

Subpart XX—West Virginia

2. Section 52.2520 is amended by adding paragraph (c)(50) to read as follows:

§ 52.2520 Identification of plan.

* * * * *

(c) * * *

(50) Revision to West Virginia Rule 45CSR9 submitted on September 21, 2000, by the West Virginia Division of Environmental Protection:

(i) Incorporation by reference.

(A) Letter of September 21, 2000, from the West Virginia Division of Environmental Protection transmitting Regulation 45CSR9—Ambient Air Quality Standard for Carbon Monoxide and Ozone.

(B) Revised Regulation 45CSR9, effective on June 1, 2000.

(ii) Additional Material—Remainder of the State submittal pertaining to the revisions listed in paragraph (c)(50)(i) of this section.

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ENVIRONMENTAL PROTECTION AGENCY**40 CFR Part 52**

[CA 207–0252; FRL–7380–8]

Revisions to the California State Implementation Plan, Antelope Valley Air Pollution Control District and South Coast Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is finalizing disapproval of revisions to the Antelope Valley and South Coast portions of the California State Implementation Plan (SIP). The revisions would provide local agencies broad discretion to suspend rules, regulations or orders during state or federally declared state of emergencies. EPA proposed disapproval of these revisions in the **Federal Register** on March 31, 2000. We are finalizing disapproving under authority of the Clean Air Act as amended in 1990 (CAA or the Act).

EFFECTIVE DATE: This rule is effective on November 6, 2002.

ADDRESSES: You can inspect copies of the administrative record for this action at EPA's Region IX office during normal business hours. You can inspect copies of the submitted rule revisions at the following locations:

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 L Street, Sacramento, CA 95812
Antelope Valley Air Pollution Control District, 315 W. Pondera Street, Lancaster, California 93534
South Coast Air Quality Management District, 21865 E. Cooley Drive, Diamond Bar, CA 91765

FOR FURTHER INFORMATION CONTACT: Cynthia G. Allen, Rulemaking Office (AIR–4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105, Telephone (415) 947–4120.

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

I. Proposed Action

On March 31, 2000 (65 FR 17229), EPA proposed to disapprove the following rules that were submitted for inclusion into the California SIP.

Local agency	Rule No.	Rule title	Adopted	Submitted
AVAPCD	118	Emergencies	8/19/97	3/10/98
SCAQMD	118	Emergencies	12/7/95	5/18/98

We proposed to disapprove these rules because we determined that they did not comply 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 one comment regarding SCAQMD Rule 118, submitted via fax by Barbara Baird of SCAQMD. A signed version of this comment was subsequently submitted dated May 3, 2000, which we are treating as the official comment.

The commenter asserts that EPA must approve Rule 118 because the rule will not interfere with attainment of the National Ambient Air Quality Standards (NAAQS), reasonable further progress (RFP) towards attainment of the NAAQS or any other requirement of the Act. EPA disagrees with this assertion as follows.

1. A state of emergency could potentially last for weeks or even months. During this time (and, in theory, in perpetuity under 118(d)(2)),

Rule 118 would allow suspension of any and all requirements for air pollution sources regardless of the effects on human health or the environment. We do not believe that such a broad grant of immunity is in the public interest or is consistent with the CAA. For example, the CAA prohibits SCAQMD and EPA from relaxing SIP requirements or taking actions that would interfere with attainment, RFP, or any other requirements of the Act.¹ Because Rule 118 is written very broadly, it does not ensure compliance with these CAA provisions.

2. The impacts of suspending requirements under Rule 118 could last far beyond the emergency period. For example, an air pollution source could be constructed or modified during a state of emergency without the pollution controls or public review that are normally required. After the emergency period, such a source could continue to emit air pollution at levels that might interfere with attainment, RFP, permit requirements in CAA section 173 or other requirements of the Act, and even at levels directly harmful to human

health and the environment. Under Rule 118, however, the source might not be held responsible for those consequences because the permitting rules were suspended when it was constructed or modified. Because such a rule is inconsistent with the CAA and contrary to the public interest, it should not be approved into the SIP.

3. The CAA requires SIPs to contain enforceable emission limits and other control measures.² Rule 118 would undermine this requirement by allowing SCAQMD broad discretion to suspend enforceable requirements in the SIP without consultation or approval from EPA or the public.

4. The CAA already allows states to suspend SIP requirements during certain emergencies, but is more focused than Rule 118 and provides for federal oversight.³ We believe it provides the flexibility needed during an emergency while ensuring adequate protection of public health.

The commenter also states that some emergency situations could justify violation of SIP rules. If such situations

² See 7410(a)(2)(A).

³ See 7410(f) and (g).

¹ See e.g., 42 U.S.C. 7410(i), (1).

occur, EPA believes that enforcement discretion, which can consider various factors such as applicable CAA requirements and impacts on human health and the environment, is a more appropriate mechanism for addressing them than the broad discretion to grant immunity under Rule 118.

III. EPA Action

No comments were submitted that change our assessment that the submitted rules do not comply with relevant CAA requirements. Therefore, as authorized in section 110(k)(3) of the Act, EPA is disapproving these rules for inclusion into the California SIP. The effect of this action is that the federally enforceable California SIP remains unchanged. The current SIP does not contain any version of AVAPCD and SCAQMD Rule 118, Emergencies.

IV. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order (E.O.) 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 E.O. 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 E.O. 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

C. 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. E.O. 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 E.O. 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 E.O. 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.

D. Executive Order 13175

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 6, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." "Policies that have tribal implications" is defined in the Executive Order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes."

This final rule does not have tribal implications. It will not have substantial direct effects on tribal governments, 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 in Executive Order 13175.

Thus, Executive Order 13175 does not apply to this rule.

E. Executive Order 13211

This rule is not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355 (May 22, 2001)) because it is not a significant regulatory action under Executive Order 12866.

F. 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.

EPA's disapproval of the state request under section 110 and subchapter I, part D of the Clean Air Act does not affect any existing requirements applicable to small entities. Any pre-existing federal requirements remain in place after this disapproval. Federal disapproval of the state submittal does not affect state enforceability. Moreover, EPA's disapproval of the submittal does not impose any new Federal requirements. Therefore, 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).

G. 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.

H. 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.

I. 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).

J. 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 December 6, 2002. 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).)

Lists of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: August 29, 2002.

Laura Yoshi,

Deputy 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 52.242 is amended by adding paragraphs (a)(1)(ii) and (a)(2) to read as follows:

§ 52.242 Disapproved rules and regulations.

(a) * * *

(1) * * *

(ii) Rule 118, Emergencies, submitted on May 21, 1998.

(2) Antelope Valley Air Pollution Control District.

(i) Rule 118, Emergencies, submitted on March 10, 1998.

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[FR Doc. 02-25282 Filed 10-4-02; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 272-0369a; FRL-7387-1]

Revisions to the California State Implementation Plan, Bay Area Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve revisions to the Bay Area Air Quality Management District (BAAQMD) portion of the California State Implementation Plan (SIP). These revisions concern Oxides of Nitrogen (NO_x) and Carbon Monoxide (CO)

emissions from boilers, steam generators, and process heaters in petroleum refineries. In accordance with the Clean Air Act as amended in 1990 (CAA or the Act), we are approving a local rule that regulates these emission sources.

DATES: This rule is effective on December 6, 2002, without further notice, unless EPA receives adverse comments by November 6, 2002. If we receive such comments, we will publish a timely withdrawal in the **Federal Register** to notify the public that this rule will not take effect.

ADDRESSES: Mail comments to Andy Steckel, Rulemaking Office Chief (AIR-4), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105-3901.

You can inspect copies of the submitted SIP revisions and EPA's technical support document (TSD) at our Region IX office during normal business hours. You may also see copies of the submitted SIP revisions at the following locations:

Air and Radiation Docket and Information Center, U.S.

Environmental Protection Agency, Room B-102, 1301 Constitution Avenue, NW., (Mail Code 6102T), Washington, DC 20460

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 1001 "I" Street, Sacramento, CA 95814

Bay Area Air Quality Management District, 939 Ellis Street, San Francisco, CA 94109

A copy of the rule may also be available via the Internet at <http://www.arb.ca.gov/drdb/drdbtxt.htm>. Please be advised that this is not an EPA website and may not contain the same version of the rule that was submitted to EPA.

FOR FURTHER INFORMATION CONTACT: Charnjit Bhullar, EPA Region IX, (415) 972-3960.

SUPPLEMENTARY INFORMATION: Throughout this document, "we," "us" and "our" refer to EPA.

Table of Contents

- I. The State's Submittal
 - A. What Rule Did the State Submit?
 - B. Are There Other Versions of This Rule?
 - C. What Is the Purpose of the Submitted Rule Revisions?
- II. EPA's Evaluation and Action.
 - A. How is EPA Evaluating this Rule?
 - B. Does This Rule Meet the Evaluation Criteria?
 - C. Public Comment and Final Action.
- III. Background Information
 - A. Why Was This Rule Submitted?
- IV. Administrative Requirements