision of the rule, which should be given full approval.

- NCUAQMD Rule 200–208: The rules improve the SIP by adding various requirements to increase the stringency of the rules and by improving clarity. The rules are enforceable and should be given full approval.

Guidance and policy documents that we used to help evaluate specific enforceability requirements consistently include the following:

1. *Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations*, EPA (May 25, 1988). [The Bluebook]

2. *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?

We believe that NCUAQMD Rules 104.2, 104.3, 104.4, 104.10, and 200 through 208 are consistent with the relevant policy and guidance regarding enforceability and SIP relaxations and should be given full approval.

The TSD has more information on our evaluation.

### C. EPA Recommendation to Further Improve Rules

A recommendation is made in the TSD to improve NCUAQMD Rules 104.2 and 104.10 at the next rule revision without affecting the current approvability.

### D. Public Comment and Final Action

As authorized in section 110(k)(3) of the CAA, EPA is fully approving NCUAQMD Rules 104.2, 104.3, 104.4, 104.10, and 200 through 208 because we believe they fulfill all relevant requirements. We do not think anyone will object to this approval, so we are finalizing it without proposing it in advance. However, in the Proposed Rules section of this **Federal Register**, we are simultaneously proposing approval of the same submitted rules. If we receive adverse comments by June 5, 2009, we will publish a timely withdrawal in the **Federal Register** to notify the public that the direct final approval will not take effect and we will address the comments in a subsequent final action based on the proposal. If we do not receive timely adverse comments, the direct final approval will be effective without further notice on July 6, 2009. This will incorporate these rules into the federally enforceable SIP.

Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if

that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

## III. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it 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).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does 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). This action 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. This rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

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 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 July 6, 2009. 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, Incorporation by reference, Intergovernmental relations, Ozone, Particulate matter, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: April 20, 2009.

Laura Yoshii,

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 paragraphs (c)(359) to read as follows:

#### § 52.220 Identification of plan.

\* \* \* \* \*

(c) \* \* \*

(359) New and amended regulations were submitted on July 18, 2008, by the Governor's designee.

(i) Incorporation by reference.

(A) North Coast Unified Air Quality Management District.

(1) Rule 104.2, "Visible Emissions," Rule 104.3, "Particulate Matter," Rule 104.4, "Fugitive Dust Emissions," and Rule 104.10, "Petroleum Loading and Storage," originally adopted on November 3, 1982 and revised on May 19, 2005.

(2) Rule 200, "Effective Date and Definitions," Rule 202, "Burn Hours and Notice of Ignition," Rule 203, "General Burn Practices, Requirements, and Conditions," Rule 204, "Ignition Devices and Methods," Rule 207, "Wildland Vegetation Management," and Rule 208, "Burn Registration Program," originally adopted on July 18, 2003 and revised on May 15, 2005; Rule 201, "General Prohibitions and Exemptions for Selected Open Burning" originally adopted on July 18, 2003 and revised on May 17, 2007; Rule 205, "Certificates from Department of Fish and Game," adopted on July 18, 2003; and Rule 206, "Burning at Disposal Sites," originally adopted on July 18, 2003 and revised on December 16, 2004.

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R09-OAR-2008-0839; FRL-8783-9]

#### Revisions to the California State Implementation Plan, South Coast Air Quality Management 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 South Coast Air Quality Management District (SCAQMD) and Sacramento Metropolitan Air Quality Management District (SMAQMD) portion of the California State Implementation Plan (SIP). These revisions concern oxides of nitrogen (NO<sub>x</sub>) emissions from boilers, process heaters, steam generators and residential water heaters. We are approving local rules that regulate these emission sources under the Clean Air Act as amended in 1990 (CAA or the Act).

**DATES:** This rule is effective on July 6, 2009 without further notice, unless EPA receives adverse comments by June 5, 2009. If we receive such comments, we will publish a timely withdrawal in the **Federal Register** to notify the public that this direct final rule will not take effect.

**ADDRESSES:** Submit comments, identified by docket number [EPA-R09-OAR-2008-0839], by one of the following methods:

1. *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the on-line instructions.
2. *E-mail:* [steckel.andrew@epa.gov](mailto:steckel.andrew@epa.gov).
3. *Mail or deliver:* Andrew Steckel (Air-4), U.S. Environmental Protection Agency Region IX, 75 Hawthorne Street, San Francisco, CA 94105-3901.

*Instructions:* All comments will be included in the public docket without change and may be made available online at <http://www.regulations.gov>, including any personal information provided, unless the comment includes Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Information that you consider CBI or otherwise protected should be clearly identified as such and should not be submitted through <http://www.regulations.gov> or e-mail. <http://www.regulations.gov> is an "anonymous access" system, and EPA will not know your identity or contact information unless you provide it in the