

## EPA APPROVED NONREGULATORY PROVISIONS AND QUASI-REGULATORY MEASURES IN THE TEXAS SIP

Name of SIP provision	Applicable geographic or non-attainment area	State submittal/ effective date	EPA approval date	Comments
Second 10-year Carbon Monoxide maintenance plan (limited maintenance plan) for the El Paso CO area.	El Paso, TX .....	9/21/2016	3/21/2017 [Insert Federal Register citation].	

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[FR Doc. 2017-05379 Filed 3-20-17; 8:45 am]  
BILLING CODE 6560-50-P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R09-OAR-2017-0043; FRL-9959-00-Region 9]

### Approval and Promulgation of Implementation Plans; California; California Mobile Source Regulations

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

**ACTION:** Direct final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is taking direct final action to approve a revision to the California State Implementation Plan (SIP) consisting of state regulations establishing standards and other requirements relating to the control of emissions from new on-road and new and in-use off-road vehicles and engines. The EPA is approving the SIP revision because the regulations meet the applicable requirements of the Clean Air Act. Approval of the regulations as part of the California SIP makes them federally enforceable.

**DATES:** This rule is effective on May 22, 2017 without further notice, unless the EPA receives adverse comments by April 20, 2017. If we receive such comments, we will publish a timely withdrawal in the **Federal Register** to notify the public that this direct final rule will not take effect.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R09-OAR-2017-0043 at <http://www.regulations.gov>, or via email to John Ungvarsky, at [Ungvarsky.John@epa.gov](mailto:Ungvarsky.John@epa.gov). For comments submitted at [Regulations.gov](http://Regulations.gov), follow the online instructions for submitting comments. Once submitted, comments cannot be removed or edited from [Regulations.gov](http://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>.

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

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#### I. Background

Under the Clean Air Act (CAA or “Act”), the EPA establishes national ambient air quality standards (NAAQS) to protect public health and welfare, and has established such ambient standards for a number of pervasive air pollutants including ozone, carbon

monoxide, nitrogen dioxide, sulfur dioxide, lead and particulate matter. Under section 110(a)(1) of the CAA, states must submit plans that provide for the implementation, maintenance, and enforcement of the NAAQS within each state. Such plans are referred to as SIPs and revisions to those plans are referred to as SIP revisions. Section 110(a)(2) of the CAA sets forth the content requirements for SIPs. Among the various requirements, SIPs must include enforceable emission limitations and other control measures, means, or techniques as may be necessary or appropriate to meet the applicable requirements of the CAA. See CAA section 110(a)(2)(a).

As a general matter, the CAA assigns mobile source regulation to the EPA through title II of the Act and assigns stationary source regulation and SIP development responsibilities to the states through title I of the Act. In so doing, the CAA preempts various types of state regulation of mobile sources as set forth in section 209(a) (preemption of state emissions standards for new motor vehicles and engines), section 209(e) (preemption of state emissions standards for new and in-use off-road vehicles and engines),<sup>1</sup> and section 211(c)(4)(A) [preemption of state fuel requirements for motor vehicle emission control, *i.e.*, other than California’s motor vehicle fuel requirements for motor vehicle emission control—see section 211(c)(4)(B)]. For certain types of mobile source emission standards, the State of California may request a waiver (for motor vehicles) or authorization (for off-road engines and equipment) for standards relating to the control of emissions and accompanying enforcement procedures. See CAA sections 209(b) (new motor vehicles) and 209(e)(2) (most categories of new and in-use off-road vehicles).

<sup>1</sup> EPA regulations refer to “nonroad” vehicles and engines whereas California regulations refer to “off-road” vehicles and engines. These terms refer to the same types of vehicles and engines, and for the purposes of this action, we will be using the state’s chosen term, “off-road,” to refer to such vehicles and engines.

Over the years, the California Air Resources Board (CARB) has submitted many requests for waiver or authorization of its standards and other requirements relating to the control of emissions from new on-road and new and in-use off-road vehicles and engines, and the EPA has granted many such requests. For example, the EPA has granted waivers for CARB's Low Emission Vehicle (LEV III) criteria pollutant standards for light- and medium-duty vehicles, and has authorized emissions standards for off-road vehicle categories. *See, e.g.*, 78 FR 2112 (January 9, 2013) (Advanced Clean Cars) and 80 FR 76468 (December 9, 2015) (Off-Road Large Spark-Ignition Engines).

Also over the years, CARB has submitted, and the EPA has approved, many local or regional California air district rules regulating stationary source emissions as part of the California SIP. *See generally* 40 CFR 52.220(c). With respect to mobile sources in general, California has submitted, and the EPA has approved, certain specific state regulatory programs, such as the in-use, heavy-duty, diesel-fueled truck rule, various fuels regulations, and the vehicle inspection and maintenance program (I/M, also known as "smog check"). *See, e.g.*, 77 FR 20308 (April 4, 2012) (in-use truck and bus regulation), 75 FR 26653 (May 12, 2010) (revisions to California on-road reformulated gasoline and diesel fuel regulations) and 75 FR 38023 (July 1, 2010) (revisions to California motor vehicle I/M program).

California relies on these local, regional, and state stationary and mobile source regulations to meet various CAA requirements and includes the corresponding emissions reductions in

the various regional air quality plans developed to attain and maintain the NAAQS. The EPA generally allows California to take credit for the corresponding emissions reductions relied upon in the various regional air quality plans because, among other reasons, the regulations are approved as part of the SIP and are thereby federally enforceable as required under CAA section 110(a)(2)(A).

However, California also relies on emissions reductions from the regulations for which the EPA has previously granted waivers or authorizations, and historically, the EPA has approved regional air quality plans that take credit for emissions reductions from such regulations, notwithstanding the fact that California has not submitted these particular regulations as part of the California SIP.

The EPA's longstanding practice of approving California plans that rely on emissions reductions from such "waiver measures," notwithstanding the lack of approval as part of the SIP, was challenged in several petitions filed in the Ninth Circuit Court of Appeals. In a 2015 decision, the Ninth Circuit held in favor of the petitioners on this issue and concluded that CAA section 110(a)(2)(A) requires that all state and local control measures on which SIPs rely to attain the NAAQS be included in the SIP and thereby subject to enforcement by the EPA and members of the general public. *See Committee for a Better Arvin v EPA*, 786 F.3d 1169 (9th Cir. 2015).

In response to the decision in *Committee for a Better Arvin v. EPA*, CARB submitted SIP revisions on August 14, 2015, and December 7, 2016, consisting of state mobile source regulations that establish standards and

other requirements for the control of emissions from various new on-road and new and in-use off-road vehicles and engines for which the EPA has issued waivers or authorizations and that are relied upon by California regional plans to attain and maintain the NAAQS. The EPA finalized its approval of CARB's August 14, 2015 submittal at 81 FR 39424 (June 16, 2016). In today's action, the EPA is finalizing CARB's December 7, 2016 SIP revision submittal.

**II. The State's Submittal**

*A. What regulations did the state submit?*

On December 7, 2016, CARB submitted a SIP revision that included a set of state mobile source regulations for which waivers or authorizations have been granted by the EPA under section 209 of the CAA since August 2015. The SIP revision consists of the regulations themselves and documentation of the public process conducted by CARB in approving the regulations as part of the California SIP. Table 1 below presents the contents of the SIP revision by mobile source category and provides, for each such category, a listing of the relevant sections of the California Code of Regulations (CCR) that establish standards and other requirements for control of emissions from new or in-use vehicles or engines; the corresponding date of CARB's hearing date or Executive Officer action through which the regulations or amendments were adopted; and the notice of decision in which the EPA granted a waiver or authorization for the given set of regulations.

TABLE 1—CARB SIP REVISION SUBMITTAL SUMMARY

Source category	Relevant sections of California Code of Regulations	Date of relevant CARB hearing date or executive officer action	EPA notice of decision
2013 Amendments to the On-Board Diagnostic (OBD) System Requirements Passenger Cars, Light-Duty Trucks, and Medium-Duty Vehicles and Engines (OBD II).	13 CCR § 1968.2, effective for state law purposes on July 31, 2013 <sup>a</sup> .	August 23, 2012 .....	81 FR 78143 (November 7, 2016).
2013 Amendments to the OBD II Enforcement Regulation.	13 CCR § 1968.5, effective for state law purposes on July 31, 2013 <sup>b</sup> .	August 23, 2012 .....	81 FR 78143 (November 7, 2016).
2013 Amendments to the Heavy-Duty Engine OBD System Requirements (HD OBD).	13 CCR § 1971.1, effective for state law purposes on July 31, 2013 <sup>a</sup> .	August 23, 2012 .....	81 FR 78149 (November 7, 2016).
2013 Amendments to HD OBD Enforcement Regulation.	13 CCR § 1971.5, effective for state law purposes on July 31, 2013 <sup>b</sup> .	August 23, 2012 .....	81 FR 78149 (November 7, 2016).
2008 Amendments to the Off-Road Large Spark-Ignition (LSI) Regulation.	13 CCR § 2433, effective for state law purposes on October 20, 2009.	November 21, 2008 ...	80 FR 76468 (December 9, 2015).
2010 Amendments to Off-Road LSI Fleet Regulation.	13 CCR § 2775, 2775.1, and 2775.2, effective for state law purposes on December 14, 2011.	December 17, 2010 ...	80 FR 76468 (December 9, 2015).
2011 Amendments to Small Off-Road Engines (SORE) Regulation.	13 CCR §§ 2403, 2404, and 2407, effective for state law purposes on January 10, 2013.	December 16, 2011 ...	80 FR 76971 (December 11, 2015).

TABLE 1—CARB SIP REVISION SUBMITTAL SUMMARY—Continued

Source category	Relevant sections of California Code of Regulations	Date of relevant CARB hearing date or executive officer action	EPA notice of decision
2011 Amendments to Tier 4 Off-Road Compression-Ignition (CI) Engines Regulation.	13 CCR §§2421, 2423, 2424, 2425, 2425.1, 2426, and 2427, effective for state law purposes on January 10, 2013 <sup>c</sup> .	December 16, 2011 ...	80 FR 76971 (December 11, 2015).
2010 Amendments to Certification Fuel for Off-Road Spark-Ignition (SI) Engines, Equipment and Vehicles <sup>d</sup> .	13 CCR §§2412, 2433, 2447, 2783 and 2784, effective for state law purposes on January 10, 2013.	December 16, 2011 ...	80 FR 76971 (December 11, 2015).

**NOTES:**

<sup>a</sup> Excluding the definitions of the terms “emission standard,” “evaporative emission standards,” and “exhaust emission standards” or “tailpipe emission standards.”

<sup>b</sup> Excluding the definition of the term “nonconforming OBD system.”

<sup>c</sup> Excluding the optional alternative non-methane hydrocarbon (NMHC)<sup>2</sup> plus oxides of nitrogen (NO<sub>x</sub>) Tier 4 exhaust emission standards and associated family emission limits.

<sup>d</sup> Includes Off-Road LSI, Off-Highway Recreational Vehicles and Engines (OHRV), and Spark-Ignition Marine Engines (SIME) off-road mobile source categories.

The regulations submitted by CARB and listed in table 1 incorporate by reference documents that establish test procedures and labeling specifications, among other things, and CARB submitted the documents as part of the overall SIP revision. Table 2 lists the incorporated documents included in the SIP submittal.

TABLE 2—DOCUMENTS INCORPORATED BY REFERENCE IN CARB REGULATIONS LISTED IN TABLE 1, ABOVE, AND SUBMITTED AS PART OF SIP REVISION

*Off-Road LSI Engines:*

California Exhaust and Evaporative Emission Standards and Test Procedures for New 2010 and Later Off-Road Large Spark-Ignition Engines, as last amended November 21, 2008.

California Exhaust and Evaporative Emission Standards and Test Procedures for New 2010 and Later Off-Road Large Spark-Ignition Engines (2010 and Later Test Procedure 1048), as last amended October 25, 2012.

California Exhaust and Evaporative Emission Standards and Test Procedures for New 2007 and Later Off-Road Large Spark-Ignition Engines (Test Procedures 1065 and 1068), as last amended October 25, 2012.

*Small Off-Road Engines (SORE):*

Test Procedure for Determining Permeation Emissions from Small Off-Road Engines and Equipment Fuel Tanks (TP–901), adopted July 26, 2004.

Test Procedure for Determining Diurnal Evaporative Emissions from Small Off-Road Engines and Equipment (TP–902), adopted July 26, 2004.

Certification and Approval Procedure for Small Off-Road Engine Fuel Tanks (CP–901), adopted July 26, 2004.

Certification and Approval Procedures for Evaporative Emission Control Systems (CP–902), adopted July 26, 2004.

California Exhaust Emission Standards and Test Procedures for 2005–2012 Small Off-Road Engines, as last amended October 25, 2012.

California Exhaust Emission Standards and Test Procedures for New 2013 and Later Small Off-Road Engines; Engine-Testing Procedures (Part 1054), adopted October 25, 2012.

California Exhaust Emission Standards and Test Procedures for New 2013 and Later Small Off-Road Engines; Engine-Testing Procedures (Part 1065), adopted October 25, 2012.

*Off-Road Compression-Ignition (OFCI) Engines:*

California Exhaust Emission Standards and Test Procedures for New 2008–2010 and Later Tier 4 Off-Road Compression-Ignition Engines, as last amended October 25, 2012.

California Exhaust Emission Standards and Test Procedures for New 2011 and Later Tier 4 Off-Road Compression-Ignition Engines, Part I–D, as last amended October 25, 2012.<sup>a</sup>

California Exhaust Emission Standards and Test Procedures for New 2011 and Later Tier 4 Off-Road Compression-Ignition Engines, Part I–F, as last amended October 25, 2012.

California Exhaust Emission Standards and Test Procedures for New 2011 and Later Tier 4 Off-Road Compression-Ignition Engines, Part I–E, as adopted October 25, 2012.

*Off-Highway Recreational Vehicles and Engines (OHRVs):*

California Exhaust Emission Standards and Test Procedures for 1997 and Later Off-Highway Recreational Vehicles and Engines, as last amended October 25, 2012.

*Spark-Ignition Marine Engines (SIME):*

California Exhaust Emission Standards and Test Procedures for 2001 Model Year and Later Spark-Ignition Marine Engines, as last amended October 25, 2012.

**Note:**

<sup>a</sup> Excluding optional alternative NMHC plus NO<sub>x</sub> Tier 4 exhaust emission standards and associated family emission limits.

We note that CARB has expressly excluded from the December 7, 2016, SIP submittal certain amended provisions of California code that were not included in the related

authorization request from CARB to the EPA and thus not included in the EPA’s authorization. These provisions pertain to an optional alternative NMHC plus NO<sub>x</sub> Tier 4 exhaust emission standards

and associated family emission limits for OFCI engines; however, the optional alternative was no longer available after December 31, 2014.

<sup>2</sup> NMHC and reactive organic gases (ROG) are terms used by California in their air quality plans

and regulations. NMHC and ROG are essentially

synonymous with volatile organic compounds (VOCs).

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

As noted previously, the CAA generally assigns to the EPA the responsibility of establishing standards for the control of emissions from mobile sources. However, the State of California was a pioneer in establishing standards for the control of emissions from new motor vehicles, and, in part due to the state’s pioneering efforts, Congress established in 1967 a process under which California, alone among the states, would be granted a waiver from preemption (if certain criteria are met) and thereby enforce its own standards and other requirements for the control of emissions from new motor vehicles. In the 1990 CAA Amendments, Congress extended a similar process that had been established under section 209 for new motor vehicles to new and in-use off-road vehicles and engines. See CAA section 209(e)(2). Under the 1990 CAA Amendments, the EPA must authorize California standards for the control of emissions of off-road vehicles and engines if certain criteria are met.

The first waiver granted was for California’s On-Road Emissions Standards for Model Year (MY) 1968. See 33 FR 10160 (July 16, 1968). Since then, there have been dozens of waivers and authorizations granted by the EPA for new and amended CARB mobile source regulations. The EPA’s Office of Transportation and Air Quality maintains a Web site that provides a general description of the waiver and authorization process and lists all of the various waivers and authorizations granted by the Agency to CARB over the

years. See <http://www.epa.gov/otaq/cafr.htm>.

Historically, as noted above, CARB regulations subject to the section 209 waiver or authorization process were not submitted to the EPA as a revision to the California SIP. However, in the wake of the Ninth Circuit’s decision in *Committee for a Better Arvin v. EPA*, on August 14, 2015, CARB submitted a large set of mobile source regulations to the EPA as a SIP revision and the EPA took final approval action on this first set of regulations on June 16, 2016 (81 FR 39424). CARB’s initial set of regulations included regulations establishing standards and other requirements relating to the control of emissions from new on-road vehicles and engines, including certain requirements related to OBD systems, and from new and in-use off-road vehicles and engines, including LSI, SORE, CI, OHRV and SIME categories of vehicles and engines. CARB’s December 7, 2016 SIP revision submittal contains certain amended OBD regulations for new on-road vehicles and engines and certain amendments to the regulations affecting LSI, SORE, CI, OHRV, and SIME categories of off-road vehicles and engines.

*C. What is the purpose of the submitted regulations?*

Historically, California has experienced some of the most severe and most persistent air pollution problems in the country. Under the CAA, based on ambient data collected at numerous sites throughout the state, the EPA has designated areas within

California as nonattainment areas for the ozone NAAQS and the particulate matter (PM) NAAQS, which includes both coarse and fine particulate (*i.e.*, PM<sub>10</sub> and PM<sub>2.5</sub>). See, generally, 40 CFR 81.305. California also includes a number of areas that had been designated as nonattainment areas for the carbon monoxide NAAQS that the EPA has redesignated as attainment areas because they have attained the standard and are subject to an approved maintenance plan demonstrating how they will maintain the carbon monoxide standard into the future.

Mobile source emissions constitute a significant portion of overall emissions of carbon monoxide, volatile organic compounds (VOC), oxides of nitrogen (NO<sub>x</sub>), sulfur dioxide (SO<sub>2</sub>) and PM in the various air quality planning areas within California, and thus, the purpose of CARB’s mobile source regulations is to reduce these emissions and thereby reduce ambient concentrations to attain and maintain the NAAQS throughout California.<sup>3</sup> At elevated levels, ozone and PM harm human health and the environment by contributing to premature mortality, aggravation of respiratory and cardiovascular disease, decreased lung function, visibility impairment, and damage to vegetation and ecosystems.

*D. What requirements do the regulations establish?*

Table 3 below generally describes the amended regulations listed in table 1 above and summarizes some of the key emissions control requirements contained in the rules.

TABLE 3—GENERAL DESCRIPTION OF REQUIREMENTS ESTABLISHED IN THE MOBILE SOURCE REGULATIONS INCLUDED IN THE DECEMBER 7, 2016 SIP REVISION

Source category	Description of requirements in submitted regulation
OBD II System Requirements for Passenger Cars, Light-Duty Trucks, and Medium-Duty Vehicles and Engines.	The amendments to the OBD II system requirements are found in 13 CCR § 1968.2, and they became effective for state law purposes on July 31, 2013. The OBD II amendments primarily affect medium-duty vehicles, to align the OBD II monitoring requirements with those adopted by CARB for heavy-duty diesel engines. For more information about CARB’s OBD II regulations, see 81 FR 78143 (November 7, 2016).
OBD System Requirements for On-Road Heavy-Duty Engines (HD OBD).	The amendments to the HD OBD system requirements are found in 13 CCR § 1971.1, and they became effective for state law purposes on July 31, 2013. The amendments primarily affect the monitoring and performance requirements of HD OBD systems. Specifically, the amendments “accelerate the start date for OBD system implementation on alternate-fueled engines from the 2020 MY to the 2018 MY, relax some requirements for OBD systems on heavy-duty hybrid vehicles for the 2013 through 2015 MY, relax malfunction thresholds for three major emission control systems ( <i>i.e.</i> , PM filters, NO <sub>x</sub> catalysts, and NO <sub>x</sub> sensors) on diesel engines until the 2016 MY, delay monitoring requirements for some diesel-related components until 2015 to provide further lead time for emission control strategies to stabilize, and clarify requirements for several monitors and standardization.” See 81 FR 78149 at 78150 (November 7, 2016).

<sup>3</sup> VOC and NO<sub>x</sub> are precursors responsible for the formation of ozone, and NO<sub>x</sub> and SO<sub>2</sub> are

precursors for PM<sub>2.5</sub>. SO<sub>2</sub> belongs to a family of compounds referred to as sulfur oxides. PM<sub>2.5</sub>

precursors also include VOC and ammonia. See 40 CFR 51.1000.

TABLE 3—GENERAL DESCRIPTION OF REQUIREMENTS ESTABLISHED IN THE MOBILE SOURCE REGULATIONS INCLUDED IN THE DECEMBER 7, 2016 SIP REVISION—Continued

Source category	Description of requirements in submitted regulation
OBD II and HD OBD Enforcement Regulations	The amendments to the OBD II and HD OBD enforcement regulations are found in 13 CCR §§ 1968.5 and 1971.5, respectively, and they became effective for state law purposes on July 31, 2013. The amendments align the enforcement regulations with the proposed diesel-related changes to the OBD II and HD OBD regulations, specifically the selection criteria of engines/vehicles for the test sample group and the mandatory recall provisions for diesel engines. For more information about CARB's OBD II and HD OBD regulations, see 81 FR 78143 (November 7, 2016) and 81 FR 78149 (November 7, 2016).
Off-Road LSI Engines .....	The amendments to the LSI new engine emissions standards are found in 13 CCR § 2433, and they became effective for state law purposes on October 20, 2009. The LSI new engine amendments create two new subcategories of LSI engines ( <i>i.e.</i> , LSI engines less than or equal to 825 cubic centimeters (cc) and LSI engines greater than 825 cc but less than 1.0 liter) and establish exhaust emission standards for new 2011 and subsequent MY LSI engines in each of these new subcategories and establish more stringent standards for the 825 cc through 1 liter subcategory beginning with the 2015 MY. The amendments to LSI fleet requirements are found in 13 CCR §§ 2775, 2775.1, and 2775.2 and effective for state law purposes on December 14, 2011. The LSI fleet amendments establish provisions that enhance the compliance flexibility provisions of the existing LSI Fleet regulation. For more information about CARB's LSI regulations, see 80 FR 76468 (December 9, 2015).
Small Off-Road Engines (SORE) .....	The amendments are found in 13 CCR §§ 2403, 2404, and 2407, and various new or amended test procedures for SORE; these amendments became effective for state law purposes on January 10, 2013. The SORE amendments modify California's existing SORE test procedures by aligning California procedures to be consistent with recent amendments by the EPA to the federal certification and exhaust emission testing requirements at 40 CFR Parts 1054 and 1065. For more information about CARB's SORE regulations, see 80 FR 76971 (December 11, 2015).
Tier 4 Off-Road Compression-Ignition (CI) Engines.	The amendments are found in 13 CCR §§ 2421, 2423, 2424, 2425, 2425.1, 2426, and 2427, and in various new or amended test procedures for off-road CI engines. The amendments became effective for state law purposes on January 10, 2013. The off-road CI engine amendments enhance the harmonization of CARB's exhaust emission requirements for new off-road CI engines with the corresponding federal emissions requirements for nonroad CI engines set forth in 40 CFR Parts 1039, 1065, and 1068. For more information about CARB's Tier 4 off-road CI engine regulations, see 80 FR 76971 (December 11, 2015).
Certification Fuel for Off-Road CI and SI Engines, Equipment and Vehicles.	The amendments are found in 13 CCR §§ 2412, 2433, 2447, 2783, and 2784, and in various new or amended test procedures for SORE, off-road CI engines, LSI engines, OHRV, and recreational marine SI engines. The amendments became effective for state law purposes on January 10, 2013. The amendments to the certification test fuel for off-road SI, gasoline-fueled engines allow the use of 10-percent ethanol-blend of gasoline as an option for certification exhaust emission testing of new gasoline-fueled SORE, LSI, recreational marine, and OHRV off-road categories from the 2013 through 2019 MY, and requires its use for such purposes for these categories beginning with the 2020 MY. For more information, see 80 FR 76971 (December 11, 2015).

**III. EPA's Evaluation and Final Action**

*A. How is the EPA evaluating the regulations?*

The EPA has evaluated the submitted regulations discussed above against the applicable procedural and substantive requirements of the CAA for SIPs and SIP revisions and has concluded that they meet 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 or 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)].<sup>4</sup>

*B. Do the state regulations meet CAA SIP evaluation criteria?*

1. Did the state provide adequate public notification and comment periods?

Under CAA section 110(l), SIP revisions must be adopted by the state,

<sup>4</sup>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 these regulations because they amend regulations previously approved in the California SIP in 2016, and thus, do not constitute an amendment to a pre-1990 SIP control requirement.

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.

All of the submitted regulations have gone through extensive public comment processes including CARB's workshop and hearing processes prior to state adoption of each rule. Also, the EPA's waiver and authorization processes provide an opportunity for the public to request public hearings to present information relevant to the EPA's consideration of CARB's request for waiver or authorization under section 209 of the CAA and to submit written comment.

In addition, on June 19, 2015, CARB published a notice of public hearing to be held on July 23, 2015, to consider adoption and submittal of certain adopted regulations, including those submitted to the EPA on August 15,

2015 (and for which the EPA has already taken action) and those submitted to the EPA on December 7, 2016, as a revision to the California SIP. CARB held the public hearing on July 23, 2015. No written comments were submitted to CARB in connection with the proposed SIP revision, and no public comments were made at the public hearing. CARB adopted the SIP revision at the July 23, 2015 Board Hearing (see Board Resolution 15–40), and submitted the relevant mobile source regulations to the EPA along with evidence of the public process conducted by CARB in adopting the SIP revision. We conclude that CARB's December 7, 2016, SIP revision submittal meets the applicable procedural requirements for SIP revisions under the CAA section 110(l) and 40 CFR 51.102.

2. Does the state have adequate legal authority to implement the regulations?

CARB has been granted both general and specific authority under the California Health & Safety Code (H&SC) to adopt and implement these regulations. California H&SC sections 39600 (“Acts required”) and 39601 (“Adoption of regulation; Conformance to federal law”) confer on CARB the general authority and obligation to adopt regulations and measures necessary to execute CARB's powers and duties imposed by state law. California H&SC sections 43013(a) and 43018 provide broad authority to achieve the maximum feasible and cost-effective emission reductions from all mobile source categories. Regarding in-use motor vehicles, California H&SC sections 43600 and 43701(b), respectively, grant CARB authority to adopt emission standards and emission control equipment requirements.

As a general matter, as noted above, the CAA assigns mobile source regulation to the EPA through title II of the Act and assigns stationary source regulation and SIP development responsibilities to the states through title I of the Act. In so doing, the CAA preempts various types of state regulation of mobile sources as set forth in section 209(a) (preemption of state emissions standards for new motor vehicles and engines), section 209(e) (preemption of state emissions standards for new and in-use nonroad vehicles and engines) and section 211(c)(4)(A) [preemption of state fuel requirements for motor vehicles, *i.e.*, other than California's motor vehicle fuel requirements for motor vehicle emission control—section 211(c)(4)(B)]. For certain types of mobile source standards, the State of California may

request a waiver (for motor vehicles) or authorization (for off-road vehicles or engines) for standards relating to the control of emissions and accompanying enforcement procedures. See CAA sections 209(b) (new motor vehicles) and 209(e)(2) (most categories of new and in-use off-road vehicles).

The mobile source regulations that are the subject of today's direct final rule were submitted by CARB under CAA section 209 with a request for waiver or authorization and for which the EPA has granted such waiver or authorization. Thus, the regulations approved today are not preempted under the CAA. For additional information regarding California's motor vehicle emission standards, please see the EPA's “California Waivers and Authorizations” Web page at URL address: <http://www.epa.gov/otaq/cafr.htm>. This Web site also lists relevant **Federal Register** notices that have been issued by the EPA in response to California waiver and authorization requests.

In addition, the EPA is unaware of any non-CAA legal obstacle to CARB's enforcement of the regulations and thus we conclude that the state has provided the necessary assurances that the state has adequate authority under state law to carry out the SIP revision (and is not prohibited by any provision of federal or state law from carrying out such SIP) and thereby meets the requirements of CAA section 110(a)(2)(E) with respect to legal authority.

3. Are the regulations enforceable as required under CAA section 110(a)(2)?

We have evaluated the enforceability of the amended mobile source regulations with respect to applicability and exemptions; standard of conduct and compliance dates; sunset provisions; discretionary provisions; and test methods, recordkeeping and reporting,<sup>5</sup> and have concluded for the reasons given below that the proposed regulations would be enforceable for the purposes of CAA section 110(a)(2).

First, with respect to applicability, we find that the amended regulations would be sufficiently clear as to which persons and which vehicles or engines are affected by the regulations. See, *e.g.*, 13 CCR section 2775 (applicability provision for off-road LSI engine fleet requirements).

Second, we find that the amended regulations would be sufficiently

<sup>5</sup> 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.

specific so that the persons affected by the regulations would be fairly on notice as to what the requirements and related compliance dates are. For instance, see the fleet average emission level standards for large and medium forklift fleets and non-forklift fleets in 13 CCR section 2775.1(a). Third, none of the submitted regulations contain sunset provisions that automatically repeal the emissions limits by a given date or upon the occurrence of a particular event, such as the change in the designation of an area from nonattainment to attainment.

Fourth, a number of the amended regulations contain provisions that allow for discretion on the part of CARB's Executive Officer. Such “director's discretion” provisions can undermine enforceability of a SIP regulation, and thus prevent full approval by the EPA. However, in the instances of “director's discretion” in the submitted regulations, the discretion that can be exercised by the CARB Executive Officer is reasonably limited under the terms of the regulations. For instance, the HD OBD requirements in 13 CCR section 1971.1 allow a manufacturer to request that the Executive Officer approve to use an alternate definition for engine start (*e.g.*, ignition key “on”) for hybrid vehicles or for engines employing alternate engine start hardware or strategies (*e.g.*, integrated starter and generators); however, Executive Officer approval of the alternate definition must be based on equivalence to an engine start for a conventional vehicle. With such constraints on discretion, the “director's discretion” contained in the amended regulations would not significantly undermine enforceability of the rules by citizens or the EPA.

Lastly, the amended regulations identify appropriate test methods and includes adequate recordkeeping and reporting requirements sufficient to ensure compliance with the applicable requirements. The technical support document provides more detail concerning the contents of the amended regulations.

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

All of the state's reasonable further progress (RFP), attainment, and maintenance plans rely to some extent on the emission reductions from CARB's mobile source program, including the emissions standards and other requirements for which the EPA has issued waivers or authorizations. For some plans, the reliance is substantial

and for others the reliance is less. CARB's mobile source program is reflected in the emissions estimates for mobile sources that are included in the emissions inventories that form the quantitative basis for the RFP, attainment, and maintenance demonstrations. As such, CARB's mobile source regulations submitted for approval as a revision to the California SIP support the various RFP, attainment, and maintenance plans, and would not interfere with such requirements for the purposes of CAA section 110(l).

5. Will the state have adequate personnel and funding for the regulations?

In its SIP revision submittal dated August 14, 2015, CARB refers to the annual approval by the California Legislature of funding and staff resources for carrying out CAA-related responsibilities and notes that a large portion of CARB's budget has gone toward meeting CAA mandates.<sup>6</sup> CARB indicates that a majority of CARB's funding comes from dedicated fees collected from regulated emission sources and other sources such as vehicle registration fees and vehicles license plate fees and that these funds can only be used for air pollution control activities. *Id.* For the 2014–2015 budget cycle, CARB had over 700 positions and almost \$500 million dedicated for the mobile source program developing and enforcing regulations. *Id.* Given the longstanding nature of CARB's mobile source program, and its documented effectiveness at achieving significant reductions from mobile sources, we find that CARB has provided necessary assurances that the state has adequate personnel and funding to carry out the amended mobile source regulations submitted for approval on December 7, 2016.

6. EPA's Evaluation Conclusion

Based on the above discussion, we believe these regulations are consistent with the relevant CAA requirements and with relevant EPA policies and guidance.

### C. Final Action and Public Comment

Under section 110(k)(3) of the CAA, and for the reasons given above, we are approving a SIP revision submitted by CARB on December 7, 2016, that includes certain sections of title 13 of the California Code of Regulations that establish standards and other

requirements relating to the control of emissions from new and in-use on-road and off-road vehicles and engines. We are approving these regulations as part of the California SIP because we believe they fulfill all relevant CAA requirements. We do not think anyone will object to this approval, so we are finalizing it without proposing it in advance. However, in the Proposed Rules section of this **Federal Register**, we are simultaneously proposing approval of the same submitted rules. If we receive adverse comments by April 20, 2017, we will publish a timely withdrawal in the **Federal Register** to notify the public that the direct final approval will not take effect and we will address the comments in a subsequent final action based on the proposal. If we do not receive timely adverse comments, the direct final approval will be effective without further notice on May 22, 2017. This will incorporate these rules into the federally enforceable SIP.

Please note that if the EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, the EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

### IV. Incorporation by Reference

In this rule, the EPA is finalizing rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is finalizing the incorporation by reference of certain sections of title 13 of the California Code of Regulations that establish standards and other requirements relating to the control of emissions from new on-road and new and in-use off-road vehicles and engines, as described in section II of this preamble. Therefore, these materials have been approved by the EPA for inclusion in the State Implementation Plan, have been incorporated by reference by the EPA into that plan, are fully federally enforceable under sections 110 and 113 of the CAA as of the effective date of the final rulemaking of EPA's approval, and will be incorporated by reference by the Director of the Federal Register in the next update to the SIP compilation.<sup>7</sup> The EPA has made, and will continue to make, these documents generally available electronically through [www.regulations.gov](http://www.regulations.gov) and/or in hard copy at the appropriate EPA office (see

the **ADDRESSES** section of this preamble for more information).

### V. Statutory and Executive Order Reviews

Under the Clean Air Act, 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 Clean Air Act. Accordingly, this action merely approves state law as meeting federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- 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 Clean Air Act; and
- Does not provide the EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable 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

<sup>6</sup> Letter from Richard W. Corey, Executive Officer, CARB, to Jared Blumenfeld, Regional Administrator, EPA Region IX, August 14, 2015.

<sup>7</sup> 62 FR 27968 (May 22, 1997).

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).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by May 22, 2017. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. Parties with objections to this direct final rule are encouraged to file a comment in response to the parallel notice of proposed rulemaking for this action published in the Proposed Rules section of today’s **Federal Register**, rather than file an immediate petition for judicial review of this direct final rule, so that the EPA can withdraw this direct final rule and address the comment in the proposed rulemaking. This action may not be challenged later in proceedings to enforce its requirements (see section 307(b)(2)).

#### List of Subjects in 40 CFR Part 52

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

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

Dated: January 18, 2017.

**Alexis Strauss,**

*Acting Regional Administrator, Region IX.*

Chapter I, title 40 of the Code of Federal Regulations is amended as follows:

#### PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

■ 1. The authority citation for Part 52 continues to read as follows:

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

#### Subpart F—California

■ 2. Section 52.220a as amended as follows:

■ a. In paragraph (c), table 1 is amended by:

■ i. By adding entries for “1968.2(a), (c) (excluding “emission standard,” “evaporative emission standards,” and “exhaust emission standards” or “tailpipe emission standards”), (d)(3), (d)(4), (e)(6), (e)(15), (f)(1)–(f)(9), (f)(12), (f)(13), (f)(15), (f)(17), (h)(4), (i)(1), (i)(2), and (j)(2)” and “1968.5(a)(3) (excluding “nonconforming OBD II system”), (b)(3), (b)(6), and (c)(3)” after the three entries for “1965”;

■ ii. By revising the entry for “1971.1”;

■ iii. By adding an entry for “1971.5(a)(3) (excluding amendments to the existing definition for “nonconforming OBD system”), (b)(3), (b)(6) and (d)(3)”, after the entry for “1971.5”;

■ iv. By adding an entry for “2403(b)(2)(B) and (d)” after the entry for “2403(b)(2), (b)(3), (b)(4), (d), (e)(1)”;

■ v. By adding an entry for “2404(c)(4)(A)” after the entry for “2404(m)(1), (m)(2), (m)(3)”;

■ vi. By adding an entry for “2407(a)(7)” after the entry for “2406(b)(1), (b)(2)”;

■ vii. By adding an entry for “2412(c) and (d)(1)” after the entry for “2412”;

■ viii. By adding an entry for “2421(a)(1)–(a)(4), (a)(15), (a)(19)–(a)(65)” after the entry for “2421”;

■ ix. By adding an entry for “2423(a), (b) (excluding optional alternative NO<sub>x</sub> + NMHC standards and associated family emission limits), (c), (d), (e), (f), (g), (h), (j), (k), (l) and (m)” after the entry for “2423”;

■ x. By adding an entry for “2424(a), (b), (c) and (l)” after the entry for “2424(a)”;

■ xi. By adding an entry for “2425(a)” after the entry for “2425(e)”;

■ xii. By revising the entry for “2425.1”;

■ xiii. By adding an entry for “2426(a) and (b)” after the entry for “2426”;

■ xiv. By adding an entry for “2427(c)” after the entry for “2427”;

■ xv. By adding entries for “2433(b)(1)(A), (b)(2), (b)(3), (b)(4),

(b)(5), (c) and (d)” and “2433(c) and (d)(1)” after the entry for “2433”;

■ xvi. By revising the entries for “2447”, “2775”, “2775.1”, and “2775.2”;

■ xvii. By adding a new table entry titled “Title 13 (Motor Vehicles), Division 3 (Air Resources Board), Chapter 15 (Additional Off-Road Vehicles and Engines Pollution Control Requirements), Article 3 (Verification Procedure, Warranty, and In-Use Compliance Requirements for Retrofits to Control Emissions from Off-Road Large Spark-Ignition Engines)” after the revised entry “2775.2”; and under the new heading, adding entries for “2783(d)(1)–(d)(4)” and “2784(c)(1)–(c)(4)”;

and  
■ b. Paragraph (c), table 2 is amended by:

■ i. By adding an entry for “California Exhaust and Evaporative Emission Standards and Test Procedures for New 2010 and Later Off-Road Large Spark-Ignition Engines, (2010 and Later Test Procedure 1048), amended November 21, 2008” and “California Exhaust and Evaporative Emission Standards and Test Procedures for New 2010 and Later Off-Road Large Spark-Ignition Engines, (2010 and Later Test Procedure 1048), amended October 25, 2012” after the entry for “California Exhaust and Evaporative Emission Standards and Test Procedures for New 2010 and Later Off-Road Large Spark-Ignition Engines, (2010 and Later Test Procedure 1048), adopted March 2, 2007”;

■ ii. By adding entries for “California Exhaust and Evaporative Emission Standards and Test Procedures for New 2007 and Later Off-Road Large Spark-Ignition Engines (Test Procedures 1065 and 1068), amended October 25, 2012”, “Small Off-Road Engine and Equipment Evaporative Emissions Test Procedure (TP–901), adopted July 26, 2004”, “Small Off-Road Engine and Equipment Evaporative Emissions Test Procedure (TP–902), adopted July 26, 2004”, “Small Off-Road Engine Evaporative Emission Control System Certification Procedure (CP–901), adopted July 26, 2004”, and “Small Off-Road Engine Evaporative Emission Control System Certification Procedure (CP–902), adopted July 26, 2004” after the entry for “California Exhaust and Evaporative Emission Standards and Test Procedures for New 2007 and Later Off-Road Large Spark-Ignition Engines (Test Procedures 1065 and 1068), adopted March 2, 2007”;

■ iii. By adding entries for “California Exhaust Emission Standards and Test Procedures for 2005 and Later Small Off-Road Engines, as last amended October 25, 2012”, “California Exhaust



Emission Standards and Test Procedures for New 2013 and Later Small Off-Road Engines, Engine-Testing Procedures (Part 1054), adopted October 25, 2012” and “California Exhaust Emission Standards and Test Procedures for New 2013 and Later Small Off-Road Engines, Engine-Testing Procedures (Part 1065), adopted October 25, 2012” after the entry for “California Exhaust Emission Standards and Test Procedures for 2005 and Later Small Off-Road Engines, as last amended February 24, 2010”;

■ iv. By adding entries for “California Exhaust Emission Standards and Test Procedures for New 2008–2010 Tier 4 Off-Road Compression-Ignition Engines, Part I–C, as last amended October 25, 2012”, “California Exhaust Emission Standards and Test Procedures for New 2011 and Later Tier 4 Off-Road Compression-Ignition Engines, Part I–D,

as last amended October 25, 2012 (excluding optional alternative NO<sub>x</sub> + NMHC standards and associated family emission limits in § 1039.102(e)”, “California Exhaust Emission Standards and Test Procedures for New 2011 and Later Tier 4 Off-Road Compression-Ignition Engines, Part I–F, as last amended October 25, 2012”, and “California Exhaust Emission Standards and Test Procedures for New 2011 and Later Tier 4 Off-Road Compression-Ignition Engines, Part I–E, adopted October 25, 2012” after the entry for “California Exhaust Emission Standards and Test Procedures for New 2008 and Later Tier 4 Off-Road Compression-Ignition Engines, Part I–C, adopted October 20, 2005”;

■ v. By adding an entry for “California Exhaust Emission Standards and Test Procedures for 2001 Model Year and Later Spark-Ignition Marine Engines, as

last amended October 25, 2012” after the entry for “California Exhaust Emission Standards and Test Procedures for 2001 Model Year and Later Spark-Ignition Marine Engines, as last amended June 5, 2009”; and

■ vi. By adding an entry for “California Exhaust Emissions Standards and Test Procedures for 1997 and Later Off-Highway Recreational Vehicles and Engines, as last amended October 25, 2012” after the entry for “California Exhaust Emissions Standards and Test Procedures for 1997 and Later Off-Highway Recreational Vehicles, and Engines, as last amended August 15, 2007”.

The additions and revisions read as follows:

**§ 52.220a Identification of plan—in part.**  
 \* \* \* \* \*  
 (c) \* \* \*

TABLE 1—EPA-APPROVED STATUTES AND STATE REGULATIONS <sup>1</sup>

State citation	Title/subject	State effective date	EPA approval date	Additional explanation
* * * * *	* * * * *	* * * * *	* * * * *	* * * * *
1968.2(a), (c) (excluding “emission standard,” “evaporative emission standards,” and “exhaust emission standards” or “tailpipe emission standards”), (d)(3), (d)(4), (e)(6), (e)(15), (f)(1)–(f)(9), (f)(12), (f)(13), (f)(15), (f)(17), (h)(4), (i)(1), (i)(2), and (j)(2).	Malfunction and Diagnostic System Requirements—2004 and Subsequent Model-Year Passenger Cars, Light-Duty Trucks, and Medium-Duty Vehicles and Engines.	7/31/2013	[Insert <b>Federal Register</b> citation], 03/21/2017.	Provisions relate to On-Board Diagnostic systems requirements (OBD II).
1968.5(a)(3) (excluding “non-conforming OBD II system”), (b)(3), (b)(6), and (c)(3).	Enforcement of Malfunction and Diagnostic System Requirements for 2004 and Subsequent Model-Year Passenger Cars, Light-Duty Trucks, and Medium-Duty Vehicles and Engines.	7/31/2013	[Insert <b>Federal Register</b> citation], 03/21/2017.	Provisions related to enforcement of OBD II requirements.
1971.1, excluding the following definitions: “emission standard,” “evaporative emission standards,” and “exhaust emission standards” or “tailpipe emission standards”).	On-Board Diagnostic System Requirements—2010 and Subsequent Model-Year Heavy-Duty Engines.	7/31/2013	[Insert <b>Federal Register</b> citation], 03/21/2017.	Amends emission standards and other requirements for On-Board Diagnostic OBD (OBD) systems for heavy-duty vehicles.
* * * * *	* * * * *	* * * * *	* * * * *	* * * * *
1971.5(a)(3) (excluding amendments to the existing definition for “nonconforming OBD system”), (b)(3), (b)(6) and (d)(3).	Enforcement of Malfunction and Diagnostic System Requirements for 2010 and Subsequent Model-Year Heavy-Duty Engines.	7/31/2013	[Insert <b>Federal Register</b> citation], 03/21/2017.	Amends certain enforcement-related provisions for the OBD systems requirements for heavy-duty vehicles.
* * * * *	* * * * *	* * * * *	* * * * *	* * * * *
2403(b)(2)(B) and (d) .....	Exhaust Emission Standards and Test Procedures—Small Off-Road Engines.	1/10/2013	[Insert <b>Federal Register</b> citation], 03/21/2017.	Amends certain certification requirements and test procedures.
* * * * *	* * * * *	* * * * *	* * * * *	* * * * *
2404(c)(4)(A) .....	Emission Control Labels and Consumer Information—1995 and Later Small Off-Road Engines.	1/10/2013	[Insert <b>Federal Register</b> citation], 03/21/2017.	Amends the rule to revise certain engine label content requirements.

TABLE 1—EPA-APPROVED STATUTES AND STATE REGULATIONS <sup>1</sup>—Continued

State citation	Title/subject	State effective date	EPA approval date	Additional explanation
2407(a)(7) .....	New Engine Compliance and Production Line Testing—New Small Off-Road Engine Selection, Evaluation, and Enforcement Action.	1/10/2013	[Insert <b>Federal Register</b> citation], 03/21/2017.	Specifies use of certain test procedures.
2412(c) and (d)(1) .....	Emission Standards and Test Procedures—New Off-Highway Recreational Vehicles and Engines.	1/10/2013	[Insert <b>Federal Register</b> citation], 03/21/2017.	Updates references to test procedures.
2421(a)(1)–(a)(4), (a)(15), (a)(19)–(a)(65).	Definitions .....	1/10/2013	[Insert <b>Federal Register</b> citation], 03/21/2017.	Amends and adds certain defined terms.
2423(a), (b) (excluding optional alternative NO <sub>x</sub> + NMHC standards and associated family emission limits), (c), (d), (e), (f), (g), (h), (j), (k), (l) and (m).	Exhaust Emission Standards and Test Procedures—Off-Road Compression-Ignition Engines.	1/10/2013	[Insert <b>Federal Register</b> citation], 03/21/2017.	Amends the rule to harmonize certain aspects of the California emissions requirements with the corresponding federal emissions requirements.
2424(a), (b), (c) and (l) .....	Emission Control Labels—1996 and Later Off-Road Compression-Ignition Engines.	1/10/2013	[Insert <b>Federal Register</b> citation], 03/21/2017.	Amends the rule to reflect updated test procedures and to add provisions prohibiting altering or removal of emission control information labels except under certain circumstances.
2425(a) .....	Defects Warranty Requirements for 1996 and Later Off-Road Compression-Ignition Engines.	1/10/2013	[Insert <b>Federal Register</b> citation], 03/21/2017.	Amends the rule to apply certain federal warranty-related requirements to 2011 and later model-year compression-ignition engines.
2425.1 .....	Defect Investigation and Reporting Requirements.	1/10/2013	[Insert <b>Federal Register</b> citation], 03/21/2017.	Amends the rule to reflect certain updated test procedures.
2426(a) and (b) .....	Emission Control System Warranty Statement.	1/10/2013	[Insert <b>Federal Register</b> citation], 03/21/2017.	Amends an existing SIP rule to make changes conforming to the changes made in 13 CCR § 2423.
2427(c) .....	Production Engine Testing, Selection, Evaluation, and Enforcement Action.	1/10/2013	[Insert <b>Federal Register</b> citation], 03/21/2017.	Amends an existing SIP rule to reflect updated test procedures.

TABLE 1—EPA-APPROVED STATUTES AND STATE REGULATIONS <sup>1</sup>—Continued

State citation	Title/subject	State effective date	EPA approval date	Additional explanation
2433(b)(1)(A), (b)(2), (b)(3), (b)(4), (b)(5), (c) and (d).	Emission Standards and Test Procedures—Off-Road Large Spark Ignition Engines.	10/20/2009	[Insert <b>Federal Register</b> citation], 03/21/2017.	Amends the rule creating two new subcategories of LSI engines, establishing exhaust and evaporative emissions standards for new 2011 and subsequent model year LSI engines in each of these new subcategories, and establishing more stringent exhaust emissions standards for 2015 and subsequent model year LSI engines with engine displacement 825cc <1.0 L.
2433(c) and (d)(1)	Emission Standards and Test Procedures—Off-Road Large Spark Ignition Engines.	1/10/2013	[Insert <b>Federal Register</b> citation], 03/21/2017.	Amends the rule to refer to updated test procedures.
2447	California Exhaust Emission Standards and Test Procedures for 2001 Model Year and Later Spark-Ignition Marine Engines.	1/10/2013	[Insert <b>Federal Register</b> citation], 03/21/2017.	Specifies certain test procedures.
2775	Applicability	12/14/2011	[Insert <b>Federal Register</b> citation], 03/21/2017.	Applies to operators of certain off-road LSI engine forklifts, sweepers/scrubbers, industrial tow tractors or airport ground support equipment operated within the State of California. Exemptions provided for small fleets and certain other equipment. Includes definitions.
2775.1	Standards	12/14/2011	[Insert <b>Federal Register</b> citation], 03/21/2017.	Establishes fleet average emission level standards with certain exceptions.
2775.2	Compliance Requirements for Fleet Operators.	12/14/2011	[Insert <b>Federal Register</b> citation], 03/21/2017.	Compliance and record-keeping requirements, provisions for extensions in compliance dates.
<b>Title 13 (Motor Vehicles), Division 3 (Air Resources Board), Chapter 15 (Additional Off-Road Vehicles and Engines Pollution Control Requirements), Article 3 (Verification Procedure, Warranty, and In-Use Compliance Requirements for Retrofits to Control Emissions from Off-Road Large Spark-Ignition Engines)</b>				
2783(d)(1)–(d)(4)	Emissions Reduction Testing Requirements.	1/10/2013	[Insert <b>Federal Register</b> citation], 03/21/2017.	Specifies test fuels for emissions reduction testing purposes for gasoline-fueled, off-road, large spark-ignition engines.
2784(c)(1)–(c)(4)	Durability Demonstration Requirements.	1/10/2013	[Insert <b>Federal Register</b> citation], 03/21/2017.	Specifies test fuels for durability demonstration purposes for gasoline-fueled, off-road, large spark-ignition engines.

<sup>1</sup> Table 1 lists EPA-approved California statutes and regulations incorporated by reference in the applicable SIP. Table 2 of paragraph (c) lists approved California test procedures, test methods and specifications that are cited in certain regulations listed in table 1. Approved California statutes that are nonregulatory or quasi-regulatory are listed in paragraph (e).

TABLE 2—EPA-APPROVED CALIFORNIA TEST PROCEDURES, TEST METHODS, AND SPECIFICATIONS

Title/subject	State effective date	EPA Approval date	Additional explanation
* * * California Exhaust and Evaporative Emission Standards and Test Procedures for New 2010 and Later Off-Road Large Spark-Ignition Engines, (2010 and Later Test Procedure 1048), amended November 21, 2008.	10/20/2009	[Insert <b>Federal Register</b> citation], 03/21/2017.	* * * Submitted by CARB on December 7, 2016.
* * * California Exhaust and Evaporative Emission Standards and Test Procedures for New 2010 and Later Off-Road Large Spark-Ignition Engines, (2010 and Later Test Procedure 1048), amended October 25, 2012.	1/10/2013	[Insert <b>Federal Register</b> citation], 03/21/2017.	* * * Submitted by CARB on December 7, 2016.
* * * California Exhaust and Evaporative Emission Standards and Test Procedures for New 2007 and Later Off-Road Large Spark-Ignition Engines (Test Procedures 1065 and 1068), amended October 25, 2012.	1/10/2013	[Insert <b>Federal Register</b> citation], 03/21/2017.	* * * Submitted by CARB on December 7, 2016.
* * * Small Off-Road Engine and Equipment Evaporative Emissions Test Procedure (TP-901), adopted July 26, 2004.	10/20/2004	[Insert <b>Federal Register</b> citation], 03/21/2017.	* * * Submitted by CARB on December 7, 2016.
* * * Small Off-Road Engine and Equipment Evaporative Emissions Test Procedure (TP-902), adopted July 26, 2004.	10/20/2004	[Insert <b>Federal Register</b> citation], 03/21/2017.	* * * Submitted by CARB on December 7, 2016.
* * * Small Off-Road Engine Evaporative Emission Control System Certification Procedure (CP-901), adopted July 26, 2004.	10/20/2004	[Insert <b>Federal Register</b> citation], 03/21/2017.	* * * Submitted by CARB on December 7, 2016.
* * * Small Off-Road Engine Evaporative Emission Control System Certification Procedure (CP-902), adopted July 26, 2004.	10/20/2004	[Insert <b>Federal Register</b> citation], 03/21/2017.	* * * Submitted by CARB on December 7, 2016.
* * * California Exhaust Emission Standards and Test Procedures for 2005 and Later Small Off-Road Engines, as last amended October 25, 2012.	1/10/2013	[Insert <b>Federal Register</b> citation], 03/21/2017.	* * * Submitted by CARB on December 7, 2016.
* * * California Exhaust Emission Standards and Test Procedures for New 2013 and Later Small Off-Road Engines, Engine-Testing Procedures (Part 1054), adopted October 25, 2012.	1/10/2013	[Insert <b>Federal Register</b> citation], 03/21/2017.	* * * Submitted by CARB on December 7, 2016.
* * * California Exhaust Emission Standards and Test Procedures for New 2013 and Later Small Off-Road Engines, Engine-Testing Procedures (Part 1065), adopted October 25, 2012.	1/10/2013	[Insert <b>Federal Register</b> citation], 03/21/2017.	* * * Submitted by CARB on December 7, 2016.
* * * California Exhaust Emission Standards and Test Procedures for New 2008–2010 Tier 4 Off-Road Compression-Ignition Engines, Part I–C, as last amended October 25, 2012.	1/10/2013	[Insert <b>Federal Register</b> citation], 03/21/2017.	* * * Submitted by CARB on December 7, 2016.
* * * California Exhaust Emission Standards and Test Procedures for New 2011 and Later Tier 4 Off-Road Compression-Ignition Engines, Part I–D, as last amended October 25, 2012 (excluding optional alternative NO <sub>x</sub> + NMHC standards and associated family emission limits in § 1039.102(e)).	1/10/2013	[Insert <b>Federal Register</b> citation], 03/21/2017.	* * * Submitted by CARB on December 7, 2016.
* * * California Exhaust Emission Standards and Test Procedures for New 2011 and Later Tier 4 Off-Road Compression-Ignition Engines, Part I–F, as last amended October 25, 2012.	1/10/2013	[Insert <b>Federal Register</b> citation], 03/21/2017.	* * * Submitted by CARB on December 7, 2016.
* * * California Exhaust Emission Standards and Test Procedures for New 2011 and Later Tier 4 Off-Road Compression-Ignition Engines, Part I–E, adopted October 25, 2012.	1/10/2013	[Insert <b>Federal Register</b> citation], 03/21/2017.	* * * Submitted by CARB on December 7, 2016.
* * * California Exhaust Emission Standards and Test Procedures for 2001 Model Year and Later Spark-Ignition Marine Engines, as last amended October 25, 2012.	1/10/2013	[Insert <b>Federal Register</b> citation], 03/21/2017.	* * * Submitted by CARB on December 7, 2016.
* * * California Exhaust Emissions Standards and Test Procedures for 1997 and Later Off-Highway Recreational Vehicles and Engines, as last amended October 25, 2012.	1/10/2013	[Insert <b>Federal Register</b> citation], 03/21/2017.	* * * Submitted by CARB on December 7, 2016.

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[FR Doc. 2017-05059 Filed 3-20-17; 8:45 am]

BILLING CODE 6560-50-P

**ENVIRONMENTAL PROTECTION AGENCY****40 CFR Part 52**

[DC104-2052; FRL-9955-98-Region 3]

**Air Plan Approval; District of Columbia; Update to Materials Incorporated by Reference****AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Final rule; notice of administrative change.

**SUMMARY:** The Environmental Protection Agency (EPA) is updating the materials that are incorporated by reference (IBR) into the District of Columbia state implementation plan (SIP). The regulations affected by this update have been previously submitted by the District of Columbia Department of Energy and Environment (DoEE) and approved by EPA. This update affects the SIP materials that are available for public inspection at the National Archives and Records Administration (NARA) and the EPA Regional Office.

**DATES:** This action is effective March 21, 2017.

**ADDRESSES:** SIP materials which are incorporated by reference into 40 CFR part 52 are available for inspection at the following locations: Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; and NARA. For information on the availability of this material at NARA, call 202-741-6030, or go to: [http://www.archives.gov/federal\\_register/code\\_of\\_federal\\_regulations/ibr\\_locations.html](http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html). To view the material at the EPA, Region III Office, EPA requests that you email the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

**FOR FURTHER INFORMATION CONTACT:** Sharon McCauley, (215) 814-3376 or by email at [mccauley.sharon@epa.gov](mailto:mccauley.sharon@epa.gov).

**SUPPLEMENTARY INFORMATION:****I. Background**

The SIP is a living document which the state revises as necessary to address its unique air pollution problems. Therefore, EPA, from time to time, must take action on SIP revisions containing new and/or revised regulations as being part of the SIP. On May 22, 1997 (62 FR 27968), EPA revised the procedures for incorporating by reference federally

approved SIPs, as a result of consultations between EPA and the Office of the Federal Register (OFR). The description of the revised SIP document, IBR procedures and “Identification of plan” format are discussed in further detail in the May 22, 1997 **Federal Register** document. On December 7, 1998 (63 FR 67407), EPA published a document in the **Federal Register** beginning the new IBR procedure for the District of Columbia. On August 6, 2004 (69 FR 47773), September 6, 2005 (70 FR 52919), March 19, 2009 (74 FR 11647), and February 22, 2011 (76 FR 9652), EPA published updates to the IBR material for the District of Columbia.

Since the publication of the last IBR update, EPA has approved the following regulatory changes to the following District of Columbia regulations:

**A. Added Regulations and Statutes**

- Chapter 2 (General and Non-attainment Area Permits), sections 208 and 210.
- Chapter 7 (Volatile Organic Compounds), sections 714, 755 through 758 inclusive, and 763 through 778 inclusive.
- DC Official Code, Title I, Chapter 11A, (Government Ethics and Accountability), sections 1-1161.01(Definitions), 1-1161.23 (Conflicts of Interest), 1-1161.24 (Public Reporting), and 1-1161.25 (Confidential Disclosure of Financial Interest).

**B. Revised Regulations**

- Chapter 1 (General), sections 100 and 199.
- Chapter 2 (General and Non-attainment Area Permits), sections 200, 204, and 299.
- Chapter 7, (Volatile Organic Compounds), sections 700, 710, 715 through 737 inclusive, 743 through 749, 751 through 754 inclusive, and 799.
- Chapter 10, title change to Air Quality—Non EGU Limits on Nitrogen Oxides Emissions, as well as title changes and revisions to sections 1001 through 1004.

**C. Removed Regulations**

- Chapter 2 (General and Non-attainment Area Permits), section 206
- Chapter 7, (Volatile Organic Compounds), sections 707, 708, 738 through 742 inclusive, and 750.
- Chapter 10 (Air Quality—Non EGU Limits on Nitrogen Oxides Emissions), sections 1005 through 1014 inclusive, and 1099.

**II. EPA Action**

In this action, EPA is doing the following:

**A. In 40 CFR 52.470(b)**

Announcing the update to the IBR material as of July 1, 2016 and revising the text within 40 CFR 52.470(b).

**B. In 40 CFR 52.470(c)**

- Correcting a typographical error in the title for chapter 7, section 702.

- Removing the five existing entries for chapter 7, section 799 with an EPA approval date prior to April 29, 2013.

**C. In 40 CFR 52.470(e)**

Revising the Applicable Geographic Area from “Statewide” to “District of Columbia” for the following titled areas currently found within 52.470(e): Regional Haze Plan; Section 110(a)(2) Infrastructure Requirements for the 2008 Lead NAAQS; the Clean Air Act (CAA) section 128 requirements in relation to State Boards; section 110(a)(2) Infrastructure Requirements for the 2010 Nitrogen Dioxide (NO<sub>2</sub>) National Ambient Air Quality Standards (NAAQS); Section 110(a)(2) Infrastructure Requirements for the 2008 Ozone NAAQS; Section 110(a)(2) Infrastructure Requirements for the 2010 Sulfur Dioxide (SO<sub>2</sub>) NAAQS; Emergency Air Pollution Plan; and the Interstate Pollution Transport Requirements for the 2010 NO<sub>2</sub> NAAQS.

**III. Good Cause Exemption**

EPA has determined that today’s rule falls under the “good cause” exemption in section 553(b)(3)(B) of the Administrative Procedures Act (APA) which, upon finding “good cause,” authorizes agencies to dispense with public participation and section 553(d)(3) which allows an agency to make a rule effective immediately (thereby avoiding the 30-day delayed effective date otherwise provided for in the APA). This rule simply codifies provisions which are already in effect as a matter of law in federal and approved state programs. Under section 553 of the APA, an agency may find good cause where procedures are “impractical, unnecessary, or contrary to the public interest.” Public comment is “unnecessary” and “contrary to the public interest” since the codification only reflects existing law. Immediate notice in the Code of Federal Register benefits the public by removing outdated citations and incorrect table entries.

**IV. Incorporation by Reference**

In this rule, the EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is finalizing the incorporation by reference of previously EPA approved regulations promulgated by the District of Columbia and federally effective prior to July 1, 2016. Therefore, these materials have been approved by EPA for inclusion in the SIP, have been incorporated by reference by EPA into that plan, are fully federally enforceable under sections 110 and 113 of the CAA as of the effective date of the final rulemaking of EPA’s approval, and will be incorporated by reference by the