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#### 40 CFR Part 52

[CA 043-0017a; FRL-5617-4]

**Approval and Promulgation of State Implementation Plans; California State Implementation Plan Revision; Kern County Air Pollution Control District; Santa Barbara County Air Pollution Control District; South Coast Air Quality Management District**

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

**ACTION:** Direct final rule.

**SUMMARY:** EPA is taking direct final action on revisions to the California State Implementation Plan (SIP). The revisions concern rules from the Kern County Air Pollution Control District (KCAPCD), the Santa Barbara County Air Pollution Control District (SBCAPCD), and the South Coast Air Quality Management District (SCAQMD). This approval action will incorporate these rules into the Federally approved SIP. The intended effect of approving these rules is to regulate emissions of volatile organic compounds (VOCs) in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). The rules control VOC emissions from organic solvent degreasing operations, petroleum storage tank degassing, and gasoline transfer and dispensing operations. Thus, EPA is finalizing the approval of these rules 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 December 6, 1996 unless adverse or critical comments are received by November 6, 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 for 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:

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

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 "L" Street, Sacramento, CA 95812.

Kern County Air Pollution Control District, 2700 "M" Street, Suite 290, Bakersfield, CA 93301.  
Santa Barbara County Air Pollution Control District, 26 Castilian Drive, B-23, Goleta, CA 93117.  
South Coast Air Quality Management District, 21865 E. Copley Drive, Diamond Bar, CA 91765-4182.

**FOR FURTHER INFORMATION CONTACT:** Mae Wang, Rulemaking Section (A-5-3), Air and Toxics Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105, Telephone: (415) 744-1200.

**SUPPLEMENTARY INFORMATION:**

**Applicability**

The rules being approved into the California SIP include: KCAPCD Rule 412.1, Transfer of Gasoline into Vehicle Fuel Tanks; KCAPCD Rule 410.3, Organic Solvent Degreasing Operations; KCAPCD Rule 102, Definitions; SBCAPCD Rule 343, Petroleum Storage Tank Degassing; and SCAQMD Rule 461, Gasoline Transfer and Dispensing.

**Background**

On March 3, 1978, EPA promulgated a list of ozone nonattainment areas under the provisions of the Clean Air Act, as amended in 1977 (1977 Act or pre-amended Act), that included the San Joaquin Valley Air Basin,<sup>1</sup> the South Central Coast Air Basin and the Los Angeles-South Coast Air Basin Area. 43 FR 8964, 40 CFR 81.305. These areas did not attain the ozone standard by their approved attainment dates.<sup>2</sup> On May 26, 1988, EPA notified the Governor of California, pursuant to section 110(a)(2) of the 1977 Act, that the KCAPCD, SBCAPCD and SCAQMD portions of the California SIP were inadequate to attain and maintain the ozone standard and requested that deficiencies in the existing SIP be corrected (EPA's SIP-Call). On November 15, 1990, the Clean Air Act Amendments of 1990 were enacted. Pub. L. 101-549, 104 Stat. 2399, codified at 42 U.S.C. 7401-7671q. In amended section 182(a)(2)(A) of the CAA, Congress statutorily adopted the requirement that nonattainment areas fix their deficient reasonably available control technology (RACT) rules for

<sup>1</sup> At the time, Kern County was included in the San Joaquin Valley Air Basin and the Southeast Desert Air Basin. The San Joaquin Valley Air Basin was designated as nonattainment and the Southeast Desert Air Basin was designated as unclassified.

<sup>2</sup> The South Central Coast Air Basin and the Los Angeles-South Coast Air Basin Area received extensions of their attainment dates to December 31, 1987. Kern County's attainment date remained December 31, 1982.

ozone and established a deadline of May 15, 1991 for States to submit corrections of those deficiencies.

On May 20, 1991, the San Joaquin Valley Unified Air Pollution Control District was formed. This district has authority over the San Joaquin Valley Air Basin Portion of Kern County. Thus, as of March 20, 1991, the KCAPCD has authority over only the Southeast Desert Air Basin portion of Kern County.

Section 182(a)(2)(A) applies to areas designated as nonattainment prior to enactment of the CAA amendments and classified as marginal or above as of the date of enactment. It requires such areas to adopt and correct RACT rules pursuant to pre-amended section 172(b) as interpreted in EPA's pre-amendment guidance.<sup>3</sup> EPA's SIP-Call used that guidance to indicate the necessary corrections for specific nonattainment areas. The South Central Coast Air Basin is classified as moderate and the Los Angeles-South Coast Air Basin Area is classified as extreme; therefore, these areas were subject to the RACT fix-up requirement and the May 15, 1991 deadline. All of Kern County is classified as serious. However, the Southeast Desert Air Basin portion of Kern County was not a pre-amendment nonattainment area and, therefore, was not designated and classified upon enactment of the amended Act.<sup>4</sup> For this reason, KCAPCD is not subject to the section 182(a)(2)(A) RACT fix-up requirement. The KCAPCD is, however, still subject to the requirements of EPA's SIP-Call because the SIP-Call included all of Kern County. The substantive requirements of the SIP-Call are the same as those of the statutory RACT fix-up requirement.

This document addresses EPA's direct final action for KCAPCD Rule 412.1, Transfer of Gasoline into Vehicle Fuel Tanks; KCAPCD Rule 410.3, Organic Solvent Degreasing Operations; KCAPCD Rule 102, Definitions; SBCAPCD Rule 343, Petroleum Storage

<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); and the existing control technique guidelines (CTGs).

<sup>4</sup> The South Central Coast Air Basin, the Los Angeles-South Coast Air Basin Area, and the San Joaquin Valley Air Basin portion of KCAPCD retained their nonattainment designations and were classified by operation of law pursuant to section 107(d) and 181(a) upon the date of enactment of the CAA. The Southeast Desert Air Basin portion of the KCAPCD was designated nonattainment on November 6, 1991. See 56 FR 56694 (November 6, 1991).

Tank Degassing; and SCAQMD Rule 461, Gasoline Transfer and Dispensing. The State of California submitted these rules for inclusion into its SIP, and EPA found them to be complete pursuant to EPA's completeness criteria that are set forth in 40 CFR part 51 Appendix V.<sup>5</sup> The following table contains the dates of adoption, submittal, and completeness for each rule.

Rule No.	Adopted	Submitted	Complete
KCAPCD 412.1 .....	11/9/92	1/11/93	3/26/93
KCAPCD 410.3 .....	3/7/96	5/10/96	7/19/96
KCAPCD 102 .....	3/7/96	5/10/96	7/19/96
SBCAPCD 343 .....	12/14/93	3/29/94	6/3/94
SCAQMD 461 .....	9/8/95	1/31/96	4/2/96

KCAPCD Rule 412.1 and SCAQMD Rule 461 control VOC emissions during gasoline transfer and dispensing operations. KCAPCD Rule 410.3 regulates organic solvent degreasing operations, and KCAPCD Rule 102 contains general definitions used in other district rules. SBCAPCD Rule 343 controls VOC emissions from the degassing of petroleum storage tanks. VOCs contribute to the production of ground level ozone and smog. These rules were originally adopted as part of district efforts to achieve the National Ambient Air Quality Standard for ozone and in response to EPA's SIP-Call. The following is EPA's evaluation and direct final action for these rules.

#### EPA Evaluation

In determining the approvability of a VOC 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). The EPA interpretation of these requirements, which forms the basis for today's action, appears in the various EPA policy guidance documents listed in footnote 3. Among those provisions is the requirement that a VOC rule must, at a minimum, provide for the implementation of RACT for stationary sources of VOC emissions. This requirement was carried forth from the pre-amended Act.

For the purpose of assisting State and local agencies in developing RACT

rules, EPA prepared a series of Control Technique Guideline (CTG) documents. The CTGs are based on the underlying requirements of the Act and specify the presumptive norms for what is RACT for specific source categories. Under the CAA, Congress ratified EPA's use of these documents, as well as other Agency policy, for requiring States to "fix-up" their RACT rules. See section 182(a)(2)(A). The CTG applicable to KCAPCD Rule 410.3 is "Control of Volatile Organic Emissions from Solvent Metal Cleaning," EPA-450/2-77-022, and the CTG applicable to SCAQMD Rule 461 is "Control of Volatile Organic Compound Leaks from Gasoline Tank Trucks and Vapor Collection Systems," EPA 450/2-78-051. For some source categories, such as storage tank degassing and phase II vapor recovery, EPA did not publish a CTG. Therefore, there is no CTG applicable to KCAPCD Rule 412.1 or SBCAPCD Rule 343. In such cases, the District makes a determination of what controls are required to satisfy the RACT requirement, by reviewing the operations of facilities within the affected source category. In that review, the technological and economic feasibility of the proposed controls are considered. Additionally, for both CTG and non-CTG rules, the District may rely on EPA policy documents, such as the Blue Book or model rules, to ensure that the adopted VOC rules are fully enforceable and strengthen or maintain the SIP. KCAPCD Rule 412.1 was evaluated against EPA's draft model stage II rule, dated August 17, 1992. KCAPCD Rule 102 contains only definitions and is not considered a prohibitory rule, and therefore it was not evaluated for RACT requirements.

KCAPCD Rule 412.1 is an amended rule which regulates the dispensing of gasoline into motor vehicle fuel tanks.

This rule contains the following significant changes from the current SIP:

- Adds definitions, recordkeeping and testing requirements.
- Adds requirements related to equipment operation and maintenance.

KCAPCD Rule 410.3 is an amended rule controlling solvent degreasing operations. The only change to this rule involved revising the "volatile organic compound" definition to reference KCAPCD Rule 102.

KCAPCD Rule 102 contains definitions for terms used and referenced in other district rules. The definitions for "exempt compounds" and "loading rack" were added, and the definition for "valley basin and desert basin" was deleted.

SBCAPCD Rule 344 is a new rule which controls VOC emissions from the

degassing of petroleum storage tanks, reservoirs, or other containers. Above-ground containers and underground tanks are subject to this rule depending upon their capacity and the vapor pressure of the stored organic liquid. The rule requires degassing emissions to be controlled by at least 90%, using one of several methods, including liquid balancing, liquid displacement, or refrigeration. Monitoring of refrigeration and carbon adsorption is required, along with records of monitoring results, vapor pressures, and degassing events.

SCAQMD Rule 461 is an amended rule that includes the following significant changes from the current SIP:

- Adds definitions, recordkeeping requirements, and test methods.
- Adds requirements for phase I and phase II equipment, initial and reverification testing, self-compliance inspection and maintenance, and completion of a training program.
- Deletes outdated compliance schedules.

EPA has evaluated the submitted rules and has determined that they are consistent with the CAA, EPA regulations, and EPA policy. Therefore, KCAPCD Rule 412.1, KCAPCD Rule 410.3, KCAPCD Rule 102, SBCAPCD Rule 343, and SCAQMD Rule 461 are being approved under section 110(k)(3) of the CAA as meeting the requirements of section 110(a) and part D.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future 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 action and anticipates no adverse comments. However, in a separate document in this Federal Register publication, EPA is proposing to approve the SIP revision should adverse or critical comments be filed. This action will be effective December 6, 1996, unless, by November 6, 1996, adverse or critical comments are received.

If 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. EPA will not institute a second comment period on this action.

<sup>5</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).

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 December 6, 1996.

**Regulatory Process**

**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. The rules being approved by this action will impose no new requirements because affected sources are already subject to these regulations under State law. Therefore, no additional costs to State, local, or tribal governments or to the private sector result from this action. EPA has also determined that this direct 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.

Under 5 U.S.C. 801(a)(1)(A) as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted 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 General Accounting Office prior to publication of the rule in today's Federal Register. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

**Small Businesses**

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 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 sections 110 and 301(a) 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 any small entities affected. 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).

This action has been classified as a Table 3 action for signature by the Regional Administrator under 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 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 compounds.

Note: Incorporation by reference of the State Implementation Plan for the State of California was approved by the Director of the Federal Register on July 1, 1982.

Dated: September 17, 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)(191)(i)(D), (c)(196)(i)(C)(3), (c)(229)(i)(A), and (c)(231)(i)(B) to read as follows:

**§ 52.220 Identification of plan.**

- \* \* \* \* \*
- (c) \* \* \*
- (191) \* \* \*

- (j) \* \* \*
- (D) Kern County Air Pollution Control District.
- (J) Rule 412.1, adopted on November 9, 1992.

\* \* \* \* \*

(196) \* \* \*

(i) \* \* \*

(C) \* \* \*

(3) Rule 343, adopted on December 14, 1993.

\* \* \* \* \*

(229) New and amended regulations for the following APCDs were submitted on January 31, 1996, by the Governor's designee.

(i) Incorporation by reference.

(A) South Coast Air Quality Management District.

(J) Rule 461, adopted on September 8, 1995.

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(231) \* \* \*

(i) \* \* \*

(B) Kern County Air Pollution Control District.

(I) Rule 102 and Rule 410.3, adopted on March 7, 1996.

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**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Office of Inspector General**

**42 CFR Part 1003**

**45 CFR Part 79**

**RIN 0991-AA**

**Medicare and State Health Care Programs and Program Fraud Civil Remedies: Fraud and Abuse; Civil Money Penalties Inflation Adjustments**

**AGENCY:** Office of Inspector General (OIG), HHS.

**ACTION:** Final rule.

**SUMMARY:** In accordance with Federal Civil Monetary Penalty Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996, this final rule incorporates the penalty inflation adjustments for the civil money penalties for health care fraud and abuse. These inflation adjustment calculations are not applicable to those civil money penalties contained in the Social Security Act, which are exempted from this adjustment.

**EFFECTIVE DATE:** This rule is effective on November 6, 1996.

**FOR FURTHER INFORMATION CONTACT:**