

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

[CA 271-0374a; FRL-7427-8]

**Revisions to the California State Implementation Plan, Santa Barbara County Air Pollution Control District and Yolo-Solano Air Quality Control District**

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

**ACTION:** Direct final rule.

**SUMMARY:** EPA is taking direct final action to approve revisions to the Santa Barbara County Air Pollution Control District (SBCAPCD) and the Yolo-Solano Air Quality Management District (YSAQMD) portions of the California State Implementation Plan (SIP). The SBCAPCD revision concerns the emission of particulate matter (PM-10) from open fires and prescribed burning. The YSAQMD revision concerns the emission of volatile organic compounds (VOCs) from the transfer of gasoline at dispensing facilities. We are approving the 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 March 24, 2003 without further notice, unless

EPA receives adverse comments by February 24, 2003. If we receive such comments, we will publish a timely withdrawal in the **Federal Register** to notify the public that this rule will not take effect.

**ADDRESSES:** Mail comments to Andy Steckel, Rulemaking Office Chief (AIR-4), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

You can inspect a copy of the submitted rules and EPA's technical support documents (TSDs) at our Region IX office during normal business hours. You may also see a copy of the submitted rules and TSDs at the following locations:

Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, (Mail Code 6102T), Room B-102, 1301 Constitution Avenue, NW., Washington, DC 20460.

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 1001 "I" Street, Sacramento, CA 95814.

Santa Barbara County Air Pollution Control District, 26 Castilian Drive, Suite B-23, Goleta, CA 93117.

Yolo-Solano Air Quality Management District, 1947 Galileo Court, Suite 103, Davis, CA 95616.

A copy of a rule may also be available via the Internet at <http://www.arb.ca.gov/drdb/drdbtxt.htm>. This is not an EPA website and it may not contain the same version of the rule that

was submitted to EPA. Readers should verify that the adoption date of the rule listed is the same as the rule submitted to EPA for approval and be aware that the official submittal is only available at the agency addresses listed above.

**FOR FURTHER INFORMATION CONTACT:** Al Petersen, Rulemaking Office (AIR-4), U.S. Environmental Protection Agency, Region IX; (415) 947-4118.

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

**Table of Contents**

- I. The State's Submittal
  - A. What rules did the State submit?
  - B. Are there other versions of these rules?
  - C. What is the purpose of the submitted rules?
- II. EPA's Evaluation and Action
  - A. How is EPA evaluating the rules?
  - B. Do the rules meet the evaluation criteria?
  - C. Public comment and final action
- III. Background Information
  - Why were these rules submitted?
- IV. Administrative Requirements

**I. The State's Submittal**

*A. What Rules Did the State Submit?*

Table 1 lists the rules we are approving with the date that they were revised by the local air agencies and submitted by the California Air Resources Board (CARB).

TABLE 1.—SUBMITTED RULES

| Local agency  | Rule # | Rule title                                | Revised  | Submitted |
|---------------|--------|---|----------|-----------|
| SBCAPCD ..... | 401    | Agricultural and Prescribed Burning ..... | 05/16/02 | 08/06/02  |
| YSAQMD .....  | 2.22   | Gasoline Dispensing Facilities .....      | 06/12/02 | 08/06/02  |

On August 30, 2002, this submittal 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 a version of SBCAPCD Rule 401 on May 18, 1981 (46 FR 27116). We approved a version of YSAQMD Rule 2.22 on February 28, 1984 (49 FR 7231).

*C. What Is the Purpose of the Submitted Rule Revisions?*

The purposes of the submitted SBCAPCD Rule 401 revisions are as follows:

- To implement the revised California Smoke Management Guidelines.
- To minimize smoke impacts.

- To establish a collaborative relationship between the SBCAPCD and burners.

- To provide reduced fuel loads with prescribed burning and remove crop waste without smoke impacts.

The purpose of the submitted rule revisions to YSAQMD Rule 2.22 are as follows:

- To improve compliance of Phase II vapor systems at gasoline dispensing facilities with more strict maintenance and inspection programs.
- To add new test procedures and perform more frequent reverification of performance tests of vapor recovery equipment.
- To increase the efficiency of vapor recovery equipment.

**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). SIP rules must require BACM/BACT or RACM/RACT for major sources in PM-10 nonattainment areas (see sections 189(a) and 189(b)). SIP rules must require Reasonably Available Control Technology (RACT) for major sources in ozone nonattainment areas (see section 182(a)(2)(A)) and must fulfill the special requirements for gasoline vapor recovery in ozone nonattainment areas (see section 182(b)(3)(A)).

The SBCAPCD regulates a PM-10 attainment area (see 40 CFR 81.305), so the rule need not require BACM/BACT or RACM/RACT.

The YSAQMD regulates serious ozone nonattainment areas in all of Yolo County and part of Solano County (see 40 CFR 81.305), so the rule must fulfill RACT requirements and fulfill the special requirements for gasoline vapor recovery.

The following guidance documents were used for reference:

- *Requirements for Preparation, Adoption, and Submittal of Implementation Plans*, U.S. EPA, 40 CFR part 51.
- *General Preamble Appendix C3—Prescribed Burning Control Measures* (57 FR 18072, April 28, 1992).
- *General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990*, 57 FR 13498, 13540 (April 16, 1992).
- *Addendum to the General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990*, 59 FR 41998 (August 16, 1994).
- *PM-10 Guideline Document*, EPA-452/R-93-008.
- *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 published in the May 25, 1988 **Federal Register**.

- *Draft Model Rule, Gasoline Dispensing Facility—Stage II Vapor Recovery*, EPA (August 17, 1992).
- *Gasoline Vapor Recovery Guidelines*, EPA Region IX (April 24, 2000).

*B. Do the Rules Meet the Evaluation Criteria?*

We believe the rules are consistent with the relevant policy and guidance regarding enforceability, SIP relaxations, RACT requirements, and the special requirements for gasoline vapor recovery. The TSDs have more information on our evaluation.

*C. Public Comment and Final Action*

As authorized in section 110(k)(3) of the CAA, EPA is fully approving the submitted rules because we believe they fulfill all relevant requirements. We do not think anyone will object to this, so we are finalizing the approval 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 February 24, 2003, 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 March 24, 2003. 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 direct final 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. Background Information**

*Why Were These Rules Submitted?*

PM-10 harms human health and the environment. Section 110(a) of the CAA requires states to submit regulations that control PM-10 emissions. Table 2 lists some of the national milestones leading to the submittal of local agency PM-10 rules.

TABLE 2.—PM-10 NONATTAINMENT MILESTONES

| Date                    | Event   |
|-------------------------|---|
| March 3, 1978 .....     | EPA promulgated a list of total suspended particulate (TSP) nonattainment areas under the Clean Air Act, as amended in 1977. 43 FR 8964; 40 CFR 81.305.   |
| July 1, 1987 .....      | EPA replaced the TSP standards with new PM standards applying only up to 10 microns in diameter (PM-10). 52 FR 24672.   |
| November 15, 1990 ..... | Clean Air Act Amendments of 1990 were enacted, Pub. L. 101-549, 104 Stat. 2399, codified at 42 U.S.C. 7401-7671q.   |
| November 15, 1990 ..... | PM-10 areas meeting the qualifications of section 107(d)(4)(B) of the CAA were designated nonattainment by operation of law and classified as moderate pursuant to section 188(a). States are required by section 110(a) to submit rules regulating PM-10 emissions in order to achieve the attainment dates specified in section 188(c). |

VOCs help produce ground-level ozone, smog, and particulate matter which harm human health and the environment. EPA has established

National Ambient Air Quality Standards (NAAQS) for ozone. Section 110(a) of the CAA requires states to submit regulations in order to achieve and

maintain the NAAQS. Table 3 lists some of the national milestones leading to the submittal of these local agency VOC rules.

TABLE 3.—OZONE NONATTAINMENT MILESTONES

| Date                    | Event   |
|-------------------------|---|
| March 3, 1978 .....     | EPA promulgated a list of ozone nonattainment areas under the Clean Air Act as amended in 1977. 43 FR 8964; 40 CFR 81.305.  |
| May 26, 1988 .....      | EPA notified Governors that parts of their SIPs were inadequate to attain and maintain the ozone standard and requested that they correct the deficiencies (EPA's SIP-Call). See section 110(a)(2)(H) of the pre-amended Act. |
| November 15, 1990 ..... | Clean Air Act Amendments of 1990 were enacted. Pub. L. 101-549, 104 Stat. 2399, codified at 42 U.S.C. 7401-7671q.   |
| May 15, 1991 .....      | Section 182(a)(2)(A) requires that ozone nonattainment areas correct deficient RACT rules by this date.   |

**IV. Administrative Requirements**

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 CAA. 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 CAA. 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 CAA. 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 CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by March 24, 2003. 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: December 4, 2002.

**Alexis Strauss,**

*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)(303) to read as follows:

#### § 52.220 Identification of plan.

\* \* \* \* \*

(c) \* \* \*

(303) New and amended regulations for the following APCDs were submitted on August 6, 2002, by the Governor's designee.

(i) Incorporation by reference.

(A) Santa Barbara County Air Pollution Control District.

(1) Rule 401, adopted on October 18, 1971 and revised on May 16, 2002.

(B) Yolo Solano Air Quality Management District.

(1) Rule 2.22, revised on June 12, 2002.

\* \* \* \* \*

[FR Doc. 03-1362 Filed 1-22-03; 8:45 am]

BILLING CODE 6560-50-P

## DEPARTMENT OF TRANSPORTATION

### Transportation Security Administration

#### 49 CFR Part 1510

[Docket No. TSA-2001-11120]

RIN 2110-AA01

#### Imposition and Collection of Passenger Civil Aviation Security Service Fees

**AGENCY:** Transportation Security Administration, DOT.

**ACTION:** Partial waiver of independent audit requirement of final rule.

**SUMMARY:** Under specified conditions and until further notice, the Transportation Security Administration (TSA) will not enforce certain independent audit requirements related to the September 11th Security Fee collected by direct air carriers and foreign air carriers. This partial waiver is because the audit may not be necessary and may be overly burdensome.

**DATES:** Effective January 23, 2003.

**FOR FURTHER INFORMATION CONTACT:** For guidance on technical matters contact Randall Fiertz, Acting Director of Revenue, (202) 385-1209. For guidance on legal or other matters contact Steven Cohen, Office of Chief Counsel, (202) 493-1216.

**SUPPLEMENTARY INFORMATION:** In order to offset the costs of providing certain civil aviation security services, TSA imposed a uniform security service fee, the September 11th Security Fee (fee), on passenger enplanements for certain flights originating at airports in the United States. The interim final rule for the fee was published in the **Federal Register** on December 31, 2001, amended on March 28, 2002, and codified at 49 CFR part 1510. Section 1510.9 requires direct air carriers and