

III. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a “significant regulatory action” and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, “Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use” (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it 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).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 “Protection of Children from Environmental Health Risks and Safety Risks” (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA’s role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus

standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

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 rule 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 March 5, 2007. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule 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, Reporting and recordkeeping requirements.

Dated: November 30, 2006.

Wayne Nastri,

Regional Administrator, Region IX.

■ Part 52, Chapter I, Title 40 of the Code of Federal Regulation 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 paragraphs (c)(279)(i)(A)(12), (13), and (14) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(279) * * *

(i) * * *

(A) * * *

(12) Rule 201, adopted prior to October 15, 1979 and revised on September 14, 1999.

(13) Rule 208, adopted March 17, 1980 and revised on September 14, 1999.

(14) Rules 203, 205, and 206, adopted on November 19, 1985 and revised on September 14, 1999.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R09-OAR-2006-0590; FRL-8260-1]

Approval and Promulgation of Implementation Plans; Revisions to the Nevada State Implementation Plan; Requests for Rescission

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is taking final action to approve certain revisions to the Nevada State Implementation Plan (SIP) and to disapprove certain other revisions. These revisions involve rules and statutory provisions for which the State of Nevada is requesting rescission. EPA is also taking final action to approve certain updated statutory provisions submitted by the State of Nevada as replacements for outdated statutory provisions in the applicable plan. These actions were proposed in the **Federal Register** on August 28, 2006. The intended effect is to rescind unnecessary provisions from the applicable plan, retain necessary provisions, and approve replacement provisions for certain statutes for which rescissions are disapproved.

DATES: *Effective Date:* This rule is effective on February 2, 2007.

ADDRESSES: EPA has established docket number EPA-R09-OAR-2006-0590 for this action. The index to the docket is available electronically at <http://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: Julie A. Rose, EPA Region IX, (415) 947-4126, rose.julie@epa.gov.

SUPPLEMENTARY INFORMATION:

Throughout this document, “we,” “us” and “our” refer to EPA.

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I. Proposed Action

On August 28, 2006 (71 FR 50875), EPA proposed approval of certain revisions to the Nevada SIP and disapproval of certain other revisions. These revisions involve rules and

statutory provisions previously approved into the Nevada SIP but for which the State of Nevada is requesting rescission. EPA also proposed approval of certain updated statutory provisions submitted by the State of Nevada as replacements for outdated statutory provisions in the applicable plan. Our August 28, 2006 proposed rule represents one of a series of rulemakings we are conducting on a large SIP revision submitted by the State of Nevada on January 12, 2006 in which the State requests approval of numerous new or amended rules and statutory provisions and requests rescission of numerous other rules and statutory provisions in the existing SIP. Our August 28, 2006 proposed rule sets forth our evaluation and proposed action on the vast majority of the rescission requests included in the State’s January 12, 2006 SIP revision submittal.

In our August 28, 2006 proposed rule, we made final approval of those requests for rescission that we proposed to approve contingent upon the receipt of certain public notice and hearing documentation from the State of Nevada. The appropriate documentation has been submitted for the provisions listed below in table 1, and we are taking final action on them today.¹ A separate final rule will be published for the remainder of the provisions for

which rescission was requested (and proposed for approval) after the public notice and hearing documentation has been submitted. A third final rule will be published for the rescission of the Federal implementation plan promulgated by EPA at 40 CFR 52.1475 (c), (d) and (e), which was also proposed for rescission in our August 28, 2006 proposed rule.

The majority of the provisions in table 1 represents defined terms that, although approved by EPA and therefore made part of the applicable SIP, are not relied upon by any rule or statutory provision in the existing applicable SIP or in any rule or statutory provision included in the SIP revision submitted on January 12, 2006 and thus are unnecessary and appropriate for rescission. For the other SIP provisions listed in table 1, we proposed approval of the State’s rescission requests because we found them to be unnecessary because they are not needed generally in a SIP under CAA section 110(a)(2) or under 40 CFR part 51 or because there are other federally enforceable provisions that would provide equivalent or greater control. Our proposed rule and related Technical Support Document (TSD) contain more information on these SIP provisions and our evaluation of the related rescission requests.

TABLE 1.—SIP PROVISIONS FOR WHICH THE STATE’S RESCISSION REQUEST IS APPROVED

SIP provision	Title	Submittal date	Approval date
NAC 445.440	Aluminum equivalent	10/26/82	03/27/84
NAC 445.442	Anode bake plant	10/26/82	03/27/84
NAC 445.443	Asphalt concrete plant	10/26/82	03/27/84
NAC 445.446	Barite dryer	10/26/82	03/27/84
NAC 445.451	Basic oxygen process furnace	10/26/82	03/27/84
NAC 445.453	Bituminous coal	10/26/82	03/27/84
NAC 445.454	Blast furnace	10/26/82	03/27/84
NAC 445.455	Blowing tap	10/26/82	03/27/84
NAC 445.456	Brass or bronze	10/26/82	03/27/84
NAC 445.459	Calcium carbide	10/26/82	03/27/84
NAC 445.460	Calcium silicon	10/26/82	03/27/84
NAC 445.461	Capture system	10/26/82	03/27/84
NAC 445.462	Charge chrome	10/26/82	03/27/84
NAC 445.463	Charge period	10/26/82	03/27/84
NAC 445.465	Coal preparation plant	10/26/82	03/27/84
NAC 445.466	Coal processing and conveying equipment	10/26/82	03/27/84
NAC 445.467	Coal refuse	10/26/82	03/27/84
NAC 445.468	Coal storage system	10/26/82	03/27/84
NAC 445.469	Coke burn-off	10/26/82	03/27/84
NAC 445.474	Commercial fuel oil	10/26/82	03/27/84
NAC 445.475	Complex source	10/26/82	03/27/84
NAC 445.476	Condensate	10/26/82	03/27/84
NAC 445.481	Control device	10/26/82	03/27/84
NAC 445.483	Copper converter	10/26/82	03/27/84
NAC 445.484	Custody transfer	10/26/82	03/27/84

¹ Table 1 in this notice differs from the corresponding table in the proposed rule in that it does not include 12 rules or statutory provisions for which the State has not yet provided documentation related to public participation and

for which final action is being deferred pending receipt of this documentation from the State. These 12 rules or statutory provisions are listed in table 4 of this notice. In addition, we are finalizing the proposed rescission of the Federal implementation

plan at 40 CFR 52.1475(c), (d), and (e), which relates to the former Kennecott Copper Company smelter located in White Pine County, in a separate notice.

TABLE 1.—SIP PROVISIONS FOR WHICH THE STATE'S RESCISSION REQUEST IS APPROVED—Continued

SIP provision	Title	Submittal date	Approval date
NAC 445.485	Cyclonic flow	10/26/82	03/27/84
NAC 445.487	Diesel fuel	10/26/82	03/27/84
NAC 445.489	Direct shell evacuation system	10/26/82	03/27/84
NAC 445.490	Drilling and production facility	10/26/82	03/27/84
NAC 445.491	Dross reverberatory furnace	10/26/82	03/27/84
NAC 445.493	Dust handling equipment	10/26/82	03/27/84
NAC 445.494	Dusts	10/26/82	03/27/84
NAC 445.495	Electric arc furnace	10/26/82	03/27/84
NAC 445.496	Electric furnace	10/26/82	03/27/84
NAC 445.497	Electric smelting furnace	10/26/82	03/27/84
NAC 445.498	Electric submerged arc furnace	10/26/82	03/27/84
NAC 445.502	Equivalent P ₂ O ₅ feed	10/26/82	03/27/84
NAC 445.503	Equivalent P ₂ O ₅ stored	10/26/82	03/27/84
NAC 445.509	Ferrochrome silicon	10/26/82	03/27/84
NAC 445.510	Ferromanganese silicon	10/26/82	03/27/84
NAC 445.511	Ferrosilicon	10/26/82	03/27/84
NAC 445.514	Fossil fuel-fired steam generating unit	10/26/82	03/27/84
NAC 445.515	Fresh granular triple superphosphate	10/26/82	03/27/84
NAC 445.518	Fuel gas	10/26/82	03/27/84
NAC 445.519	Fuel gas combustion device	10/26/82	03/27/84
NAC 445.522	Furnace charge	10/26/82	03/27/84
NAC 445.523	Furnace cycle	10/26/82	03/27/84
NAC 445.524	Furnace power input	10/26/82	03/27/84
NAC 445.526	Granular diammonium phosphate plant	10/26/82	03/27/84
NAC 445.527	Granular triple super-phosphate storage facility	10/26/82	03/27/84
NAC 445.528	Heat time	10/26/82	03/27/84
NAC 445.529	High-carbon ferrochrome	10/26/82	03/27/84
NAC 445.530	High level of volatile impurities	10/26/82	03/27/84
NAC 445.531	High terrain	10/26/82	03/27/84
NAC 445.532	Hydrocarbon	10/26/82	03/27/84
NAC 445.534	Isokinetic sampling	10/26/82	03/27/84
NAC 445.539	Low terrain	10/26/82	03/27/84
NAC 445.543	Meltdown and refining	10/26/82	03/27/84
NAC 445.544	Meltdown and refining period	10/26/82	03/27/84
NAC 445.546	Molybdenum	10/26/82	03/27/84
NAC 445.547	Molybdenum processing plant	10/26/82	03/27/84
NAC 445.551	Nitric acid production unit	10/26/82	03/27/84
NAC 445.566	Petroleum liquids	10/26/82	03/27/84
NAC 445.567	Petroleum refinery	10/26/82	03/27/84
NAC 445.568	Pneumatic coal-cleaning equipment	10/26/82	03/27/84
NAC 445.572	Potroom	10/26/82	03/27/84
NAC 445.573	Potroom group	10/26/82	03/27/84
NAC 445.576	Primary aluminum reduction plant	10/26/82	03/27/84
NAC 445.577	Primary control system	10/26/82	03/27/84
NAC 445.578	Primary copper smelter	10/26/82	03/27/84
NAC 445.579	Primary lead smelter	10/26/82	03/27/84
NAC 445.580	Primary zinc smelter	10/26/82	03/27/84
NAC 445.582	Process gas	10/26/82	03/27/84
NAC 445.583	Process upset gas	10/26/82	03/27/84
NAC 445.586	Product change	10/26/82	03/27/84
NAC 445.587	Proportional sampling	10/26/82	03/27/84
NAC 445.591	Refinery process unit	10/26/82	03/27/84
NAC 445.593	Reid vapor pressure	10/26/82	03/27/84
NAC 445.594	Reverberatory furnace	10/26/82	03/27/84
NAC 445.595	Reverberatory smelting furnace	10/26/82	03/27/84
NAC 445.598	Roof monitor	10/26/82	03/27/84
NAC 445.600	Run-of-pile triple superphosphate	10/26/82	03/27/84
NAC 445.602	Secondary control system	10/26/82	03/27/84
NAC 445.603	Secondary lead smelter	10/26/82	03/27/84
NAC 445.604	Shop	10/26/82	03/27/84
NAC 445.605	Shop opacity	10/26/82	03/27/84
NAC 445.608	Silicomanganese	10/26/82	03/27/84
NAC 445.609	Silicomanganese zirconium	10/26/82	03/27/84
NAC 445.610	Silicon metal	10/26/82	03/27/84
NAC 445.611	Silvery iron	10/26/82	03/27/84
NAC 445.614	Sinter bed	10/26/82	03/27/84
NAC 445.615	Sintering machine	10/26/82	03/27/84
NAC 445.616	Sintering machine discharge end	10/26/82	03/27/84
NAC 445.619	Smelting	10/26/82	03/27/84
NAC 445.620	Smelting furnace	10/26/82	03/27/84
NAC 445.626	Standard ferromanganese	10/26/82	03/27/84

TABLE 1.—SIP PROVISIONS FOR WHICH THE STATE'S RESCISSION REQUEST IS APPROVED—Continued

SIP provision	Title	Submittal date	Approval date
NAC 445.629	Steel production cycle	10/26/82	03/27/84
NAC 445.631	Storage vessel	10/26/82	03/27/84
NAC 445.632	Structure, building, facility or installation	10/26/82	03/27/84
NAC 445.634	Sulfuric acid plant	10/26/82	03/27/84
NAC 445.635	Sulfuric acid production unit	10/26/82	03/27/84
NAC 445.636	Superphosphoric acid plant	10/26/82	03/27/84
NAC 445.637	Tapping	10/26/82	03/27/84
NAC 445.638	Tapping period	10/26/82	03/27/84
NAC 445.639	Tapping station	10/26/82	03/27/84
NAC 445.640	Thermal dryer	10/26/82	03/27/84
NAC 445.641	Thermit process	10/26/82	03/27/84
NAC 445.642	Total fluorides	10/26/82	03/27/84
NAC 445.643	Total smelter charge	10/26/82	03/27/84
NAC 445.644	Transfer and loading system	10/26/82	03/27/84
NAC 445.645	Triple superphosphate plant	10/26/82	03/27/84
NAC 445.646	True vapor pressure	10/26/82	03/27/84
NAC 445.648	Vapor recovery system	10/26/82	03/27/84
NAC 445.652	Weak nitric acid	10/26/82	03/27/84
NAC 445.654	Wet-process phosphoric acid plant	10/26/82	03/27/84
Article 2.7.4	Confidential Information	12/10/76	08/21/78
Articles 2.10.1 and 2.10.1.1	Appeal procedures	01/28/72	05/31/72
Articles 2.10.1.2, 2.10.2 and 2.10.3	Appeal procedures	10/31/75	01/09/78
Article 3.3.4	Stop orders	01/28/72	05/31/72
Article 4.3.4	Emissions from any mobile equipment	01/28/72	05/31/72
Article 7.2.5	Basic Refractory	11/05/80	06/18/82
Article 7.2.9	Sierra Chemical Co.	11/05/80	06/18/82
Article 8.1	Primary Non-Ferrous Smelters	06/14/74	02/06/75
Articles 8.1.1, 8.1.2, & 8.1.4	Primary Non-Ferrous Smelters	10/31/75	01/09/78
Article 8.3.4	Basic	11/05/80	06/18/82
Article 16.3.1.2	Regulations controlling cement (Applying to Portland cement plants) ...	12/29/78	06/18/82
Articles 16.3.2, 16.3.2.1, & 16.3.2.2	Standard of particulate matter for clinker cooler (Applying to Portland cement plants).	12/29/78	06/18/82
Article 16.15	Primary lead smelters	12/29/78	06/18/82
Articles 16.15.1 to 16.15.1.2	Standard for Particulate Matter (Applying to primary lead smelters)	12/29/78	06/18/82
Articles 16.15.2 to 16.15.2.2	Standard for Opacity (Applying to primary lead smelters)	12/29/78	06/18/82
Articles 16.15.3 to 16.15.3.2	Standard for Sulfur (Applying to primary lead smelters)	12/29/78	06/18/82
Article 16.15.4	Monitoring Operations (Applying to primary lead smelters)	12/29/78	06/18/82
NAC 445.723	Existing copper smelters	10/26/82	03/27/84
NAC 445.815	Molybdenum processing plants	09/14/83	03/27/84
NAC 445.816(2) (a), (b), (c), (e), (f), (g), (h), and (i).	Processing Plants for Precious Metals	09/14/83	03/27/84
Section 13(15) and (19) of Senate Bill No. 275.	[State commission of environmental protection—review recommendations of hearing board and delegation].	01/28/72	05/31/72

As noted above, in our August 28, 2006 proposed rule, we proposed to disapprove the State's request to rescind certain rules and statutory provisions from the existing SIP. These rules and statutory provisions are listed in table 2

below. We believe that retention of these provisions is appropriate to satisfy certain specific requirements for SIPs under CAA section 110(a)(2) or that retention is appropriate because the State has not provided sufficient

documentation to show that rescission would not interfere with continued attainment of the national ambient air quality standards (NAAQS) as required under CAA section 110(l).

TABLE 2.—SIP PROVISIONS FOR WHICH THE STATE'S RESCISSION REQUEST IS DISAPPROVED

SIP provision	Title	Submittal date	Approval date
NAC 445.436	Air contaminant	10/26/82	03/27/84
NAC 445.570	Portland cement plant	10/26/82	03/27/84
Article 1.171	Single source	12/10/76	08/21/78
NAC 445.630	Stop order	10/26/82	03/27/84
NAC 445.660	Severability	10/26/82	03/27/84
NAC 445.663	Concealment of emissions prohibited	10/26/82	03/27/84
NAC 445.665	Hazardous emissions: Order for reduction or discontinuance	10/26/82	03/27/84
NAC 445.696	Notice of violations; appearance before commission	10/26/82	03/27/84
NAC 445.697	Stop Orders	10/26/82	03/27/84
NAC 445.764	Reduction of employees' pay because of use of system prohibited	10/26/82	03/27/84
NAC 445.816(3), (4) & (5)	Processing Plants for Precious Metals	09/14/83	03/27/84

TABLE 2.—SIP PROVISIONS FOR WHICH THE STATE'S RESCISSION REQUEST IS DISAPPROVED—Continued

SIP provision	Title	Submittal date	Approval date
NRS 445.451*	State environmental commission: Creation; composition; chairman; quorum; salary, expenses of members; disqualification of members; technical support.	12/29/78	07/10/80
NRS 445.456*	Department designated as state air pollution control agency	12/29/78	07/10/80
NRS 445.473*	Department powers and duties	12/29/78	07/10/80
NRS 445.476*	Power of department representatives to enter and inspect premises	12/29/78	07/10/80
NRS 445.498*	Appeals to commission; Notice of appeal	12/29/78	07/10/80
NRS 445.499*	Appeals to commission; Hearings	12/29/78	07/10/80
NRS 445.501*	Appeals to commission: Appealable matters; commission action; rules for appeals.	12/29/78	07/10/80
NRS 445.526*	Violations: Notice and order by director; hearing; alternative procedures.	09/10/75	01/24/78
NRS 445.529*	Violations: Injunctive relief	12/29/78	07/10/80
NRS 445.576*	Confidential information: Definitions; limitations on use; penalty for unlawful disclosure or use.	09/10/75	01/24/78
NRS 445.581*	Power of department officers to inspect, search premises; search warrants.	12/29/78	07/10/80
NRS 445.596*	Private rights and remedies not affected	12/29/78	07/10/80
NRS 445.598*	Provisions for transition in administration	12/29/78	07/10/80
NRS 445.601*	Civil penalties; fines not bar to injunctive relief, other remedies; disposition of fines.	12/29/78	07/10/80

Note: Asterisk (*) indicates applicable SIP provisions for which replacement provisions are being approved (see table 3, below).

Also as noted above, in our August 28, 2006 proposed rule, we proposed to approve certain submitted statutory provisions to supersede the corresponding outdated provisions noted with an asterisk in table 2 above. These submitted statutory provisions are listed in table 3, below. In its January 12, 2006 SIP revision submittal,

NDEP requests EPA to approve new statutory provisions to replace any outdated State statutory provisions for which EPA determines that the rescission request should not be approved. Thus, consistent with the State's request, we are approving 14 specific statutory provisions, submitted by NDEP in Appendix III-E of the

January 12, 2006 SIP revision submittal, to replace the corresponding statutory provisions in the applicable SIP (see table 3, below). In general, we find that the current statutory provisions listed in table 3 essentially mirror the corresponding outdated provisions in the applicable SIP and thus would not relax any existing requirement.²

TABLE 3.—SUBMITTED PROVISIONS WHICH ARE APPROVED AS REPLACEMENTS FOR OUTDATED PROVISIONS IN THE APPLICABLE SIP

Submitted provisions	Title	Submittal date
NRS 445B.200	Creation and composition; chairman; quorum; compensation of members and employees; disqualification; technical support.	01/12/06
NRS 445B.205	Department designated as state air pollution control agency	01/12/06
NRS 445B.230	Powers and duties of department	01/12/06
NRS 445B.240	Power of representatives of department to enter and inspect premises	01/12/06
NRS 445B.340	Appeals to commission: notice of appeal	01/12/06
NRS 445B.350	Appeals to commission: hearings	01/12/06
NRS 445B.360	Appeals to commission: appealable matters; action by commission; regulations	01/12/06
NRS 445B.450	Notice and order by director; hearing; alternative procedures	01/12/06
NRS 445B.460	Injunctive relief	01/12/06
NRS 445B.570	Confidentiality and use of information obtained by department; penalty	01/12/06
NRS 445B.580	Officer of department may inspect or search premises; search warrant	01/12/06
NRS 445B.600	Private rights and remedies not affected	01/12/06
NRS 445B.610	Provisions for transition in administration	01/12/06
NRS 445B.640	Levy and disposition of administrative fines; additional remedies available; penalty	01/12/06

II. Public Comments and EPA Responses

EPA's proposed action provided a 30-day public comment period. During this

period, we received comments from Jennifer L. Carr and Michael Elges, Division of Environmental Protection, State of Nevada Department of Conservation & Natural Resources, by

letter dated September 25, 2006. We summarize the comments and provide our responses in the paragraphs that

² Because the current statutory provisions essentially mirror the outdated provisions, we view our approval of the current statutory provisions as a re-codification and, as such, we are not taking action to remedy pre-existing deficiencies in the

applicable SIP. We note, however, that one of the provisions, NRS 445B.200 ("Creation and composition; chairman; quorum; compensation of members and employees; disqualification; technical support"), does not meet the related SIP

requirements (CAA section 110(a)(2)(E)(ii) and CAA section 128) and could be the subject of some future EPA rulemaking, such as one under CAA section 110(k)(5).

follow. Note that some of the comments in the September 25, 2006 letter are directed at a different EPA proposed rule also related to the State's January 12, 2006 SIP submittal and published the same week as the August 28, 2006 proposed rule. See 71 FR 51793 (August 31, 2006). Comments on the August 31, 2006 proposed rule are addressed in a separate final action published on December 11, 2006 at 71 FR 71486.

Comment #1: The Nevada Division of Environmental Protection (NDEP) recognizes that EPA has made final approval of the rescission requests contingent upon receipt of public notice and hearing documentation from the State of Nevada and believes that it has now provided the required documentation for all of the applicable rescission requests except for 12. NDEP also comments that EPA should state that the public notice and hearing

documentation submitted on February 16, 2005 was used to support the proposed rulemaking.

Response #1: With the exception of the 12 provisions listed in table 4 below for which documentation is pending, we find that the State has now provided sufficient documentation for the applicable rescission requests and thereby met the contingency placed on their proposed approval in our August 28, 2006 proposed rule.

TABLE 4.—SIP PROVISIONS FOR WHICH STATE'S REQUEST FOR RESCISSION WAS PROPOSED FOR APPROVAL BUT FOR WHICH FINAL ACTION IS PENDING RECEIPT OF DOCUMENTATION OF PUBLIC PARTICIPATION

SIP (or FIP) provision	Title	Submittal date	Approval date
NAC 445.477	Confidential information	10/26/82	03/27/84
NAC 445.554	Nuisance	10/26/82	03/27/84
NAC 445.596	Ringelmann chart	10/26/82	03/27/84
NAC 445.617	Six-minute period	10/26/82	03/27/84
NAC 445.662	Confidential Information	10/26/82	03/27/84
NAC 445.695	Schedules for compliance	10/26/82	03/27/84
NAC 445.698	Appeal of director's decision: Application forms	10/26/82	03/27/84
NAC 445.700	Violations: Manner of paying fines	10/26/82	03/27/84
NAC 445.844	Odors	10/26/82	03/27/84
NRS 445.401	Declaration of public policy	12/29/78	07/10/80
NRS 445.466	Commission regulations: Notice and hearing	12/29/78	07/10/80
NRS 445.497	Notice of regulatory action: Requirement; method; contents of notice ...	12/29/78	07/10/80

We also agree that an explanation of the extent of reliance of our proposed rule on the February 16, 2005 SIP submittal is warranted. On February 16, 2005, NDEP submitted a large revision to the applicable Nevada SIP. The February 16, 2005 SIP submittal includes new and amended rules and statutory provisions as well as requests for rescission of certain rules and statutory provisions in the existing SIP. The February 16, 2005 SIP submittal also contains documentation of public participation (i.e., notice and public hearing) and adoption for all of the submitted rules through the hearing on November 30, 2004 held by the State Environmental Commission. The February 16, 2005 SIP submittal also includes documentation of public participation for 16 of the requested rule rescissions.

On January 12, 2006, NDEP submitted an amended version of the February 16, 2005 SIP submittal. The January 12, 2006 SIP submittal contains updated regulatory materials including new and amended rules adopted by the State Environmental Commission on October 4, 2005 but otherwise contains the same materials as the earlier submittal with the exception of the documentation of public participation. The January 12, 2006 SIP submittal only contains documentation of public participation for rule amendments adopted by the State Environmental Commission on

October 4, 2005 but did not re-submit the public participation documentation included in the earlier submittal. Therefore, the January 12, 2006 SIP submittal supersedes the earlier SIP revision submittal dated February 16, 2005 for all purposes except for the documentation of public participation for adoption dates from November 30, 2004 and earlier. The January 12, 2006 SIP submittal did not include public participation documentation for any of the requested rescissions.

Upon request by EPA for documentation of public participation for the requested rescissions, NDEP indicated where such documentation could be found in the materials submitted as part of the February 16, 2005 SIP submittal and also provided documentation for public hearings held by the State Environmental Commission on August 28–29, 1985 during which the vast majority of the rules for which the State has requested rescission were repealed. NDEP also provided an explanation for all of the other rules and statutory provisions proposed for rescission that were not already documented in the February 16, 2005 SIP submittal or the materials for the August 28–29, 1985 public hearings (except for the 12 listed in table 4). Taken collectively, the documentation provided by NDEP is sufficient to meet the related public participation requirements under CAA section 110(l)

and for us to remove the contingency in our proposed rule for all of the provisions for which rescission was requested and proposed for approval (except, as noted, for the 12 listed in table 4).

Comment #2: NDEP disagrees with the statements made in EPA's TSD (for the August 28, 2006 proposed rule) regarding the rescission of Nevada Air Quality Regulation (NAQR) article 7.2.9. NDEP states that a new lime kiln located on the previous site of Sierra Chemical Company's lime kiln in Lincoln County would be subject to a new emission limit rather than the limit in NAQR article 7.2.9.

Response #2: We agree. Although we proposed approval of the State's request for rescission of NAQR article 7.2.9, our discussion and evaluation of the rescission request as set forth in the TSD presumes incorrectly that the emission limit in NAQR article 7.2.9 would apply to a new kiln at this location. The stated presumption is incorrect because a new kiln at this location would be treated as a new emission unit under NDEP's new source review rules. As such, the unit-specific limit in NAQR article 7.2.9 would not apply and has become obsolete (see letter from William Frey, Senior Deputy Attorney General, State of Nevada, dated July 11, 2006). In this notice, we are taking final action to approve the State's request for rescission of NAQR article 7.2.9.

Comment #3: NDEP acknowledges that EPA is deferring action on NAC 445.694 and intends to respond to EPA's suggestion of providing further explanation as to why the provision can be rescinded.

Response #3: We appreciate NDEP's willingness to submit additional justification for the rescission of NAC 445.694 ("Emission discharge information") and plan to review it when it is submitted.

III. EPA Action

No comments were submitted that change our assessment of our proposed action. Therefore, as authorized in section 110(k)(3) of the Clean Air Act, and in light of documentation for public participation provided by the State of Nevada, EPA is finalizing the approval of the State's request for rescission of the rules and statutory provisions listed in table 1, above, and the disapproval of the State's request for rescission of the rules and statutory provisions listed in table 2, above. EPA is also approving the submitted statutory provisions listed in table 3, above, into the Nevada SIP as replacements for the corresponding outdated provisions listed in table 2.

EPA is not taking final action on 12 of the provisions for which the State requests rescission and for which EPA proposed approval on August 28, 2006 (as listed in table 4, above) but will do so upon receipt of public participation documentation from the State. Lastly, we will be taking final action on our proposed rescission of the Federal implementation plan at 40 CFR 52.1475 (c), (d), and (e), which is related to the former Kennecott Copper Company smelter located in White Pine County, in a separate notice.

IV. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves or disapproves certain State requests for rescission and approves certain replacement provisions as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility

Act (5 U.S.C. 601 *et seq.*). Because this rule rescinds, retains or approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it 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).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves or disapproves certain State requests for rescission and approves certain replacement provisions implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

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 rule 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 March 5, 2007. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule 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, Reporting and recordkeeping requirements.

Dated: December 14, 2006.

Keith Takata,

Acting Regional Administrator, Region IX.

■ Part 52, Chapter I, Title 40 of the Code of Federal Regulation 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 DD—Nevada

■ 2. Section 52.1470 is amended by adding paragraphs (b)(2), (c)(7)(i), (c)(11)(i), (c)(12)(i), (c)(14)(ix), (c)(22)(iii), (c)(25)(iii), (c)(26)(i)(B), and (c)(56)(i)(A)(8) to read as follows:

§ 52.1470 Identification of plan.

* * * * *

(b) * * *

(2) Previously approved on May 31, 1972 in paragraph (b) and now deleted without replacement: Articles 2.10.1, 2.10.1.1, 3.3.4, 4.3.4, and Section 13, Nos. 15 and 19 of Senate Bill No. 275.

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(c) * * *

(7) * * *

(i) Previously approved on February 6, 1975 in paragraph (7) and now deleted without replacement: Article 8.1.

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(11) * * *

(i) Previously approved on January 9, 1978 in paragraph (11) and now deleted without replacement: Articles 2.10.1.2, 2.10.2, 2.10.3, 8.1.1, 8.1.2, and 8.1.4.

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(12) * * *

(i) Previously approved on August 21, 1978 in paragraph (12) and now deleted without replacement: Article 2.7.4.

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(14) * * *

(ix) Previously approved on June 18, 1982 in paragraph (14)(viii) and now deleted without replacement: Article 16: Rules 16.3.1.2, 16.3.2, 16.3.2.1, 16.3.2.2, 16.15, 16.15.1, 16.15.1.1, 16.15.1.2, 16.15.2, 16.15.2.1, 16.15.2.2, 16.15.3, 16.15.3.1, 16.15.3.2, and 16.15.4.

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(22) * * *

(iii) Previously approved on June 18, 1982 in paragraph (22)(ii) and now deleted without replacement: Articles 7.2.5, 7.2.9, and 8.3.4.

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(25) * * *

(iii) Previously approved on March 27, 1984, in paragraph (25)(i)(A) and now deleted without replacement: Nevada Administrative Code (NAC) sections: 445.440, 445.442–445.443, 445.446, 445.451, 445.453–445.456, 445.459–445.463, 445.465–445.469, 445.474–445.476, 445.481, 445.483–445.485, 445.487, 445.489–445.491, 445.493–445.498, 445.502–445.503, 445.509–445.511, 445.514–445.515, 445.518–445.519, 445.522–445.524, 445.526–445.532, 445.534, 445.539, 445.543–445.544, 445.546, 445.547, 445.551, 445.566–445.568, 445.572–445.573, 445.576–445.580, 445.582–445.583, 445.586–445.587, 445.591, 445.593–445.595, 445.598, 445.600, 445.602–445.605, 445.608–445.611, 445.614–445.616, 445.619–445.620, 445.626, 445.629, 445.631–445.632, 445.634–445.646, 445.648, 445.652, 445.654, and 445.723.

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(26) * * *

(i) * * *

(B) Previously approved on March 27, 1984, in paragraph (26)(i)(A) and now deleted without replacement: Nevada Administrative Code (NAC) sections 445.815 (paragraphs (1), (2)(a)(1)–(2), and (3)–(5)) and 445.816 (paragraph (2)(a)–(c) and (e)–(i)).

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(56) * * *

(i) * * *

(A) * * *

(8) Title 40, Chapter 445B of Nevada Revised Statutes (NRS)(2003): Sections 445B.200, 445B.205, 445B.230, 445B.240, 445B.340, 445B.350, 445B.360, 445B.450, 445B.460, 445B.570, 445B.580, 445B.600, 445.610, and 445.640.

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[FR Doc. E6–22408 Filed 12–29–06; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2006–0904; FRL–8264–8]

Approval and Promulgation of Air Quality Implementation Plans; Maryland; PM-10 Test Methods

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve revisions to the Maryland State Implementation Plan (SIP). The revisions incorporate by reference EPA's test methods for particulate matter with a particle size of 10 microns or less (PM-10). EPA is approving these revisions to the General Administrative Provisions of the Maryland regulations in accordance with the requirements of the Clean Air Act.

DATES: This rule is effective on March 5, 2007 without further notice, unless EPA receives adverse written comment by February 2, 2007. If EPA receives such comments, it will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA–R03–OAR–2006–0904 by one of the following methods:

A. www.regulations.gov. Follow the on-line instructions for submitting comments.

B. E-mail: miller.linda@epa.gov.

C. Mail: EPA–R03–OAR–2006–0904, Linda Miller, Acting Chief, Air Quality Planning and Analysis Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

D. *Hand Delivery:* At the previously-listed EPA Region III address. Such deliveries are only accepted during the Docket's normal hours of operation, and

special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–R03–OAR–2006–0904. EPA's policy is that all comments received will be included in the public docket without change, and may be made available online at www.regulations.gov, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through www.regulations.gov or e-mail. The www.regulations.gov Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through www.regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the electronic docket are listed in the www.regulations.gov index. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in www.regulations.gov or in hard copy during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the Maryland Department of the Environment, 1800 Washington Boulevard, Suite 705, Baltimore, Maryland, 21230.

FOR FURTHER INFORMATION CONTACT: Linda Miller, (215) 814–2068, or by e-mail at miller.linda@epa.gov.