

ENVIRONMENTAL PROTECTION AGENCY**40 CFR Part 52**

[EPA-R06-OAR-2014-0642; FRL-9943-42-Region 6]

Approval and Promulgation of Air Quality Implementation Plans; New Mexico; and Albuquerque/Bernalillo County; Revisions To Establish Small Business Stationary Source Technical and Environmental Compliance Assistance Programs**AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve revisions to the New Mexico State Implementation Plan (SIP) for both the State and Albuquerque/Bernalillo County. These proposed revisions establish Small Business Stationary Assistance Source Technical and Environmental Compliance Assistance Programs. The EPA is proposing to approve these revisions pursuant to sections 110 and 507(a) of the Clean Air Act (CAA).

DATES: Written comments should be received on or before April 11, 2016.

ADDRESSES: Comments may be submitted by following the detailed instructions in the **ADDRESSES** section of the direct final rule located in the rules section of this **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Mr. John Walser, (214) 665-7128, walser.john@epa.gov.

SUPPLEMENTARY INFORMATION: In the Rules and Regulations section of this **Federal Register**, the EPA is approving the State's SIP submittal as a direct rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no relevant adverse comments are received in response to this action, no further activity is contemplated. If the EPA receives relevant adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time.

For additional information, see the direct final rule which is located in the Rules and Regulations section of this **Federal Register**.

Dated: February 24, 2016.

Ron Curry,*Regional Administrator, Region 6.*

[FR Doc. 2016-05161 Filed 3-9-16; 8:45 am]

BILLING CODE 6560-50-P**ENVIRONMENTAL PROTECTION AGENCY****40 CFR Part 52**

[EPA-R09-OAR-2015-0819; FRL-9943-47-Region 9]

Revisions to the California State Implementation Plan; South Coast Air Quality Management District; Control of Oxides of Nitrogen Emissions From Off-Road Diesel Vehicles**AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve South Coast Air Quality Management District's (SCAQMD or District) Rule 2449, Control of Oxides of Nitrogen Emissions from Off-Road Diesel Vehicles, which adopts by reference title 13, chapter 9, section 2449.2 of the California Code of Regulations (CCR), "Surplus Off-Road Opt-In for NO_x (SOON) Program," as part of the SCAQMD portion of the California State Implementation Plan (SIP). SCAQMD Rule 2449 requires certain in-use off-road vehicle fleets to meet more stringent requirements in the South Coast area when funding is provided by the District in order to achieve additional reductions of oxides of Nitrogen (NO_x). We are taking comments on this proposal and plan to follow with a final action.

DATES: Any comments must arrive by April 11, 2016.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R09-OAR-2015-0819 at <http://www.regulations.gov>, or via email to lo.doris@epa.gov. For comments submitted at [Regulations.gov](http://www.regulations.gov), follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from [Regulations.gov](http://www.regulations.gov). For either manner of submission, the EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include

discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <http://www2.epa.gov/dockets/commenting-epa-dockets>.

FOR FURTHER INFORMATION CONTACT: Doris Lo, EPA Region IX, (415) 972-3959, lo.doris@epa.gov.

SUPPLEMENTARY INFORMATION:

Throughout this document, "we," "us" and "our" refer to the EPA.

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I. Background

The California Air Resources Board's (CARB) Off-Road Diesel-Fueled Fleets Regulation (13 CCR sections 2449, 2449.1 and 2449.2) applies to fleets with nonroad¹ compression-ignition vehicles and equipment greater than 25 horsepower (hp). Sections 2449 and 2449.1 (collectively the "Off-Road

¹ The Clean Air Act refers to these engines as "nonroad" engines and the State of California uses the term "off-road" engines. The terms "nonroad" and "off-road" are used interchangeably in this rule.

Regulation”) require fleet operators to meet a progressively more stringent combined particulate matter (PM) and NO_x standard, or to reduce emissions through technology upgrades such as retrofit or replacement. The Off-Road Regulation was initially approved by CARB on July 26, 2007 and was subsequently amended in December 2010.

In conjunction with the Off-Road Regulation, CARB also adopted an “opt-in” provision that allows local air districts to achieve additional reductions of NO_x emissions by introducing cleaner engines or control devices into a fleet with incentive funding (see 13 CCR section 2449.2, Surplus Off-Road Opt-In for NO_x Program (also referred to as the “CARB SOON Program” in today’s proposed rule)). Under this provision, any California air district can “opt-in” to the CARB SOON Program to achieve reductions of NO_x emissions from in-use nonroad diesel-fueled vehicles that are surplus to what is required by CARB’s Off-Road Regulation. In order to participate in the CARB SOON Program, a district’s governing board must hold a public hearing, vote to “opt-in” to the CARB SOON Program, and decide whether to make the program voluntary or mandatory.

On May 2, 2008 the SCAQMD governing board held a public hearing at which it voted to “opt-in” to the CARB SOON Program as a mandatory requirement and adopted Rule 2449, Control of Oxides of Nitrogen Emissions from Off-Road Diesel Vehicles, which includes by reference the CARB SOON Program. The SCAQMD also adopted additional Rule 2449 Administrative Guidelines (May 2008) as required by the CARB SOON Program to implement the program in the South Coast area. On July 11, 2014, the SCAQMD amended Rule 2449 to update the rule’s reference to the CARB SOON Program, which was amended by CARB in December 2011. The SCAQMD Rule 2449 adopts the provisions of the CARB SOON Program found under 13 CCR, section 2449.2 into the SCAQMD’s rule book and makes the CARB SOON Program a mandatory requirement for in-use off-road sources located in the South Coast area.²

CARB’s Off-Road Regulation and the CARB SOON Program are subject to section 209(e) of the Clean Air Act (CAA or the Act), which generally preempts States from adopting and enforcing standards and other requirements relating to the control of emissions from

nonroad engines (see CAA section 209(e)(1) and *Engine Mfrs. Ass’n v. EPA*, 88 F.3d 1075 (D.C. Cir. 1996)). However, CAA section 209(e)(2)(A) requires the EPA to authorize California to adopt and enforce standards and other requirements relating to the control of emissions from certain nonroad vehicles or engines, unless the EPA makes one of three enumerated findings. On September 20, 2013 the EPA authorized CARB to enforce the Off-Road Regulation and the CARB SOON Program (collectively “Fleet Requirements”) (see 78 FR 58090–58121, September 20, 2013).

On November 12, 2015, the EPA proposed to approve the Fleet Requirements into the California SIP (see 80 FR 69915).³

II. The State’s Submittal

A. What rule did the State submit?

On July 18, 2008, the State of California submitted SCAQMD Rule 2449, “Control of Oxides of Nitrogen Emissions from Off-Road Vehicles,” which was adopted by the District on May 2, 2008 (see July 18, 2008 letter from Michael H. Scheible, Deputy Executive Officer, CARB, to Wayne Natri, Regional Administrator, EPA Region 9, with attachments).

On September 5, 2014, the state submitted a revision to Rule 2449 adopted by the District on July 11, 2014. The submittal made a minor administrative revision to the numbering of the referenced CARB SOON Program, which was revised by CARB in December 2011, from section 2449.3 to section 2449.2 (see September 5, 2014 letter to Jared Blumenfeld, Regional Administrator, EPA Region 9, from Richard W. Corey, Executive Officer, Air Resources Board with attachments).

The July 18, 2008 submittal was deemed complete by operation of law under CAA section 110(k)(1)(B) on January 18, 2009. The September 5, 2014 submittal was deemed complete by operation of law under CAA section 110(k)(1)(B) on March 5, 2015.

B. Are there other versions of the rule?

There are no previous versions of Rule 2449 in the SIP for the SCAQMD.

C. What is the purpose of the submitted rule?

NO_x helps produce ground-level ozone, smog and fine particulate matter (PM_{2.5}), which harm human health and

the environment. Section 110(a) of the CAA requires States to submit regulations that control NO_x emissions. In addition, section 172(c)(1) of the Act requires implementation of all reasonably available control measures (RACM) as expeditiously as practicable in nonattainment areas. Because the South Coast area is designated nonattainment for the 1-hour ozone standard, the 1997 annual and 24-hour PM_{2.5} standard, the 2006 24-hour PM_{2.5} standard, the 2012 annual PM_{2.5} standard, the 1997 8-hour ozone standard and the 2008 8-hour ozone standard (see 40 CFR part 81.305), CARB and the SCAQMD must implement RACM for NO_x (among other pollutants) under CAA section 172(c)(1). In addition, under subpart 4 of the CAA, serious PM_{2.5} areas are required to adopt best available control measures (BACM) for PM_{2.5} and its precursors.⁴ On January 13, 2016, the EPA reclassified the South Coast PM_{2.5} nonattainment area as a Serious nonattainment area for the 2006 PM_{2.5} NAAQS (81 FR 1514).

Off-road diesel vehicles collectively represent one of the largest sources of NO_x emissions in the South Coast Air Basin.⁵ The purpose of Rule 2449 is to achieve surplus NO_x reductions from this source category beyond those required under CARB’s Off-Road Regulation with funding provided by the SCAQMD. The SCAQMD’s 2012 Air Quality Management Plan (AQMP) relies on NO_x reductions from Rule 2449 to attain the one-hour and 1997 eight-hour ozone NAAQS.⁶ Rule 2449 is expected to achieve 7.5 tons per day (tpd) of NO_x reductions in 2023.⁷

D. What do the Off-Road Regulation and Rule 2449 require?

In general, CARB’s Off-Road Regulation applies to all diesel-fueled off-road fleet equipment owners operating in the State of California. The Off-Road Regulation has performance requirements depending on the size of the fleet (*i.e.*, a large fleet is defined as a fleet having greater than 5,000 horsepower (hp), a small fleet has less

⁴ The EPA generally takes action on a RACM or BACM demonstration as part of our action on the State’s attainment demonstration for the relevant NAAQS.

⁵ See, *e.g.*, Draft Staff Report, Proposed Amended Rule 2449—Control of Oxides of Nitrogen Emissions from Off-Road Diesel Vehicles, page 1 (May 2014).

⁶ See 2012 AQMP, Table 4–6, page 4–33, OFFRD–01, Extension of the SOON Provision for Construction/Industrial Equipment [NO_x] and Appendix IV–B, pages IV–B–30 thru IV–B–32.

⁷ *Id.* The EPA is not proposing to approve the emission reductions in today’s proposed rule. Emission reductions or SIP credit from Rule 2449 will be addressed in future EPA actions on attainment plans.

² Unless otherwise indicated, references in this notice to Rule 2449 include the CARB Soon Program, as implemented through Rule 2449.

³ In particular, the EPA proposed to approve 13 CCR sections 2449 (excluding subsection 2449(d)(2)), 2449.1, and 2449.2 into the SIP. 80 FR 69918, Table 1.

than or equal to 2,500 hp, and a medium fleet is in between)⁸ and provides calculation methodologies for determining a fleet average index and a fleet average target rate. Each year, each subject fleet must demonstrate that its fleet average index was less than or equal to the applicable fleet average target rate or that it met Best Available Control Technology (BACT) requirements by performing turnover or installing verified diesel emission control strategies (VDECS).⁹ As discussed above, the EPA has authorized CARB to implement the Off-Road Regulation under CAA section

209(e) (78 FR 58090) and has proposed to approve the Off-Road Regulation into the California SIP (80 FR 69915). SCAQMD Rule 2449 focuses on the largest fleets with the oldest engines and requires these fleets to meet more stringent fleet average targets than those required by section 2449.1(a) of the Off-Road Regulation. In general, Rule 2449 applies to the owners¹⁰ of off-road vehicles that operate within the SCAQMD and that are part of fleets with more than 40 percent Tier 0 and Tier 1 vehicles¹¹ (as of January 1, 2008) and with more than 20,000 horsepower (hp) in maximum power on a statewide basis

(excluding the hp from engines in two-engine vehicles and the hp from single cranes formerly subject to the Cargo Handling Equipment Regulation).¹² Once the District issues a solicitation for applications for funding under Rule 2449, subject fleet owners are required to meet the more stringent fleet average targets required by the CARB SOON Program or apply for incentive funding for a sufficient number of projects (e.g., repowers, purchases, replacements) to meet the CARB SOON Program fleet average targets (reproduced in Table 1 below).¹³

TABLE 1—SOON TARGET FOR EACH MAX HP GROUP FOR USE IN CALCULATING SOON FLEET AVERAGE TARGET RATES [g/bhp-hr]

Compliance date: Jan 1 of year	25–49 hp	50–74 hp	75–99 hp	100–174 hp	175–299 hp	300–599 hp	600–750 hp	>750 hp
2011	5.6	6.2	6.7	6.0	5.4	5.1	5.3	6.4
2014	5.8	6.5	7.1	6.4	3.9	3.7	3.7	5.3
2017	5.0	5.4	5.5	4.9	2.2	2.2	2.2	4.3
2020	4.1	4.2	3.4	3.1	1.4	1.3	1.4	3.4
2023	3.3	3.0	1.4	1.3	0.7	0.7	0.7	2.7

Source: Reproduction of Table 5 of section 2449.2(d) of CARB SOON Program. These fleet average target rates are more stringent than what is required under the Off-Road Regulation (see 13 CCR section 2449.1(a)(1), Table 3).

Specifically, subject fleet owners are required to submit a report with information on, including but not limited to, the fleet owner, vehicle types and uses of each vehicle, engines used to power the vehicles and the type and use of each engine, and VDECS installed on engines. 13 CCR section 2449.2(d)(1)(A)). Fleets must calculate their fleet average index based on the equipment they have and compare it to the fleet average target rate based on the SOON target rates shown in Table 1 above (13 CCR section 2449.2(d)(1)(B) and (C)), and if their fleet average index is greater than the SOON fleet average target rate, they are required to apply for

funding (13 CCR section 2449.2(d)(1)(D)). Fleets must apply for funding in accordance with the Carl Moyer Memorial Air Quality Standards Attainment Program (Carl Moyer Program)¹⁴ policies and procedures and also with the Administrative Guidelines¹⁵ adopted by the SCAQMD, which provide further clarification on what to include in the funding applications and compliance plans. Funding applications and compliance plans must together demonstrate that equipment identified for the CARB SOON Program funding will result in surplus¹⁶ reductions in order to qualify for incentive funding. Once a fleet

receives funding for a qualified project, the fleet is required to implement the project. The SCAQMD has approved significant funding for the implementation of Rule 2449. The 2012 AQMP states that the District Governing Board has allocated up to \$30 million per year for the program and extended the SOON Program to 2023 (see Final 2012 AQMP: Appendix IV–B, p. IV–B–31). For “FY 2015–2016,” or “Year 18” of the Carl Moyer Memorial Air Quality Standards Attainment Program, the SCAQMD expects that approximately \$5 million of funding will be available for the SCAQMD SOON Program (see DRAFT Technology Committee Agenda

⁸ See CARB’s Off-Road Regulation, section 2449(c)(24), definition of “Fleet size category.”
⁹ See CARB’s Off-Road Regulation, section 2449.1(a) Fleet Average Requirements, 2449.1(b) BACT Requirements, and Appendix A with table of “Emission Factors by Horsepower and Year (g/bhp-hr).”
¹⁰ Most provisions of the CARB SOON Program apply to fleets rather than fleet owners or operators (see e.g. sections 2449.2(b)(2) and (d)(1)). However, SCAQMD Rule 2449 makes these requirements applicable to the owners of off-road vehicles that operate in SCAQMD and meet the criteria in 13 CCR 2449.2(b)(2).
¹¹ See 13 CCR section 2449(c)(48) and (49) for definitions of Tier 0 and Tier 1 engines.
¹² See 13 CCR section 2449.2(b)(2), adopted by reference under SCAQMD Rule 2449.
¹³ See 13 CCR section 2449.2(d). Thus, for example, the Off-Road Regulation requires “large” fleets to meet a fleet average target of 1.5 g/bhp-hr for 175–750 hp engines and 3.4 g/bhp-hr for greater than 750 hp engines in the year 2023, whereas Rule

2449 and the CARB SOON Program require a fleet average target of 0.7 g/bhp-hr for 175–750 hp engines and 2.7 g/bhp-hr for greater than 750 hp engines in 2023.
¹⁴ The Carl Moyer Program funds are used to fund Rule 2449 with the requirement that all projects meet, at a minimum, the Carl Moyer Program’s latest requirements and guidelines (e.g., project selection criteria, co-funding requirements, and reporting and monitoring requirements). For more information on the Carl Moyer Program, see <http://www.arb.ca.gov/msprog/moyer/moyer.htm>.
¹⁵ In addition to the Carl Moyer Program guidelines, the CARB SOON Program requires the District to adopt District guidelines, through a public process, that include additional administrative provisions necessary to implement the CARB SOON Program. These provisions include, but are not limited to, funding guidelines, compliance planning requirements and reporting and monitoring requirements. The SCAQMD adopted these additional district guidelines on May 22, 2008 (see Draft Administrative Guidelines,

Proposed Rule 2449 Administrative Guidelines, SCAQMD, May 2008). The SCAQMD Board plans to consider amendments to the May 2008 Administrative Guidelines on March 4, 2016 (see DRAFT Technology Committee Agenda #1, prepared for BOARD MEETING DATE: March 4, 2016, with Attachment 4, SOON Provision Implementation Guidelines). The amendments include referencing the correct section of CARB’s Off-Road Regulation and aligning funding levels for the SCAQMD SOON Program with the Carl Moyer program. If approved by the SCAQMD Board, the EPA expects the SCAQMD to forward the amendments to CARB for approval.
¹⁶ Surplus reductions are those NO_x reductions that are not needed for meeting the requirements of the Off-Road Regulation. If surplus reductions are available and used to meet the requirements of Rule 2449 and the CARB SOON Program, then those reductions cannot be used to meet the requirements of the Off-Road Regulation until they are no longer needed for compliance with Rule 2449.

#1, prepared for BOARD MEETING DATE: March 4, 2016, page 3).

III. The EPA's Evaluation of the State's Submittal

A. How is the EPA evaluating the rule?

The EPA has evaluated Rule 2449 against the applicable procedural and substantive CAA requirements for SIPs and SIP revisions and has concluded that it meets all of the applicable requirements.

Generally, SIPs must include enforceable emission limitations and other control measures, means, or techniques, as well as schedules and timetables for compliance, as may be necessary to meet the requirements of the Act (see CAA section 110(a)(2)(A)); must provide necessary assurances that the State will have adequate personnel, funding, and authority under State law to carry out such SIP (and is not prohibited by any provision of Federal to State law from carrying out such SIP) (see CAA section 110(a)(2)(E)); must be adopted by a State after reasonable notice and public hearing (see CAA section 110(l)), and must not interfere with any applicable requirement concerning attainment and reasonable further progress, or any other applicable requirement of the Act (see CAA section 110(l)).¹⁷

In addition, as noted above, CARB and the SCAQMD must implement RACM for NO_x (among other pollutants) under CAA section 172(c)(1).

B. Does Rule 2449 meet CAA SIP evaluation criteria?

1. Did the SCAQMD and CARB provide adequate public notice and comment periods?

Under CAA section 110(l), SIP revisions must be adopted by the State, and the State must provide for reasonable public notice and hearing prior to adoption. In 40 CFR 51.102(d), we specify that reasonable public notice in this context refers to at least 30 days. The State has submitted evidence of public notice and hearing prior to the May 5, 2008 adoption and July 11, 2014 amendment of Rule 2449 by the SCAQMD (see attachments to July 18, 2008 letter to Mr. Wayne Natri, EPA Region 9 from Michael H. Scheible, Air Resource Board and attachments to September 5, 2014 letter to Mr. Jared

Blumenfeld, EPA Region 9, from Richard W. Corey, Air Resources Board). Based on the evidence provided by the SCAQMD and CARB, we conclude that they have provided adequate public notice and comment periods.

2. Do the SCAQMD and CARB have adequate legal authority to implement the rule?

California air districts are authorized to adopt and enforce rules by California Health and Safety Code (H&SC) section 40001. CARB is authorized to adopt the rules as revisions to the SIP by H&SC section 39601, 39602, and 41650 through 41652 (see CARB Executive Order S-14-012).

In addition, we note that California H&SC sections 43013(a) and 43018 provide CARB with broad authority to achieve the maximum feasible and cost-effective emission reductions from all mobile source categories, including both on-road and off-road diesel engines.

As discussed above, CARB's Off-Road Regulation is subject to CAA section 209(e), and on September 20, 2013 the EPA granted CARB's request for authorization to enforce its Fleet Requirements, including the CARB SOON Program (see 78 FR 58090-58121, September 20, 2013). Thus, we find that the SCAQMD and CARB have adequate legal authority to adopt and implement Rule 2449.

3. Is the rule enforceable as required under CAA section 110(a)(2)?

We have evaluated the enforceability of Rule 2449 and the CARB SOON Program with respect to applicability and exemptions; standard of conduct and compliance dates; sunset provisions; discretionary provisions; and test methods, recordkeeping and reporting,¹⁸ and have concluded for the reasons given below that the rule is enforceable for the purposes of CAA section 110(a)(2).

First, with respect to applicability, we find Rule 2449 and the CARB SOON Program to be sufficiently clear as to which fleet owners and which vehicles or engines are subject to the program and the rule (see Rule 2449 and 13 CCR section 2449.2(b)). In general, the rule applies to owners of vehicles that operate within the SCAQMD and are part of a fleet consisting of 40 percent Tier 0 and Tier 1 vehicles with greater than 20,000 hp statewide, excluding the hp from engines in two-engine vehicles

and single engine cranes formerly subject to the Cargo Handling Equipment Regulation (see 13 CCR 2449.2(b)(2)).

Second, we find that Rule 2449 and the CARB SOON Program are sufficiently specific so that the persons affected are fairly on notice as to what the requirements and related compliance dates are. We have described the substantive requirements and compliance dates set forth in Rule 2449 in section II.D. of today's proposed rule.

Third, the requirements of Rule 2449 will sunset at different times from 2011 through 2023, depending on when the SCAQMD issues its solicitations for funding; however, once a fleet is no longer subject to Rule 2449, it will be then be subject to the requirements of the Off-Road Regulation.

Fourth, Rule 2449 contains a provision that allows for discretion on the part of CARB's Executive Officer (EO), this provision is limited both in scope and application, and is no longer relevant since the date to request discretion has passed (see 13 CCR section 2449.2(e)(2), allowing a fleet to apply to the EO for an extension from the requirements if the rule calculations would require a fleet to turn over Tier 2 or better engines before January 1, 2014). As such, we find that this provision does not undermine the enforceability of Rule 2449 or preclude its approval into the SIP.

Lastly, Rule 2449 identifies appropriate calculation requirements and includes adequate recordkeeping and reporting requirements sufficient to ensure compliance with the applicable requirements. In particular, as described above, once the SCAQMD issues a solicitation, each subject fleet owner must submit a report containing detailed information about each vehicle and engine in the fleet, each VDECS installed on an engine in the fleet, and other information related to compliance with the Off-Road Rule (see 13 CCR 2449(d)(1)(A) and 2449(g)). If the fleet average index is greater than the SOON fleet average target rate, the fleet owner must apply for SOON funding (13 CCR 2449.2(d)(1)(B)). If the necessary NO_x retrofits, repower, or vehicle replacements are available, the application must indicate how these retrofits, repowers, or vehicle replacements would bring the fleet average index for vehicles that operate within the SCAQMD to less than or equal to the SOON fleet average target rate (13 CCR 2449.2(d)(1)(D)). In addition, the fleet owner must prepare and submit a compliance plan laying out the actions it is required to take

¹⁷ CAA section 193, which prohibits any pre-1990 SIP control requirement relating to nonattainment pollutants in nonattainment areas from being modified unless the SIP is revised to insure equivalent or greater emission reductions of such air pollutants, does not apply to this rule because it does not include any pre-1990 SIP control requirements.

¹⁸ These concepts are discussed in detail in an EPA memorandum from J. Craig Potter, EPA Assistant Administrator for Air and Radiation, *et al.*, titled "Review of State Implementation Plans and Revisions for Enforceability and Legal Sufficiency," dated September 23, 1987.

under section 2449.1 and the actions for which it is applying to the SCAQMD for funding under section 2449.2 (13 CCR 2449.2(e)(3)).

4. Does the rule interfere with reasonable further progress and attainment or any other applicable requirement of the Act?

As discussed above, the SCAQMD's 2012 AQMP relies on NO_x reductions from Rule 2449 to attain the one-hour and 1997 eight-hour ozone NAAQS. The EPA has approved SCAQMD's commitment to implement the SOON Program as part of the SCAQMD's aggregate NO_x emissions reductions commitment (see 79 FR 29712, 29720 and 29721). Approval of Rule 2449 into the SIP will help fulfill this commitment. Thus, the EPA believes that approval of Rule 2449 does not interfere with Reasonable Further Progress, attainment or any other applicable requirement of the Act.

5. Will the State and the SCAQMD have adequate personnel and funding for the rule?

As discussed above, the SCAQMD has approved significant funding for the implementation of Rule 2449. The 2012 AQMP states that the SCAQMD Board has allocated up to \$30 million per year for the program and extended the SOON Program to 2023 (see Final 2012 AQMP: Appendix IV-B, p. IV-B-31). For "FY 2015-2016," or "Year 18" of the Carl Moyer Memorial Air Quality Standards Attainment Program, the SCAQMD expects to have approximately \$5 million of funding available for the SCAQMD SOON Program (see DRAFT Technology Committee Agenda #1, prepared for BOARD MEETING DATE: March 4, 2016, page 3).

6. Does the rule meet the RACM and BACM requirements under CAA sections 172(c)(1) and 189?

Rule 2449 provides for the most stringent in-use off-road diesel equipment requirements that we are aware of in the United States, and thus, we find that the rule implements both reasonably available and best available control measures for this source category. However, as discussed above, the EPA generally takes action on a RACM or BACM demonstration as part of our action on the State's attainment demonstration for the relevant NAAQS. Thus, while we do not know of any more stringent requirements for this category at this time, we are also not taking any action on how this measure fits within the context of a RACM or BACM demonstration for the South Coast area.

7. The EPA's Rule Evaluation Conclusion

Based on the above discussion, we believe Rule 2449 and the CARB SOON Program are consistent with the relevant CAA requirements, policies and guidance.

IV. Proposed Action and Public Comment

As authorized in section 110(k)(3) of the Act, the EPA is proposing to fully approve the submitted rule because we believe it fulfills all relevant requirements. We will accept comments from the public on this proposal until April 11, 2016. Unless we receive convincing new information during the comment period, we intend to publish a final approval action that will incorporate this rule into the federally enforceable SIP.

V. Incorporation by Reference

In this rule, the EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is proposing to incorporate by reference SCAQMD Rule 2449. The EPA has made, and will continue to make, this document available electronically through www.regulations.gov and in hard copy at the appropriate EPA office (see the **ADDRESSES** section of this preamble for more information).

VI. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA's role is to approve State choices, provided that they meet the criteria of the Act. Accordingly, this proposed action merely proposes to approve State law as meeting Federal requirements and does not impose additional requirements beyond those imposed by State law. For that reason, this proposed action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);

- 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);

- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);

- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);

- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);

- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and

- does not provide the EPA with the discretionary authority to address disproportionate human health or environmental effects with practical, appropriate, and legally permissible methods under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements.

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

Dated: February 25, 2016.

Jared Blumenfeld,

Regional Administrator, Region IX.

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