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**Stanley F. Mires,**

*Chief Counsel, Legislative.*

[FR Doc. 00-32159 Filed 12-18-00; 8:45 am]

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Parts 52 and 70

[CA224-0263; FRL-6864-3]

#### Clean Air Act Final Interim Approval of the Operating Permits Program; Approval of State Implementation Plan Revision for the Issuance of Federally Enforceable State Operating Permits; Antelope Valley Air Pollution Control District, California

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

**ACTION:** Final interim approval.

**SUMMARY:** The EPA is promulgating interim approval of the Operating Permits Program submitted by the California Air Resources Board on behalf of the Antelope Valley Air Pollution Control District (APCD), California (Antelope Valley or District) for the purpose of complying with Federal requirements for an approvable State program to issue operating permits to all major stationary sources, and to certain other sources. In addition, EPA is promulgating final approval of a revision to Antelope Valley's portion of the California State Implementation Plan (SIP) regarding synthetic minor regulations for the issuance of federally enforceable state operating permits (FESOP). In order to extend the federal enforceability of state operating permits to hazardous air pollutants (HAP), EPA is also finalizing approval of Antelope Valley's synthetic minor regulations pursuant to section 112(l) of the Clean Air Act (CAA or Act). Finally, today's action grants final approval to Antelope Valley's mechanism for receiving delegation of section 112 standards as promulgated.

**DATES:** *Effective date:* January 18, 2001.

*Expiration date:* January 11, 2003.

**ADDRESSES:** Copies of the District's submittal and other supporting

information used in developing the final interim approval are available for inspection during normal business hours at the following location: Permits Office, Air-3, Air Division, U.S. EPA, Region IX, 75 Hawthorne Street, San Francisco, California 94105.

Copies of the submitted rules are also available for inspection at the following locations:

California Air Resources Board, 2020 L Street, Sacramento, CA 95814

Antelope Valley Air Pollution Control District, 43301 Division Street, Suite 206, Lancaster, CA 93539-4409

#### FOR FURTHER INFORMATION CONTACT:

Duong Nguyen (telephone 415/744-1142), Mail Code Air-3, U.S. Environmental Protection Agency, Region IX, Air Division, 75 Hawthorne Street, San Francisco, CA 94105.

#### SUPPLEMENTARY INFORMATION:

##### I. Background and Purpose

###### A. Introduction

Title V of the 1990 Clean Air Act Amendments (sections 501-507 of the Act) and implementing regulations at 40 Code of Federal Regulations (CFR) part 70 require that States develop and submit operating permits programs to EPA by November 15, 1993, and that EPA act to approve or disapprove each program within 1 year after receiving the submittal. The EPA's program review occurs pursuant to section 502 of the Act and the part 70 regulations, which together outline criteria for approval or disapproval. Where a program substantially, but not fully, meets the requirements of part 70, EPA may grant the program interim approval for a period of up to 2 years. If EPA has not fully approved a program by 2 years after the November 15, 1993 date, or by the end of an interim program, it must establish and implement a Federal program.

On March 31, 2000, EPA proposed interim approval of the operating permits program for Antelope Valley APCD, California. See 65 FR 17231. The **Federal Register** document also proposed approval of the District's interim mechanism for implementing section 112(g) and program for delegation of section 112 standards as promulgated. Public comment was solicited on these proposed actions. EPA received no public comment on the proposal. In this notice, EPA is promulgating interim approval of Antelope Valley's operating permits program. EPA is also clarifying the section 112(g) implementation discussion in the proposed rulemaking. The clarification is not a substantive change from the proposed rulemaking

(see II.B.2). This final rulemaking also approves the delegation mechanism to implement section 112(l) as noted above. On June 28, 1989 (54 FR 27274), EPA published criteria for approving and incorporating into the SIP regulatory programs for the issuance of federally enforceable state operating permits. Permits issued pursuant to a program meeting the June 28, 1989 criteria and approved into the SIP are considered federally enforceable for criteria pollutants. The synthetic minor mechanism may also be used to create federally enforceable limits for emissions of HAP if it is approved pursuant to section 112(l) of the Act.

In the March 31, 2000 **Federal Register** document, EPA also proposed approval of Antelope Valley's synthetic minor program for creating federally enforceable limits in District operating permits. In this document, EPA is promulgating approval of the synthetic minor program for Antelope Valley as a revision to the District's SIP and pursuant to section 112(l) of the Act.

##### II. Final Action and Implications

###### A. Analysis of State Submission

###### Comments

On March 31, 2000, EPA proposed interim approval of Antelope Valley's title V operating permits program as it was submitted on January 26, 1999. EPA received no adverse public comment on Antelope Valley's title V operating permits program, the proposed approval of Antelope Valley's synthetic minor program, or program for receiving section 112(1) standards as promulgated.

###### B. Final Action

###### 1. Title V Operating Permits Program

The EPA is promulgating interim approval of Antelope Valley's title V operating permits program as submitted on January 26, 1999. EPA did not receive any comments on the changes that were outlined as necessary for full approval. Therefore, the program deficiencies described in the proposed rulemaking, under II.B.1.(a), Proposed Interim Approval, and the legislative deficiency outlined under II.B.1.(b), Legislative Source Category-Limited Interim Approval Issue, must be corrected in order for the District to be granted full approval. The scope of the Antelope Valley's part 70 program approved in this notice applies to all part 70 sources (as defined in the approved program) within the District, except any sources of air pollution over which an Indian Tribe has jurisdiction. See, e.g., 59 FR 55813, 55815-55818

(Nov. 9, 1994). The term "Indian Tribe" is defined under the Act as "any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village, which is Federally recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians." See section 302(r) of the CAA; see also 59 FR 43956, 43962 (Aug. 25, 1994); 58 FR 54364 (Oct. 21, 1993).

This interim approval, which may not be renewed, extends until January 21, 2003. During this interim approval period, Antelope Valley is protected from sanctions, and EPA is not obligated to promulgate, administer and enforce a Federal operating permits program in this District. Permits issued under a program with interim approval have full standing with respect to part 70, and the 1-year time period for submittal of permit applications by subject sources begins upon the effective date of this interim approval, as does the 3-year time period for processing the initial permit applications. If Antelope Valley fails to submit a complete corrective program for full approval by July 21, 2002, EPA will start an 18-month clock for mandatory sanctions. If the District then fails to submit a corrective program that EPA finds complete before the expiration of that 18-month period, EPA will be required to apply one of the sanctions in section 179(b) of the Act, which will remain in effect until EPA determines that the District has corrected the deficiency by submitting a complete corrective program. Moreover, if the Administrator finds a lack of good faith on the part of Antelope Valley, both sanctions under section 179(b) will apply after the expiration of the 18-month period until the Administrator determines that the District has come into compliance. In any case, if, six months after application of the first sanction, Antelope Valley still has not submitted a corrective program that EPA has found complete, a second sanction will be required.

If EPA disapproves Antelope Valley's complete corrective program, EPA will be required to apply one of the section 179(b) sanctions on the date 18 months after the effective date of the disapproval, unless prior to that date the District has submitted a revised program and EPA has determined that it corrected the deficiencies that prompted the disapproval. Moreover, if the Administrator finds a lack of good faith on the part of Antelope Valley, both sanctions under section 179(b) shall apply after the expiration of the 18-month period until the Administrator determines that the District has come

into compliance. In all cases, if, six months after EPA applies the first sanction, Antelope Valley has not submitted a revised program that EPA has determined corrects the deficiencies, a second sanction is required.

In addition, discretionary sanctions may be applied where warranted any time after the expiration of an interim approval period if Antelope Valley has not submitted a timely and complete corrective program or EPA has disapproved its submitted corrective program. Moreover, if EPA has not granted full approval to the District's program by the expiration of this interim approval and that expiration occurs after November 15, 1995, EPA must promulgate, administer and enforce a federal permits program for Antelope Valley upon interim approval expiration.

## 2. Implementing Section 112(g)

In the March 31, 2000 proposed rulemaking for interim approval of Antelope Valley's title V operating permits program, EPA proposed approving the use of Antelope Valley's preconstruction review program. The proposal was intended as a mechanism to implement section 112(g) during the transition period between promulgation of EPA's section 112(g) rule and adoption by Antelope Valley of rule(s) specifically designed to implement section 112(g).

This final rulemaking clarifies the proposed rulemaking by noting that the section 112(g) rule, titled "Hazardous Air Pollutants: Regulations Governing Constructed or Reconstructed Major Sources," was actually promulgated by EPA on December 27, 1996. The rule specified that permitting authorities must adopt a program (rule) to implement section 112(g) with an effective date of June 29, 1998, and that a permitting authority must certify and notify EPA by this date that the program meet the requirements of 112(g). A subsequent EPA rulemaking on June 30, 1999 granted a 30-month transitional period to permitting authorities that were unable to initiate a program to implement section 112(g) after June 29, 1998. During this transitional period, which expires on December 29, 2000, a permitting authority may (1) Request EPA to issue section 112(g) determinations, or (2) make section 112(g) determinations and issue a notice of Maximum Available Control Technology (MACT) that will become final and legally enforceable after EPA concurs in writing with the permitting authority's determination. Failure by the permitting authority to adopt a program

to implement section 112(g) after the transitional period ends shall be construed as a failure by the permitting authority to adequately administer and enforce its title V operating permits program and shall constitute cause by EPA to apply the sanctions and remedies set forth in the Clean Air Act section 502(l).

On July 24, 1998, Antelope Valley submitted a letter to EPA indicating its intention to rely on an existing, but incomplete Toxic New Source Review rule and case-by-case MACT determinations in the transitional period to comply with the section 112(g) rule. Antelope Valley is in the process of developing and adopting a revised rule to implement section 112(g) by December 2000.

This final rulemaking hereby reiterates that failure by Antelope Valley to adopt a program (rule) to implement section 112(g) after December 29, 2000 shall be viewed as failure to adequately administer and enforce its title V operating permits program and could trigger sanctions and remedies as prescribed in section 502 of the Act. Since this section 112(g) implementation discussion merely clarifies the language in the proposed rulemaking on March 31, 2000 and provides additional information on the issue, it is not a substantive change from the proposed rulemaking.

## 3. Program for Delegation of Section 112 Standards as Promulgated

Requirements for part 70 program approval, specified in 40 CFR 70.4(b), encompass section 112(l)(5) requirements for approval of a program for delegation of section 112 standards as promulgated by EPA as they apply to part 70 sources. Section 112(l)(5) requires that the District's program contain adequate authorities, adequate resources for implementation, and an expeditious compliance schedule, which are also requirements under part 70. Therefore, EPA is also promulgating approval under section 112(l)(5) and 40 CFR 63.91 of Antelope Valley's program for receiving delegation of section 112 standards that are unchanged from the federal standards as promulgated. This program for delegations applies to both existing and future standards but is limited to sources covered by the part 70 program.

## 4. State Operating Permit Program for Synthetic Minors

EPA is promulgating full approval of Antelope Valley's synthetic minor operating permit program, adopted by the District on March 17, 1998, and submitted to EPA by the California Air

Resources Board, on behalf of Antelope Valley, on February 16, 1999. The synthetic minor operating permit program is being approved into Antelope Valley's SIP pursuant to part 52 and the five approval criteria set out in the June 28, 1989 Federal Register document (54 FR 27282). EPA is also promulgating full approval pursuant to section 112(l)(5) of the Act so that HAP emission limits in synthetic minor operating permits may be deemed federally enforceable.

### III. Administrative Requirements

#### A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866, entitled "Regulatory Planning and Review."

#### B. Executive Order 13045

Executive Order 13045, entitled Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to Executive Order 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

#### C. Executive Order 13084

Under Executive Order 13084, Consultation and Coordination with Indian Tribal Governments, EPA may not issue a regulation that is not required by statute, that significantly affects or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, EPA must provide to OMB, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature

of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

#### D. Executive Order 13132

Executive Order 13132, entitled Federalism (64 FR 43255, August 10, 1999) revokes and replaces Executive Orders 12612, Federalism and 12875, Enhancing the Intergovernmental Partnership. Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that 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." Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This rule will 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, because it merely acts on 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. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

#### E. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

This final rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply act on requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities.

Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co. v. U.S. EPA*, 427 U.S. 246, 255-66 (1976); 42 U.S.C. 7410(a)(2).

#### F. National Technology Transfer and Advancement Act

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires Federal agencies to evaluate existing technical standards when developing a new regulation. To comply with NTTAA, EPA must consider and use "voluntary consensus standards" (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical.

EPA believes that VCS are inapplicable to today's action because it does not require the public to perform activities conducive to the use of VCS.

#### G. Submission to Congress and the Comptroller General

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 rule is not a "major" rule as defined by 5 U.S.C. 804(2).

#### *H. Petitions for Judicial Review*

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 February 20, 2001. 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).)

#### *I. Unfunded Mandates*

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to private sector, of \$100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated costs of \$100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action acts on pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

#### **List of Subjects**

##### *40 CFR Part 52*

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Sulfur oxides, Volatile organic compounds.

##### *40 CFR Part 70*

Environmental protection, Administrative practice and procedure, Air pollution control, Hazardous substances, Intergovernmental relations, Operating permits, and Reporting and recordkeeping requirements.

Dated: August 21, 2000.

**Felicia Marcus,**

*Regional Administrator, Region 9.*

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)(262)(i)(E) to read as follows:

##### **§ 52.220 Identification of plan.**

\* \* \* \* \*

(c) \* \* \*

(262) \* \* \*

(i) \* \* \*

(E) Antelope Valley Air Pollution Control District.

(1) Rule 225, adopted March 17, 1998.

\* \* \* \* \*

#### **PART 70—[AMENDED]**

1. The authority citation for part 70 continues to read as follows:

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

2. Appendix A to part 70 is amended by adding paragraph (ii) to the entry for California to read as follows:

Appendix A to Part 70—Approval Status of State and Local Operating Permits Programs

\* \* \* \* \*

California

\* \* \* \* \*

(ii) Antelope Valley Air Pollution Control District (complete submittal received on January 26, 1999); interim approval effective on January 18, 2001;

interim approval expires January 21, 2003.

\* \* \* \* \*

[FR Doc. 00-32031 Filed 12-18-00; 8:45 am]

**BILLING CODE 6560-50-P**

#### **FEDERAL COMMUNICATIONS COMMISSION**

##### **47 CFR Part 73**

[MM Docket No. 92-3, RM-7874, RM-7958]

#### **Radio Broadcasting Services; Prineville and Sisters, OR**

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** This document dismisses a Petition for Reconsideration filed jointly by multiple licensees in Oregon directed to the *Report and Order* in this proceeding which upgraded Station KPXA, Sisters, Oregon, to specify operation on Channel 281C1. See 57 FR 47006, October 14, 1992.

**FOR FURTHER INFORMATION CONTACT:** Robert Hayne, Mass Media Bureau (202) 418-2177.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's *Memorandum Opinion and Order* in MM Docket No. 92-3, adopted December 6, 2000, and released December 8, 2000. The full text of this decision is available for inspection and copying during normal business hours in the FCC Reference Information Center at Portals II, CY-A257, 445 12th Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857-3805, 1231 M Street, NW, Washington, DC 20036.

Federal Communications Commission.

**John A. Karousos,**

*Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.*

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#### **FEDERAL COMMUNICATIONS COMMISSION**

##### **47 CFR Part 73**

[DA 002767; MM Docket No. 00-150; RM-9944]

#### **Radio Broadcasting Services; Lewistown, MT**

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.