

A detailed discussion of rule deficiencies can be found in the Technical Support Document for Rule 330, (7/98) which is available from the U.S. EPA, Region 9 office. Given these deficiencies, the Rule 330 is not approvable pursuant to the section 182(a)(2)(A) of the CAA because it is inconsistent with the interpretation of section 172 of the 1977 CAA as found in the Blue Book and may lead to rule enforceability problems.

Because of the above deficiencies, EPA cannot grant full approval of this rule under section 110(k)(3) and part D. Also, because the submitted rule is not composed of separable parts which meet all the applicable requirements of the CAA, EPA cannot grant partial approval of the rule under section 110(k)(3). However, EPA may grant a limited approval of the submitted rule under section 110(k)(3) in light of EPA's authority pursuant to section 301(a) to adopt regulations necessary to further air quality by strengthening the SIP. The approval is limited because EPA's action also contains a simultaneous limited disapproval. To strengthen the SIP, EPA is proposing a limited approval of Santa Barbara County Air Pollution Control District's Rule 330—Surface Coating of Metal Parts and Products under sections 110(k)(3) and 301(a) of the CAA.

At the same time, EPA is also proposing a limited disapproval of this rule because it contains deficiencies that have not been corrected as required by section 182(a)(2)(A) of the CAA, and, as such, the rule does not fully meet the requirements of part D of the Act. Under section 179(a)(2), if the Administrator disapproves a submission under section 110(k) for an area designated nonattainment based on the submission's failure to meet one or more of the elements required by the Act, the Administrator must apply one of the sanctions set forth in section 179(b) unless the deficiency has been corrected within 18 months of such disapproval. Section 179(b) provides two sanctions available to the Administrator: highway funding and offsets. The 18-month period referred to in section 179(a) will begin on the effective date of EPA's final limited disapproval. Moreover, the final disapproval triggers the Federal implementation plan (FIP) requirement under section 110(c). It should be noted that the rule covered by this NPR has been adopted by the SBCAPCD in effect in the Santa Barbara County Air Pollution Control District. EPA's final limited disapproval action will not prevent the Santa Barbara County Air Pollution Control District, the state of

California, or EPA from enforcing this rule.

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 will be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

IV. Administrative Requirements

A. Executive Orders 12866 and 13045

The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866 review.

The proposed rule is not subject to E.O. 13045, entitled "Protection of Children from Environmental Health Risks and Safety Risks," because it is not an "economically significant" action under E.O. 12866.

B. Regulatory Flexibility Act

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, 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 flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its action 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).

C. 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 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 proposed does not include a Federal mandate that may result in estimated 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 Federal requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

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.

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

Dated: July 31, 1998.

Felicia Marcus,

Regional Administrator, Region 9.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA-198-0058; FRL-6142-2]

Approval and Promulgation of Implementation Plans; California State Implementation Plan Revision; South Coast Air Quality Management District, San Diego County Air Pollution Control District, and Kern County Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve revisions to the California State Implementation Plan (SIP) which primarily concern the control of particulate matter (PM) emissions. The

intended effect of these proposed SIP revisions is principally to regulate PM emissions in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). EPA's final approval of these revisions will incorporate them into the federally approved SIP for the South Coast Air Quality Management District (SCAQMD), San Diego County Air Pollution Control District (SDCAPCD), and the Kern County Air Pollution Control District (KCAPCD). EPA has evaluated each of the revisions and is proposing to approve them 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. EPA is also proposing a limited approval and limited disapproval of SCAQMD Rule 403. EPA is proposing simultaneous limited approval and limited disapproval of this revision because, while it strengthens the SIP, it also does not fully meet the CAA provisions regarding plan submissions and requirements for nonattainment areas.

DATES: Written comments must be received on or before September 10, 1998.

ADDRESSES: Comments should be addressed to Dave Jesson, Air Planning Office (AIR-2), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105-3901.

Copies of the rule revisions and EPA's evaluation report of the rules are available for public inspection at EPA's Region 9 office during normal business hours. Copies of the submitted rule revisions are also available for inspection at the following locations:

California Air Resources Board,
Stationary Source Division, Rule
Evaluation Section, 2020 "L" Street,
Sacramento, CA
South Coast Air Quality Management
District, 21865 E. Copley Drive,
Diamond Bar, CA
San Diego County Air Pollution Control
District, 9150 Chesapeake Drive, San
Diego, CA
Kern County Air Pollution Control
District, 2700 "M" Street, Suite 302,
Bakersfield, CA

FOR FURTHER INFORMATION CONTACT:
Dave Jesson, (415) 744-1288.

SUPPLEMENTARY INFORMATION:

I. Applicability

The rules being proposed for approval into the California SIP are: SCAQMD Rule 403, *Fugitive Dust* (as amended on February 14, 1997); SCAQMD Rule

403.1, *Wind Entrainment of Fugitive Dust* (adopted on January 15, 1993); SCAQMD Rule 1186, *PM₁₀ Emissions from Paved and Unpaved Roads, and Livestock Operations* (adopted on February 14, 1997); San Diego Rule 52, *Particulate Matter* (as amended on January 22, 1997); San Diego Rule 53, *Specific Air Contaminants* (as amended on January 22, 1997); San Diego Rule 54, *Dust and Fumes* (as amended on January 22, 1997); and KCAPCD Rule 405, *Particulate Matter—Emission Rate* (as amended on May 1, 1997). These new and amended rules were submitted to EPA as SIP revisions by the California Air Resources Board (CARB) on August 1, 1997, with the exception of SCAQMD Rule 403.1, which was submitted on November 18, 1993. EPA is also proposing to approve local ordinances for 9 Coachella Valley cities and the County of Riverside for the control of fugitive dust in the Coachella Valley Planning Area.¹ The ordinances were adopted on various dates and submitted as SIP revisions on February 16, 1995.

II. Background

In response to section 110(a) and Part D of the Act, local California air pollution control districts have adopted and the State of California has submitted many PM rules for incorporation into the California SIP, including the rules and ordinances being acted on in this document. This document addresses EPA's proposed approval of SCAQMD Rules 403, 403.1, and 1186; SDCAPCD Rules 52, 53, and 54; and KCAPCD Rule 405, as identified above. These submitted rules were found to be complete on September 30, 1997, pursuant to EPA's completeness criteria that are set forth in 40 CFR part 51, appendix V², with the exception of SCAQMD Rule 403.1, which was found complete on December 27, 1993, and the Coachella Valley ordinance submittal, which became complete by operation of law on August 16, 1995.

SCAQMD Rule 403, *Fugitive Dust*, consists of reasonably available control measures (RACMs) and best available control measures (BACMs) to reduce fugitive dust emissions associated with agricultural operations, "active operations" (construction and demolition activities, earth-moving activities, or vehicular movement),

¹ The Coachella Valley Planning Area is classified as a serious PM-10 nonattainment area, and is located within the jurisdiction of the SCAQMD, which also has responsibility for the South Coast Air Basin serious PM-10 nonattainment area.

² 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).

track-out of bulk material onto public paved roadways, and open storage piles or disturbed surface areas. SCAQMD Rule 403.1, *Wind Entrainment of Fugitive Dust*, consists of additional fugitive dust measures for agriculture, abandoned disturbed surface areas, and bulk material deposits entrained by high winds within the Coachella Valley. SCAQMD Rule 1186, *PM₁₀ Emissions from Paved and Unpaved Roads, and Livestock Operations*, establishes BACM requirements for reducing PM entrained as a result of vehicular traffic on paved and unpaved roads, and at livestock operations. The Coachella Valley ordinances, together with the applicable SCAQMD rules, constitute RACM and BACM for the Coachella Valley PM-10 nonattainment area, applying additional fugitive dust controls on construction projects and on paved and unpaved roads and surfaces.

SDCAPCD Rule 52, *Particulate Matter*, prohibits any source from discharging into the atmosphere PM in excess of 0.10 grain per dry standard cubic foot of gas. SDCAPCD Rule 53, *Specific Air Contaminants*, limits by volume, emissions of combustion PM and sulfur compounds, calculated as sulfur dioxide (SO₂). SDCAPCD Rule 54, *Dust and Fumes*, restricts PM emissions from process operations. KCAPCD Rule 405 *Particulate Matter—Emission Rate*, also restricts PM emissions from process operations.

The rules and ordinances that are the subject of this action were originally adopted as part of each district's efforts to prevent violations of the National Ambient Air Quality Standard (NAAQS) for Total Suspended Particulates (TSP), EPA's original ambient standard for particulates, or for PM-10, EPA's ambient standard for PM adopted on July 1, 1987.³ The SCAQMD revised its

³ EPA's revision to the NAAQS for particulate matter on July 1, 1987 (52 FR 24672) replaced standards for total suspended particulates (TSP) with new standards applying only to particulate matter up to 10 microns in diameter (PM-10). At that time, EPA established two PM-10 standards. The annual PM-10 standard is attained when the expected annual arithmetic average of the 24-hour samples for a period of one year does not exceed 50 micrograms per cubic meter (ug/m³). The 24-hour PM-10 standard of 150 ug/m³ is attained if samples taken for 24-hour periods have no more than one expected exceedance per year, averaged over 3 years.

On July 18, 1997, EPA reaffirmed the annual PM-10 standard and slightly revised the 24-hour standard (62 FR 38651). The revised 24-hour PM-10 standard is attained if the 99th percentile of the distribution of the 24-hour results over 3 years does not exceed 150 ug/m³ at each monitor within an area. In the same rulemaking, EPA also established two new standards for PM, both applying only to particulate matter up to 2.5 microns in diameter (PM-2.5). EPA has not yet established specific plan

Continued

Rule 403 and adopted new Rule 1186 to meet CAA Part D requirements for RACM and BACM for fugitive sources of PM-10. The Coachella Valley ordinances were adopted by local jurisdictions to provide important additional RACM and BACM controls as supplements to the SCAQMD rules.

III. EPA Evaluation and Proposed Action

A. Evaluation of Rules and Ordinances

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

For PM-10 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.

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 EPA intends 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 proposed rulemaking action, EPA is applying these policies to this submittal, taking into consideration the specific factual issues presented.

Both KCAPCD and SCAQMD contain areas designated under section 107 of the Act as nonattainment for PM-10. The SCAQMD has jurisdiction over areas classified as serious for PM-10.⁴

and control requirements for the new PM-2.5 NAAQS.

Emissions of fine PM contribute to the production of ground-level PM. PM can harm human health by causing lung damage, increased respiratory disease, and possibly premature death. Children, the elderly, and people suffering from heart and lung disease, like asthma, are especially at risk. PM also damages materials, reduces visibility, and adversely affects crops and forests.

⁴ As indicated above, the SCAQMD has jurisdiction over the South Coast Air Basin (SCAB) and Coachella Valley PM-10 serious nonattainment areas. This Federal Register action for the SCAQMD excludes the Los Angeles County portion of the Southeast Desert AQMA, otherwise known as the

KCAPCD has jurisdiction over a portion of the Searles Valley, which is currently classified as moderate for PM-10.

South Coast Air Quality Management District

On June 14, 1978, EPA approved into the SIP a version of Rule 403, *Fugitive Dust*, that had been adopted by the SCAQMD on May 7, 1976, and submitted by CARB on August 2, 1976. On November 6, 1992, July 9, 1993, and February 14, 1997, SCAQMD adopted amendments to Rule 403, which include the following significant changes from the current SIP:

- Persons conducting active operations within the SCAB must employ BACM to minimize fugitive emissions.
- Persons conducting active operations outside of the SCAB must employ RACM.
- More stringent BACM (for active operations inside the SCAB) and RACM (for active operations outside the SCAB) are required for high wind conditions.
- Persons shall not cause or allow levels to exceed 50 micrograms per cubic meter ($\mu\text{g}/\text{m}^3$) of PM-10, as opposed to 100 $\mu\text{g}/\text{m}^3$ of TSP in the applicable SIP rule, when determined as the difference between upwind and downwind samples.
- Persons shall prevent or remove within 1 hour track-out onto public paved roads or implement specific alternative actions.
- In the event that EPA finds that the area has not met PM-10 milestones or has failed to attain or maintain the PM-10 NAAQS, the rule's applicability threshold for disturbed areas is reduced from 100 acres to 50 acres, and the threshold for daily earth-moving or throughput volume is reduced from 10,000 cubic yards to 5,000 cubic yards during the most recent 365-day period.
- Persons may submit alternative compliance plans for approval by the SCAQMD Executive Officer and USEPA.
- The rule exempts agricultural operations outside of the SCAB and agricultural operations within the SCAB provided that the combined disturbed surface area is less than 10 acres.
- The rule exempts disturbed surface areas less than $\frac{1}{2}$ acre on property zoned for residential uses, and activities undertaken during a state of emergency.
- Certain additional sources are exempted from specific rule provisions under specified conditions (e.g., during a state of emergency) or because the sources are below impact thresholds.

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.

All provisions of Rule 403 became effective upon the dates of rule adoption, although compliance with certain provisions is not required until September 1, 1998, or January 1, 1999.

EPA does not propose to approve into the SIP section (i) of Rule 403, which establishes fees which are enforced locally only, and which are not integral to the rule requirements.

As requested by CARB and SCAQMD,⁵ EPA proposes to approve 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-lbf/ft³ (2,700 kN-m/m³));
- (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."

CARB and SCAQMD did not request that EPA approve as part of the SIP the remaining portion of the Rule 403 Implementation Handbook, which includes copies of SCAQMD rules, lists of chemical dust suppressants, sample recordkeeping, and guidance on preparation of high wind fugitive dust control plans. These supplementary guidance materials do not substantively affect control or compliance requirements in Rule 403.

Consequently, EPA is not proposing to approve these sections of the Handbook.

The SCAQMD has indicated that any future revisions to the Handbook that affect the control and compliance requirements of Rule 403 will be submitted as a SIP revision (letters from CARB and SCAQMD referenced above).

Although Rule 403 will strengthen the SIP, the rule 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)). This discretion could lead to the use of

⁵ The docket to this rulemaking contains letter dated March 27, 1998, from Dean Saito, CARB, to Dave Jesson, USEPA, transmitting a letter dated December 11, 1997, from Elaine Chang, Director of Planning, SCAQMD, to Dave Jesson, USEPA.

test methods not approved by EPA, and could consequently result in enforceability problems. Thus, the provision is not consistent with CAA section 172(c)(6), which provides that SIP measures must be enforceable. Because of this deficiency, EPA cannot grant full approval of Rule 403 under section 110(k)(3) and part D. Also, because the rule is not composed of separable parts that meet all the applicable CAA requirements, EPA cannot grant partial approval of Rule 403 under section 110(k)(3). However, EPA may grant a limited approval of Rule 403 under section 110(k)(3) in light of EPA's authority pursuant to section 301(a) to adopt regulations necessary to further air quality by strengthening the SIP.

At the same time, EPA is also proposing a limited disapproval of Rule 403 because it contains the deficiency identified above. The potential sanctions that might result from this disapproval are set forth in section III.B. below. EPA expects, however, that future revisions to Rule 403 will resolve this issue by requiring that equivalent test methods receive EPA approval. When this deficiency is corrected and submitted as a SIP revision, EPA intends to approve the amended rule fully thus superseding the limited disapproval.

It should be noted that Rule 403 has been adopted by SCAQMD and is currently in effect. EPA's final limited approval/limited disapproval action will not prevent SCAQMD or EPA from enforcing the rule.

There is currently no version of SCAQMD Rule 403.1, *Wind Entrainment of Fugitive Dust*, in the SIP. The submitted rule includes many definitions and other regulatory elements similar or identical to those in Rule 403, and Rule 403.1 is also accompanied by an Implementation Handbook specifying standard methods and calculations, and monitoring and reporting responsibilities. Rule 403.1 contains the following specific provisions:

- Persons involved in active operations in the Coachella Valley Blowsand Zone shall stabilize man-made deposits within 24 hours by application of water, chemical dust suppressants, and/or installation of wind breaks.
 - Persons involved in agricultural tilling or soil mulching shall cease such activities when winds exceed 25 mph.
- All provisions of Rule 403.1 became effective upon March 1, 1993.

As requested by CARB and SCAQMD in the correspondence previously cited (see footnote 5), EPA proposes to

approve the following sections of the "Rule 403.1 Implementation Handbook," which was included as part of the SIP revision and which is incorporated by reference:

(1) "Wind Monitoring"—performance standards for wind monitoring equipment; and

(2) "Storage Piles"—Surface-Area Calculations and ASTM Standard Method C-136 for Sieve Analysis of Fine and Coarse Aggregates.

CARB and SCAQMD did not request that EPA approve as part of the SIP the remaining portion of the Rule 403.1 Implementation Handbook, which includes copies of SCAQMD rules, notification procedures, lists of chemical dust suppressants, sample recordkeeping, and Food Securities Act fact sheets. These supplementary guidance materials do not substantively affect control or compliance requirements in Rule 403.1. Consequently, EPA is not proposing to approve these sections of the Handbook.

The SCAQMD has indicated that any future revisions to the Handbook that affect the control and compliance requirements of Rule 403.1 will be submitted as a SIP revision (letters from CARB and SCAQMD referenced above).

There is currently no version of SCAQMD Rule 1186, *PM₁₀ Emissions from Paved and Unpaved Roads, and Livestock Operations*, in the SIP. The submitted rule includes the following provisions representing BACM requirements:

- Owners/operators of paved public roads shall remove visible roadway accumulations through street cleaning within 72 hours following notification.
- Agencies purchasing, leasing or contracting for street sweeper equipment for routine street sweepers shall procure PM-10 efficient equipment after January 1, 1999.
- Owners/operators of unpaved public roads having greater than the average daily trips of all unpaved roads in its jurisdiction beginning January 1, 1998 and each of the 8 calendar years thereafter shall annually
 - pave at least 1 mile; or
 - apply chemical stabilization to 2 miles; or
 - take one or more of the following actions on 3 miles:
 - Install signage at ¼ mile intervals prohibiting speeds greater than 15 mph;
 - Install speed bumps every 500 feet; or
 - Maintain the roadway to inhibit speeds greater than 15 mph.
 - Owners/operators of livestock operations (50 or more animals) shall cease hay grinding between 2 and 5 pm

if visible emissions extend more than 50 feet from the grinding source, and shall treat all unpaved access areas with pavement, gravel, or asphalt no later than January 1, 1998.

SCAQMD Rule 1186 also contains contingency requirements for new or widened paved roads with projected average daily trips of 500 or more, involving curbing, paving shoulders, and paving (or landscaping or chemically stabilizing) medians. These requirements would be triggered by an EPA finding that the area has not achieved PM-10 and PM-10 precursor emission reduction requirements at a milestone reporting period, that the region failed to attain the PM-10 NAAQS by the CAA deadline, or that the region failed to maintain the PM-10 NAAQS.

Rule 1186 has several exemption provisions and allows for submission of alternative compliance plans for approval by the SCAQMD Executive Officer and USEPA.

The February 16, 1995, SIP submittal for the Coachella Valley area includes the following local fugitive dust ordinances: City of Cathedral City Ordinance No. 377 (2/18/93), City of Coachella Ordinance No. 715 (10/6/93), City of Desert Hot Springs Ordinance No. 93-2 (5/18/93), City of Indian Wells Ordinance No. 313 (2/4/93), City of Indio Ordinance No. 1138 (3/17/93), City of La Quinta Ordinance No. 219 (12/15/92), City of Palm Desert Ordinance No. 701 (1/14/93), City of Palm Springs Ordinance No. 1439 (4/21/93), City of Rancho Mirage Ordinance No. 575 (8/5/93), and County of Riverside Ordinance No. 742 (1/4/94).

These ordinances are based on a model fugitive dust control ordinance developed by the Coachella Valley Association of Governments, local governments, and the SCAQMD. The ordinances typically require: (1) dust control plans for each construction project needing a grading permit; (2) plans to pave or chemically treat unpaved surfaces if daily vehicle trips exceed 150; (3) imposition of 15 mph speed limits for unpaved surfaces if daily vehicle trips do not exceed 150; (4) paving or chemical treatment of unpaved parking lots; and (5) actions to discourage use of unimproved property by off-highway vehicles.

The ordinances are exemplary approaches by local governments to establish reasonable controls on dust emissions. Successful implementation of the ordinances by the involved agencies and members of the public has been instrumental in bringing the Coachella Valley area into attainment of the PM-10 NAAQS.

San Diego County Air Pollution Control District

On December 5, 1984, EPA approved into the SIP a version of Rule 52, *Particulate Matter*, that had been adopted by the SDCAPCD on September 21, 1983, and submitted by CARB on March 14, 1984. On January 22, 1997, the SDCAPCD adopted an amendment to Rule 52, which includes the following significant changes from the current SIP:

- All sources subject to Rule 54 must comply with the uncorrected particulate concentration (grain loading) standard of 0.10 grain per dry standard cubic foot of gas;
- Asphalt plants are exempted until July 1, 1998, provided the plants are in compliance with Rule 54; and
- Equipment not required to obtain an Authority to Construct, Permit to Operate or Registration are exempted.

On July 6, 1982, EPA approved into the SIP a version of Rule 53, *Specific Contaminants*, that had been adopted by the SDCAPCD on November 25, 1981, and submitted on March 1, 1982. On January 22, 1997, the SDCAPCD adopted an amendment to Rule 53, which retitles the rule *Specific Air Contaminants*, and includes the following significant changes from the current SIP:

- All sources subject to Rule 54 are exempted from the particulate concentration (grain loading) standards of 0.10 grain per dry standard cubic foot of gas standardized to 12 percent of carbon dioxide, and 0.30 grain from incinerators with a rated capacity of 100 pounds per hour or less;
- Equipment operating on liquid fuel with a maximum heat input rating of 10 million Btu per hour or less are exempted;
- Equipment operating on gaseous fuel with a maximum heat input rating of 50 million Btu per hour or less are exempted; and
- Equipment not required to obtain an Authority to Construct, Permit to Operate or Registration are exempted.

On September 22, 1972, and August 31, 1978, EPA approved into the SIP versions of Rule 54, *Dust and Fumes*, that had been adopted by the SDCAPCD and submitted by CARB on June 30, 1972, and October 13, 1977. On January 22, 1997, the SDCAPCD adopted an amendment to Rule 54, which makes minor clarifications and includes the following significant changes from the current SIP:

- Process weight table emission limits less than 1.0 pounds per hour are deleted;

- Equipment not required to obtain an Authority to Construct, Permit to Operate or Registration are exempted.
- Operations comprised exclusively of a combustion process where liquid fuels, gaseous fuels, and corresponding combustion air are introduced are exempted.

Kern County Air Pollution Control District

On May 3, 1984, EPA approved into the SIP a version of Rule 405, *Particulate Matter* that had been adopted by KCAPCD on July 18, 1983, and submitted by CARB on August 30, 1983. On May 1, 1997, the KCAPCD adopted an amendment to Rule 405, which makes minor clarifications to this RACT rule and the following significant changes from the current SIP:

- Process weight table for the San Joaquin Valley air basin is deleted, since this portion of Kern County is no longer under the jurisdiction of KCAPCD;
- An exemption applicable to a 1983 project is deleted.

B. EPA Action

EPA has evaluated the submitted rules and ordinances and has determined that they are consistent with the CAA and EPA regulations, except for the director's discretion provision's of SCAQMD Rule 403, discussed above. The rules and ordinances clarify and strengthen the existing SIP. Furthermore, the SCAQMD rules and Coachella ordinances reflect applicable RACM and BACM requirements and the amended KCAPCD rule reflects applicable RACT requirements. Therefore, SCAQMD new Rules 403.1 and 1186; Coachella Valley ordinances; SDCAPCD amendments to Rules 52, 53, and 54; and KCAPCD amendments to Rule 405 are being proposed for approval under section 110(k)(3) of the CAA as meeting the requirements of section 110(a) and Part D.

As mentioned in section III.A., EPA proposes a limited approval of SCAQMD Rule 403 under CAA sections 110(k)(3) and 301(a), and a limited disapproval of Rule 403, because the rule contains enforceability deficiencies inconsistent with CAA section 172(c)(6). Under CAA section 179(a)(2), if EPA disapproves a submission under section 110(k) for an area designated as nonattainment, based on the submission's failure to meet CAA requirements, EPA must apply one of the sanctions set forth in section 179(b) unless the deficiency has been corrected within 18 months of such disapproval. Section 179(b) provides two sanctions available to the Administrator: highway funding and offsets. The 18 month

period referred to in section 179(a) will begin on the effective date of EPA's final limited disapproval.

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.

IV. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866 review.

B. Regulatory Flexibility Act

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 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 impose any new requirements, the Administrator certifies 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 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).

C. 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 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 proposed does not include a Federal mandate that may result in estimated 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 Federal requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

D. Executive Order 13045

This proposed rule is not subject to E.O. 13045, entitled Protection of Children from Environmental Health Risks and Safety Risks, because it is not an "economically significant" action under E.O. 12866.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements, Sulfur dioxide.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: July 31, 1998.

Felicia Marcus,

Regional Administrator, Region IX.

[FR Doc. 98-21527 Filed 8-10-98; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 82

[FRL-6137-1]

RIN: 2060-A107

Protection of Stratospheric Ozone: Halon Recycling and Recovery Equipment Certification

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed determination.

SUMMARY: Through this action EPA is proposing a determination that it is neither necessary nor appropriate under section 608(a)(2) of the Clean Air Act as amended in 1990 (CAA or "Act") to issue a proposed rule requiring the

certification of recycling and recovery equipment for halons; and further, that it is neither necessary nor appropriate under section 608(a)(2) of the CAA to require that halons be removed only through the use of certified equipment. This proposed determination is also being issued, pursuant to a consent decree, as a direct final determination in the final rules section of today's **Federal Register**. A detailed discussion of the reasoning for this proposed determination is set forth in the direct final determination and the accompanying study referred to therein. If no relevant adverse comment is timely received, no further action will be taken with respect to this proposal and the direct final determination will become final on the date provided in that action.

DATES: Comments on this proposed determination must be received by September 10, 1998.

ADDRESSES: Comments on this proposed determination should be sent to Docket No. A-98-37, U.S. Environmental Protection Agency, OAR Docket and Information Center, Room M-1500, Mail Code 6102, 401 M Street, S.W., Washington, D.C. 20460. The docket may be inspected from 8:00 a.m. until 5:30 p.m., weekdays. The docket phone number is (202) 260-7548, and the fax number is (202) 260-4400. A reasonable fee may be charged for copying docket materials. A second copy of any comments should also be sent to Lisa Chang, U.S. Environmental Protection Agency, Stratospheric Protection Division, 401 M Street, S.W., Mail Code 6205J, Washington, D.C. 20460 if by mail, or at 501 3rd Street, N.W., Room 267, Washington, D.C. 20001 if comments are sent by courier delivery.

FOR FURTHER INFORMATION CONTACT: Lisa Chang at (202) 564-9742 or fax (202) 565-1096, U.S. Environmental Protection Agency, Stratospheric Protection Division, Mail Code 6205J, 401 M Street, S.W., Washington, D.C. 20460.

SUPPLEMENTARY INFORMATION: If no relevant adverse comment is timely received, no further activity is contemplated in relation to this proposed determination and the direct final determination in the final rules section of today's **Federal Register** will be final and become effective in accordance with the information discussed in that action. If relevant adverse comment is timely received, the direct final determination will be withdrawn and all public comments will be addressed in a subsequent final determination. The Agency will not institute a second comment period on

this proposed determination; therefore, any parties interested in commenting should do so during this comment period.

For more detailed information and the rationale supporting this proposed determination, the reader should review the information provided in the direct final determination in the final rules section of today's **Federal Register**.

I. Administrative Requirements

A. Executive Order 12866

Executive Order 12866 (58 FR 51735, October 4, 1993) provides for interagency review of "significant regulatory actions." It has been determined by the Office of Management and Budget (OMB) and EPA that this action—which is a proposed determination that requiring the certification of equipment used in halon recovery and recycling, and requiring that halons be removed from halon-containing equipment only through use of certified recovery and recycling equipment, is not necessary or appropriate—is not a "significant regulatory action" under the terms of Executive Order 12866 and is therefore not subject to OMB review under the Executive Order.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601-602, requires that Federal agencies, when developing regulations, consider the potential impact of those regulations on small entities. Because this action is a proposed determination that requiring the certification of equipment used in halon recovery and recycling, and requiring that halons be removed from halon-containing equipment only through use of certified recovery and recycling equipment, is not necessary or appropriate, the Regulatory Flexibility Act does not apply. By its nature, this action will not have an adverse effect on the regulated community, including small entities.

C. Paperwork Reduction Act

This action does not add any new requirements or increase burdens under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

D. Unfunded Mandates Reform Act

It has been determined that this action does not contain a Federal mandate that may result in expenditures of \$100 million or more for State, local and tribal governments, in the aggregate, or the private sector, in any one year.