

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, Intergovernmental relations, Incorporation by reference, Ozone, Nitrogen dioxides, Reporting

and recordkeeping requirements, Volatile organic compounds.

Dated: July 16, 2009.

**J. Scott Gordon,**

*Acting Regional Administrator, Region 4.*

■ 40 CFR part 52 is amended as follows:

**PART 52—[AMENDED]**

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

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

**Subpart B—Alabama**

■ 2. Section 52.50(d), is amended by adding new entries to the table for “Lafarge Cement Kiln” and “Lehigh Cement Kiln” to read as follows:

**§ 52.50 Identification of plan.**

\* \* \* \* \*  
(d) \* \* \*

**EPA-APPROVED ALABAMA SOURCE SPECIFIC REQUIREMENTS**

Name of source	Permit No.	State submittal date/effective date	EPA approval date	Explanations
Lafarge Cement Kiln .....	AB70004_1_01 .....	2/6/2008	7/30/2009 [Insert citation of publication].	Certain provisions of the permit.
Lehigh Cement Kiln .....	4-07-0290-03 .....	2/6/2008	7/30/2009 [Insert citation of publication].	Certain provisions of the permit.

\* \* \* \* \*  
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**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

[EPA-R09-OAR-0296; FRL-8936-6]

**Revisions to the California State Implementation Plan, San Joaquin Valley Air Pollution Control District**

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

**ACTION:** Final rule.

**SUMMARY:** EPA is finalizing approval of revisions to the San Joaquin Valley Air Pollution Control District portion of the California State Implementation Plan

(SIP). These revisions were proposed in the **Federal Register** on June 8, 2009 and concern volatile organic compound (VOC) emissions from organic solvent cleaning and degreasing operations. We are approving local rules that regulate these emission sources under the Clean Air Act as amended in 1990 (CAA or the Act).

**DATES:** *Effective Date:* This rule is effective on August 31, 2009.

**ADDRESSES:** EPA has established docket number EPA-R09-OAR-0296 for this action. The index to the docket is available electronically at <http://www.regulations.gov> and in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California. While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (*e.g.*, copyrighted material), and some may not be publicly available in

either location (*e.g.*, CBI). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

**FOR FURTHER INFORMATION CONTACT:** Nicole Law, EPA Region IX, (415) 947-4126, [Law.Nicole@epa.gov](mailto:Law.Nicole@epa.gov).

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

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**I. Proposed Action**

On June 8, 2009 (74 FR 27084), EPA proposed to approve the following rules into the California SIP.

Local agency	Rule No.	Rule title	Adopted	Submitted
SJVAPCD .....	4662	Organic Solvent Degreasing Operations .....	09/20/07	03/07/08
SJVAPCD .....	4663	Organic Solvent Cleaning, Storage, and Disposal .....	09/20/07	03/07/08

We proposed to approve these rules because we determined that they complied with the relevant CAA requirements. Our proposed action contains more information on the rules and our evaluation.

**II. Public Comments and EPA Responses**

EPA’s proposed action provided a 30-day public comment period. During this period, we received no comments.

**III. EPA Action**

No comments were submitted that change our assessment that the submitted rules comply with the relevant CAA requirements. Therefore, as authorized in section 110(k)(3) of the Act, EPA is fully approving these rules into the California SIP.

**IV. 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, 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 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 Clean Air Act; and

- Does not provide 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, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this 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 September 28, 2009. 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. This action may not be challenged later in proceedings to enforce its requirements (see section 307(b)(2)).

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

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: July 10, 2009.

**Jane Diamond,**

*Acting Regional Administrator, Region IX.*

■ Part 52, Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

#### PART 52—[AMENDED]

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

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

#### Subpart F—California

■ 2. Section 52.220, is amended by adding paragraph (c)(354)(i)(E) to read as follows:

##### § 52.220 Identification of plan.

\* \* \* \* \*

(c) \* \* \*

(354) \* \* \*

(i) \* \* \*

(E) San Joaquin Valley Unified Air Pollution Control District

(1) Rule 4662, "Organic Solvent Degreasing Operations," Adoption April 11, 1991 and amended September 20, 2007

(2) Rule 4663, "Organic Cleaning Storage, and Disposal," Adoption December 20, 2001 and amended September 20, 2007

\* \* \* \* \*

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## DEPARTMENT OF TRANSPORTATION

### Office of the Secretary

#### 49 CFR Part 40

[Docket OST-2003-15245]

RIN 2105-AD89

#### Procedures for Transportation Workplace Drug and Alcohol Testing Programs

**AGENCY:** Office of the Secretary, DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment reinstates the requirement for direct observation collections for all return-to-duty and follow-up tests. This provision was stayed by the United States Court of Appeals for the District of Columbia Circuit effective November 1, 2008, but that stay was lifted on July 1, 2009. This amendment, therefore, restores language to the version that became a final rule on June 25, 2008.

**DATES:** *Effective Date:* August 31, 2009.

**FOR FURTHER INFORMATION CONTACT:** Jim L. Swart, Director, U.S. Department of Transportation, Office of Drug and Alcohol Policy and Compliance, 1200 New Jersey Avenue, SE., Washington, DC 20590; (202) 366-3784 (voice), (202) 366-3897 (fax), or [jim.swart@dot.gov](mailto:jim.swart@dot.gov); or Robert C. Ashby, Deputy Assistant General Counsel for Regulation and Enforcement, U.S. Department of Transportation, same address, (202) 366-9310 (voice), (202) 366-9313 (fax), or [bob.ashby@dot.gov](mailto:bob.ashby@dot.gov).

#### SUPPLEMENTARY INFORMATION:

##### Background

The Department issued a final rule on June 25, 2008 (73 FR 35961) that, among other changes, modified 49 CFR 40.67(b) and added a new paragraph (i) concerning the use of direct observation collections, a very significant tool the Department employs to combat attempts by employees to cheat on their drug tests. The amendment to 49 CFR 40.67(b) required direct observation collections for all return-to-duty and follow-up tests. Section 40.67(i) required that direct observations be conducted so as to allow the observer to check the individual for prosthetic or other cheating devices.

Several petitioners asked the Department to delay the effective date of these two provisions, seek further comment on them, and reconsider them. In response, the Department issued a notice delaying the effective date of 49 CFR 40.67(b)—the provision for making direct observation collections mandatory for all return-to-duty and