

the most recent Index published prior to December 1, 2007. On each December 1 thereafter the Copyright Royalty Judges shall publish a notice of the change in the cost of living during the period from the most recent index published prior to the previous notice, to the most recent Index published prior to December 1, of that year.

(b) On the same date of the notices published pursuant to paragraph (a) of this section, the Copyright Royalty Judges shall publish in the **Federal Register** a revised schedule of rates for § 381.5 which shall adjust those royalty amounts established in dollar amounts according to the change in the cost of living determined as provided in paragraph (a) of this section. Such royalty rates shall be fixed at the nearest dollar.

(c) The adjusted schedule for rates for § 381.5 shall become effective thirty days after publication in the **Federal Register**.

#### **§ 381.11 Notice of restrictions on use of reproductions of transmission programs.**

Any public broadcasting entity which, pursuant to 17 U.S.C. 118, supplies a reproduction of a transmission program to governmental bodies or nonprofit institutions shall include with each copy of the reproduction a warning notice stating in substance that the reproductions may be used for a period of not more than seven days from the specified date of transmission, that the reproductions must be destroyed by the user before or at the end of such period, and that a failure to fully comply with these terms shall subject the body or institution to the remedies for infringement of copyright.

Dated: April 10, 2007.

**James Scott Sledge,**

*Chief Copyright Royalty Judge.*

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## **ENVIRONMENTAL PROTECTION AGENCY**

### **40 CFR Part 52**

[EPA-R09-OAR-2007-0165; FRL-8300-3]

#### **Approval and Promulgation of Implementation Plans; Revisions to the Nevada State Implementation Plan; Stationary Source Permits**

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

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing, under the Clean Air Act, approval of certain

revisions to the applicable state implementation plan for the State of Nevada and full disapproval of certain other revisions. These revisions involve State rules governing applications for, and issuance of, permits for stationary sources, but not including review and permitting of major sources and major modifications under parts C and D of title I of the Clean Air Act. These revisions involve submittal of certain new or amended State rules and requests by the State for rescission of certain existing rules from the state implementation plan. The rescission requests for which we propose approval are contingent upon receipt of public notice and hearing documentation from the State. EPA is proposing this action under the Clean Air Act obligation to take action on State submittals of revisions to state implementation plans. The intended effect is to update the rules governing permitting in the applicable state implementation plan and to rescind unnecessary provisions from the applicable plan. EPA is taking comments on this proposal and plans to follow with a final action.

**DATES:** Any comments must arrive by June 18, 2007.

**ADDRESSES:** Submit comments, identified by docket number EPA-R09-OAR-2007-0165, by one of the following methods:

1. Federal eRulemaking Portal: [www.regulations.gov](http://www.regulations.gov). Follow the on-line instructions.
2. E-mail: [R9airpermits@epa.gov](mailto:R9airpermits@epa.gov).
3. Mail or deliver: Gerardo Rios (Air-3), U.S. Environmental Protection Agency Region IX, 75 Hawthorne Street, San Francisco, CA 94105-3901.

**Instructions:** All comments will be included in the public docket without change and may be made available online at <http://www.regulations.gov>, including any personal information provided, unless the comment includes Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Information that you consider CBI or otherwise protected should be clearly identified as such and should not be submitted through [www.regulations.gov](http://www.regulations.gov) or e-mail. [www.regulations.gov](http://www.regulations.gov) is an "anonymous access" system, and EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send e-mail directly to EPA, your e-mail address will be automatically captured and included as part of the public comment. 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.

**Docket:** The index to the docket for this action is available electronically at [www.regulations.gov](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:**

Laura Yannayon, EPA Region IX, (415) 972-3534, [yannayon.laura@epa.gov](mailto:yannayon.laura@epa.gov).

#### **SUPPLEMENTARY INFORMATION:**

Throughout this document, the terms "we," "us" and "our" refer to EPA.

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#### **I. The State's Submittal**

##### **A. Which rules did the state submit or rescind?**

On February 16, 2005, the State of Nevada's Department of Conservation and Natural Resources, Division of Environmental Protection (NDEP) submitted a large revision to the applicable State Implementation Plan (SIP). The February 16, 2005 SIP revision submittal includes statutory provisions, new or amended rules as well as requests for rescission of certain statutory provisions and rules approved by EPA into the applicable SIP. The rules and rescission requests submitted by NDEP on February 16, 2005 relate to definitions, administrative requirements, prohibitory rules, and permitting-related requirements and procedures. The February 16, 2005 SIP submittal also includes documentation of public notice and hearing for all of the new or amended rules through the hearing on November 30, 2004 held by the Nevada State Environmental Commission.

On January 12, 2006, NDEP re-submitted most of the earlier submittal as modified to reflect new or amended rules adopted by the State Environmental Commission on October

4, 2005. The January 12, 2006 SIP revision submittal supersedes the regulatory portion of the earlier SIP revision submittal but is not a complete re-submittal of the earlier submittal in that it did not include the documentation of public notice and hearing previously submitted. The January 12, 2006 SIP revision submittal does include such documentation for amendments adopted by the commission on October 4, 2005.

On December 8, 2006, NDEP submitted a SIP revision supplementing and superseding certain rules submitted on January 12, 2006 to reflect amendments adopted by the State Environmental Commission on September 6, 2006. The December 8, 2006 SIP revision submittal contains the amended rules and related documentation of public notice and hearing. Our consideration of the rules submitted on January 12, 2006 and December 8, 2006 is made herein in light of the public participation documentation contained in those two submittals as well as the February 16, 2005 submittal. With some specific exceptions, none of the three submittals contains documentation of public notice and hearing for the State's rescissions.

The primary purpose of these SIP revision submittals is to clarify and harmonize the provisions approved by EPA under section 110 of the Clean Air Act ("Act" or CAA) with the current provisions adopted by the State. Because these submittals incorporate so many changes from the 1970s and 1980s vintage SIP regulations, EPA has decided to review and act on them in a series of separate actions. The first such action, related to various definitions, sulfur emission rules, and restrictions on open burning and use of incinerators, was proposed in the **Federal Register** on September 13, 2005 (70 FR 53975) and finalized on March 27, 2006 (71 FR 15040). The second such action, related to statutory authority, was proposed on June 9, 2006 (71 FR 33413) and finalized on August 31, 2006 (71 FR 51766). A third action, related to most of the State's rescissions, was proposed on August 28, 2006 (71 FR 50875); EPA finalized most of the proposed rescissions on January 3, 2007 (72 FR 11). A fourth action, related to monitoring and VOC rules, was proposed on August 31, 2006 (71 FR 51793) and finalized on December 11, 2006 (71 FR 71486).

In today's action, we are taking another step in the process of acting on the State's January 12, 2006, and December 8, 2006 SIP revision submittals by proposing action on the State's submittal of rules governing

applications for, and issuance of, permits for stationary sources.<sup>1</sup> We are also proposing action on the State's requests for rescission of certain permit-related rules in the existing SIP. The remaining portions of the submittals will be acted on in future **Federal Register** actions.

#### *B. What is the regulatory history of the Nevada SIP?*

Pursuant to the Clean Air Amendments of 1970, the Governor of Nevada submitted the original Nevada SIP to EPA in January 1972. EPA approved certain portions of the original SIP and disapproved other portions under CAA section 110(a). See 37 FR 10842 (May 31, 1972). For some of the disapproved portions of the original SIP, EPA promulgated substitute provisions under CAA section 110(c).<sup>2</sup> This original SIP included various rules, codified as articles within the Nevada Air Quality Regulations (NAQR), and various statutory provisions codified in chapter 445 of the Nevada Revised Statutes (NRS). In the early 1980's, Nevada reorganized and re-codified its air quality rules into sections within chapter 445 of the Nevada Administrative Code (NAC). Today, Nevada codifies its air quality regulations in chapter 445B of the NAC and codifies air quality statutes in chapter 445B ("Air Pollution") of title 40 ("Public Health and Safety") of the NRS.

Nevada adopted and submitted many revisions to the original set of regulations and statutes in the SIP, some of which EPA approved on February 6, 1975 at 40 FR 5508; on March 26, 1975 at 40 FR 13306; on January 9, 1978 at 43 FR 1341; on January 24, 1978 at 43 FR 3278; on August 21, 1978 at 43 FR

<sup>1</sup> We note that the stationary source permitting rules that are the subject of this proposal are not intended to satisfy the requirements for pre-construction review and permitting of major sources or major modifications under part C ("Prevention of significant deterioration of air quality") or part D ("Plan requirements for nonattainment areas") of title I of the Clean Air Act. Of the 100+ permit-related rules or statutes that were submitted by NDEP for approval or for rescission, we are proposing action today on all but two. We are deferring action on the State's requests for rescission of rule 25 of general order number 3 of the Nevada Public Service Commission and Nevada Revised Statutes (NRS) 704.820 to 704.900—Construction of utility facilities: utility environmental protection act. Rule 25 of general order number 3 and NRS 704.820–900 relate to new source review under part D, and as such, we will take action on the State's related rescissions after the State submits, and we take action on, a revised "nonattainment" new source review program under part D of title I of the Clean Air Act.

<sup>2</sup> Provisions that EPA promulgates under CAA section 110(c) in substitution of disapproved State provisions are referred to as Federal Implementation Plans (FIPs).

36932; on July 10, 1980 at 45 FR 46384; on April 14, 1981 at 46 FR 21758; on August 27, 1981 at 46 FR 43141; on March 8, 1982 at 47 FR 9833; on April 13, 1982 at 47 FR 15790; on June 18, 1982 at 47 FR 26386; on June 23, 1982 at 47 FR 27070; on March 27, 1984 at 49 FR 11626. Since 1984, EPA has approved very few revisions to Nevada's applicable SIP despite numerous changes that have been adopted by the State Environmental Commission. As a result, the version of the rules enforceable by NDEP is often quite different from the SIP version enforceable by EPA.

#### *C. What is the purpose of this proposed rule?*

The purpose of this proposed rule is to present our evaluation under the Clean Air Act and EPA's regulations of the new and amended rules in NDEP's January 12, 2006 and December 8, 2006 SIP revision submittals. The submitted rules relate to application for, and issuance of, permits for stationary sources and with respect to NDEP's requests for rescission of certain permitting-related rules from the existing SIP. We provide our reasoning in general terms below but provide a more detailed analysis in the technical support document (TSD) that has been prepared for this proposed rulemaking.

## **II. EPA's Evaluation and Action**

### *A. How is EPA evaluating the rules?*

Under CAA section 110(k)(2), EPA is obligated to take action on submittals by States of SIPs and SIP revisions. CAA section 110(k)(3) authorizes EPA to approve or disapprove, in whole or in separable part, such submittals.

EPA has reviewed the rules submitted on January 12, 2006 and December 8, 2006 by NDEP governing application for, and issuance of, permits for stationary sources and the permitting-related rules (in the existing SIP) that the State has requested rescission for compliance with the CAA requirements for SIPs in general set forth in CAA section 110(a)(2) and for stationary source permitting programs in particular in 40 CFR part 51, sections 51.160 through 51.164, and also for compliance with CAA requirements for SIP revisions in CAA section 110(l) and 193.<sup>3</sup> As described below, EPA is

<sup>3</sup> CAA section 110(l) requires SIP revisions to be subject to reasonable notice and public hearing prior to adoption and submittal by States to EPA and prohibits EPA from approving any SIP revision that would interfere with any applicable requirement concerning attainment and reasonable further progress, or any other applicable requirement of the CAA. CAA section 193 provides

proposing approval of some, but full disapproval of most, of the submitted rules and rescissions.

*B. Do the rules meet the evaluation criteria?*

We are proposing action on the submitted rules listed in tables 1 and 2

and on the requests for rescission of existing SIP rules listed in table 3. Table 1 lists the submitted rules that, while permit-related, are separable from the rest of the permit-related rules and thus qualify for action independent of our action on the bulk of the permit-related rules. Table 2 lists the submitted set of

rules that comprise the bulk of NDEP's stationary source permitting program (excluding review under parts C and D of the title I of the CAA). Table 3 lists the permit-related rules (in the existing SIP) for which NDEP has requested rescission and for which we are proposing action.

TABLE 1.—SUBMITTED RULES THAT ARE PROPOSED FOR ACTION INDEPENDENT OF THE REST OF THE PERMIT-RELATED RULES

Submitted rule	Title	Adoption date	Submittal date	Proposed action
NAC 445B.021 .....	"Area source" defined .....	11/03/93	01/12/06	Disapproval.
NAC 445B.028 .....	"Best available control technology" defined .....	03/26/96	01/12/06	Disapproval.
NAC 445B.178 .....	"Source reduction" defined .....	03/03/94	01/12/06	Disapproval.
NAC 445B.196 .....	"Toxic regulated air pollutant" defined .....	10/03/95	01/12/06	Disapproval.
NAC 445B.22083 .....	Construction, major modification or relocation of plants to generate electricity using steam produced by burning of fossil fuels.	10/04/05	01/12/06	Approval.
NAC 445B.250 .....	Notification of planned construction or reconstruction .....	10/04/05	01/12/06	Approval.
NAC 445B.252 .....	Testing and sampling .....	09/18/03	01/12/06	Approval.

The separable, submitted rules are listed in table 1 along with the applicable adoption and submittal dates and our proposed actions. As shown in table 1, we are proposing approval of the three specific submitted rules and disapproval of four specific submitted rules. We are proposing approval of NAC 445B.22083, 445B.230, and 445B.252 because they strengthen the SIP and otherwise meet all applicable requirements. We are proposing disapproval of NAC 445B.021, 445B.178, and 445B.196 because they define terms that are not used in any of

the other submitted rules or in any of the rules of the existing SIP and thus are unnecessary. We are also proposing to disapprove NAC 445B.028 ("Best Available Control Technology" defined) because it is not used in any of the other submitted rules and is used only in an existing SIP rule for which we are proposing to grant NDEP's rescission request.<sup>4</sup> The TSD provides more details concerning our proposal and rationale with respect to each of the rules listed in table 1.

Table 2 lists the submitted rules governing application for, and issuance

of, permits for stationary sources under NDEP jurisdiction in the State of Nevada, excluding rules intended to provide for review and permitting of major sources and major modifications under parts C and D of title I of the CAA. In our review of these submitted rules, we have identified a number of deficiencies that lead us to conclude that the submitted rules do not comply with the requirements of section 110 and 40 CFR part 51, sections 51.160 through 51.164 and that form the basis for our proposed disapproval.

TABLE 2.—SUBMITTED RULES GOVERNING APPLICATION FOR, AND ISSUANCE OF, PERMITS FOR STATIONARY SOURCES UNDER NDEP JURISDICTION

Submitted rule	Title	Adoption date	Submittal date
NAC 445B.003 .....	"Adjacent properties" defined .....	11/03/93	01/12/06
NAC 445B.0035 .....	"Administrative revision to a Class I operating permit" defined .....	08/19/04	01/12/06
NAC 445B.007 .....	"Affected state" defined .....	11/03/93	01/12/06
NAC 445B.013 .....	"Allowable emissions" defined .....	10/04/05	01/12/06
NAC 445B.014 .....	"Alteration" defined .....	10/03/95	01/12/06
NAC 445B.016 .....	"Alternative operating scenarios" defined .....	10/03/95	01/12/06
NAC 445B.019 .....	"Applicable requirements" defined .....	01/22/98	01/12/06
NAC 445B.035 .....	"Class I-B application" defined .....	10/03/95	01/12/06
NAC 445B.036 .....	"Class I source" defined .....	08/19/04	01/12/06
NAC 445B.037 .....	"Class II source" defined .....	09/18/01	01/12/06
NAC 445B.038 .....	"Class III source" defined .....	09/18/01	01/12/06
NAC 445B.044 .....	"Construction" defined .....	10/04/05	01/12/06
NAC 445B.046 .....	"Contiguous property" defined .....	09/16/76	01/12/06
Sec. 2 of R096-05 .....	"Dispersion technique" defined .....	10/04/05	01/12/06
Sec. 3 of R096-05 .....	"Excessive concentration" defined .....	10/04/05	01/12/06
NAC 445B.066 .....	"Existing stationary source" defined .....	10/03/95	01/12/06
NAC 445B.068 .....	"Facility" defined .....	10/03/95	01/12/06
NAC 445B.069 .....	"Federally enforceable" defined .....	11/03/93	01/12/06
NAC 445B.070 .....	"Federally enforceable emissions cap" defined .....	11/03/93	01/12/06

that no control requirement in effect in any area which is a nonattainment area for any air pollutant may be modified after November 15, 1990, in any manner unless the modification insures equivalent or greater emission reductions of such air pollutant.

<sup>4</sup> "Best Available Control Technology" (BACT) is the control technology requirement under EPA's Prevention of Significant Deterioration (PSD) regulations for pre-construction review and permitting of new major sources and major

modifications in attainment or unclassifiable areas, and we would expect this definition to be re-submitted by NDEP when they submit their rules implementing PSD for approval by EPA as a SIP revision.

TABLE 2.—SUBMITTED RULES GOVERNING APPLICATION FOR, AND ISSUANCE OF, PERMITS FOR STATIONARY SOURCES UNDER NDEP JURISDICTION—Continued

Submitted rule	Title	Adoption date	Submittal date
NAC 445B.082	"General permit" defined	10/03/95	01/12/06
Sec. 4 of R096-05	"Good engineering practice stack height" defined	10/04/05	01/12/06
NAC 445B.087	"Increment" defined	11/03/93	01/12/06
NAC 445B.093	"Major modification" defined	08/19/04	01/12/06
NAC 445B.094	"Major source" defined	05/10/01	01/12/06
NAC 445B.0945	"Major stationary source" defined	08/19/04	01/12/06
NAC 445B.099	"Modification" defined	10/03/95	01/12/06
NAC 445B.104	"Motor vehicle" defined	05/10/01	01/12/06
Sec. 5 of R096-05	"Nearby" defined	10/04/05	01/12/06
NAC 445B.108	"New stationary source" defined	10/03/95	01/12/06
NAC 445B.117	"Offset" defined	10/03/95	01/12/06
NAC 445B.123	"Operating permit" defined	11/19/02	01/12/06
NAC 445B.124	"Operating permit to construct" defined	11/19/02	01/12/06
NAC 445B.1345	"Plantwide applicability limitation" defined	08/19/04	01/12/06
NAC 445B.138	"Potential to emit" defined	03/26/98	01/12/06
NAC 445B.142	"Prevention of significant deterioration of air quality" defined	11/03/93	01/12/06
NAC 445B.147	"Program" defined	11/03/93	01/12/06
NAC 445B.154	"Renewal of an operating permit" defined	11/03/93	01/12/06
NAC 445B.156	"Responsible official" defined	11/03/93	01/12/06
NAC 445B.157	"Revision of an operating permit" defined	08/19/04	01/12/06
NAC 445B.179	"Special mobile equipment" defined	05/10/01	01/12/06
NAC 445B.187	"Stationary source" defined	05/10/01	01/12/06
NAC 445B.194	"Temporary source" defined	05/10/01	01/12/06
NAC 445B.287	Operating permits: General requirements; exception; restriction on transfers.	08/19/04	01/12/06
NAC 445B.288	Operating permits: Exemptions from requirements; insignificant activities.	05/10/01	01/12/06
NAC 445B.295	Application: General requirements	09/06/06	12/08/06
NAC 445B.297	Application: Submission of application and supplementary or corrected information.	08/19/04	01/12/06
NAC 445B.298	Application: Official date of submittal	08/19/04	01/12/06
NAC 445B.305	Operating permits: Imposition of more stringent standards for emissions	10/03/95	01/12/06
NAC 445B.308	Prerequisites and conditions for issuance of operating permits: Environmental evaluation; compliance with control strategy; exemption from environmental evaluation.	09/06/06	12/08/06
NAC 445B.310	Environmental evaluation: Applicable sources	09/06/06	12/08/06
NAC 445B.311	Environmental evaluation: Required information	09/06/06	12/08/06
NAC 445B.313	Method for determining heat input: Class I sources	11/19/02	01/12/06
NAC 445B.3135	Method for determining heat input: Class II sources	11/19/02	01/12/06
NAC 445B.314	Method for determining heat input: Class III sources	11/19/02	01/12/06
NAC 445B.315	Contents of operating permits: Exception for operating permits to construct; required conditions.	11/19/02	01/12/06
NAC 445B.318	Operating permits: Separate permit required for each source; form of application; issuance or denial of permit; posting of permit.	09/06/06	12/08/06
NAC 445B.319	Operating permits: Administrative amendment	08/19/04	01/12/06
NAC 445B.325	Operating permits: Termination, reopening and revision, revision, or revocation and reissuance.	01/22/98	01/12/06
NAC 445B.326	Operating permits: Assertion of emergency as affirmative defense to action for noncompliance.	11/03/93	01/12/06
NAC 445B.331	Request for change of location of emission unit	09/06/06	12/08/06
NAC 445B.3361	General requirements	09/06/06	12/08/06
NAC 445B.3363	Operating permit to construct: Application	09/06/06	12/08/06
NAC 445B.33637	Operating permit to construct for approval of plantwide applicability limitation: Application.	08/19/04	01/12/06
NAC 445B.3364	Operating permit to construct: Review of application and determination of completeness by director; notice.	09/06/06	12/08/06
NAC 445B.3365	Operating permit to construct: Required conditions	09/06/06	12/08/06
NAC 445B.33656	Operating permit to construct for approval of plantwide applicability limitation: Required conditions and information.	09/06/06	12/08/06
NAC 445B.3366	Operating permit to construct: Expiration; extension	09/06/06	12/08/06
NAC 445B.3368	Application: Additional requirements; exception	08/19/04	01/12/06
NAC 445B.3375	Class I-B application: Filing requirement	09/06/06	12/08/06
NAC 445B.3395	Review of application and determination of completeness by director; notice; expiration of permit.	09/06/06	12/08/06
NAC 445B.340	Prerequisites to issuance, revision or renewal of permit	01/22/98	01/12/06
NAC 445B.342	Revision of permit: Exception when making certain changes; notification of changes.	09/06/06	12/08/06
NAC 445B.3425	Minor revision of permit	08/19/04	01/12/06
NAC 445B.344	Significant revision of permit	11/19/02	01/12/06
NAC 445B.3441	Administrative revision of permit to incorporate conditions of certain permits to construct.	09/06/06	12/08/06

TABLE 2.—SUBMITTED RULES GOVERNING APPLICATION FOR, AND ISSUANCE OF, PERMITS FOR STATIONARY SOURCES UNDER NDEP JURISDICTION—Continued

Submitted rule	Title	Adoption date	Submittal date
NAC 445B.3443 .....	Renewal of permit .....	02/26/04	01/12/06
NAC 445B.3453 .....	Application: General requirements .....	11/19/02	01/12/06
NAC 445B.3457 .....	Application: Determination of completeness by director .....	09/06/06	12/08/06
NAC 445B.346 .....	Required contents of permit .....	10/03/95	01/12/06
NAC 445B.3465 .....	Application for revision .....	10/04/05	01/12/06
NAC 445B.3473 .....	Renewal of permit .....	02/26/04	01/12/06
NAC 445B.3477 .....	Class II general permit .....	11/19/02	01/12/06
NAC 445B.3485 .....	Application: General requirements .....	09/06/06	12/08/06
NAC 445B.3487 .....	Application: Determination of completeness by director .....	09/06/06	12/08/06
NAC 445B.3489 .....	Required content of permits .....	09/06/06	12/08/06
NAC 445B.3493 .....	Application for revision .....	09/18/01	01/12/06
NAC 445B.3497 .....	Renewal of permits .....	02/26/04	01/12/06

First, we find that certain submitted rules use undefined terms, contain incorrect citations, rely on rules or statutory provisions that have not been submitted for approval as part of the SIP, or multiple versions of the same rule were included in the same submittal, and thus are unnecessarily ambiguous. Specifically, NAC 445B.3366 relies on the term, “commence,” that is not defined in the SIP for contexts outside of CAA section 111. NAC 445B.069 includes incorrect citations to EPA regulations. The following submitted rules rely on rules or statutory provisions that have not been submitted: NAC 445B.287 (citing subsection (2)), NAC 445B.104 (citing NRS 485.050), NAC 445B.179 (citing NRS 482.123), and NAC 445B.311 (citing 445B.083). More than one version of the following rules was submitted on December 8, 2006: NAC 445B.308, NAC 445B.3363, and NAC 445B.3364. NDEP must define the relevant term, correct the citations, submit the relevant rules and statutory provisions for approval into the SIP, and submit a single version of those rules for which multiple versions were submitted.

Second, the definition of “potential to emit” in submitted rule NAC 445B.138 must be revised to require effective limits and to include criteria by which a limit is judged to be practicably enforceable by NDEP.

Third, NDEP’s stationary source program may not be as inclusive as required under the CAA depending upon whether the exclusion of “special mobile equipment” from the definition of “stationary source” in submitted rule NAC 445B.187 extends to engines and vehicles that are not considered to be “nonroad.” Absent a satisfactory explanation by NDEP, the definition must be amended accordingly.

Fourth, the method for determining heat input for class I sources in

submitted rule NAC 445B.313 must be amended to require combustion sources to make applicability determinations based on the maximum heat input.

Fifth, NAC 445B.331 (“Request for change of location of emission unit”) must be amended to limit its applicability to location changes within the confines of the existing stationary source at which the emission unit is originally permitted. Relocation of an emission unit to a site outside of the existing source at which it is originally permitted should trigger new source review.

Sixth, the submitted rule NAC 445B.3477 (“Class II general permit”) does not identify the requirements for general permits, the public participation requirements for issuing such permits, nor the criteria by which stationary sources may qualify for such a permit. To be approved, the rule must be amended accordingly.

Seventh, NAC 445B.311 allows for NDEP to authorize use of a modification or substitution of a model specified in appendix W of 40 CFR part 51 without EPA approval and must be amended accordingly to comply with 40 CFR 51.160(f).

Eighth, to comply with 40 CFR 51.161 (“Public availability of information”), the relevant submitted rules must be amended to provide for adequate public review of new or modified class II sources. Under submitted rule NAC 445B.3457 (“Application: Determination of completeness by Director”), NDEP may initiate public notice and comment if, after review of an application for a class II permit, NDEP determines that the change to the stationary source results in a significant change in air quality at any location where the public is present on a regular basis. Such a provision does not provide well-defined objective criteria for determining when public notice is required to meet the requirements of 40 CFR 51.161.

With respect to issue of public review of proposed permits, the submitted provisions for class I sources are generally acceptable with one exception; NAC 445B.3364 must be amended to specifically require that copies of NDEP’s review and preliminary intent to issue or deny a class I operating permit be sent to Washoe County Health District for those sources proposed to be constructed or modified in Washoe County and to the Clark County Department of Air Quality and Environmental Management in Clark County. Also, the rules must be amended to provide for public participation for sources of lead with PTE’s greater than 5 tons per year. See 40 CFR 51.100(k)(2) and 40 CFR 51.161(d).

Ninth, while the affirmative defense provision in NAC 445B.326 is acceptable as applied to permit conditions, it is not approvable under CAA section 110(a)(2) if applied to technology-based emission limitations approved into the SIP. Because of the potential for confusion, NAC 445B.326 should be withdrawn from further consideration as part of the Nevada SIP or must be revised to clarify that the affirmative defense applies only to actions brought for noncompliance of permit conditions and not to technology-based emission limitations approved into the SIP.

Lastly, while the submitted rules include a specific prohibition on approving a permit for any source where the degree of emission limitation required is affected by that amount of the stack height as exceeds good engineering practice stack height or any other dispersion technique, the relevant provision (i.e., 445B.308(3)) includes director’s discretion (\* \* \* if “the Director determines” \* \* \*), which must be removed in order for EPA to approve the rules as meeting the requirements of 40 CFR 51.164.

The TSD provides more details concerning our proposal and rationale with respect to each of the issues discussed above in connection with the rules listed in table 2. In the TSD, we also identify certain other deficiencies in the rules listed in table 2 that we do not view as approvability issues but that

we recommend for further clarification or correction.

Table 3 lists the permit-related rules in the existing SIP for which NDEP has requested rescission and for which we are proposing action. Table 3 lists these rules along with the dates they were submitted to EPA and the dates on

which we published approval of them into the SIP in the **Federal Register**. As shown in table 3, we are proposing approval of rescission requests for NAQR article 13.1.3(3) and NAC 445.706(2) and proposing disapproval of rescission requests for NAQR article 1.60 and 1.72 and NAC 445.715.

TABLE 3.—EXISTING SIP RULES FOR WHICH THE STATE HAS REQUESTED RESCISSION AND FOR WHICH WE ARE PROPOSING ACTION

Existing SIP rule	Title	Submittal date	Approval date and FR	Proposed action
Article 1.60 .....	Effective date .....	12/29/78	08/27/81 at 46 FR 43141 .....	Disapproval.
NAQR Article 1.72 .....	Existing facility .....	12/10/76	08/21/78 at 43 FR 36932 .....	Disapproval.
NAQR Article 13, subsection 13.1.3(3).	[BACT requirement in attainment areas].	03/17/80	04/14/81 at 46 FR 21758 .....	Approval.
NAC 445.706(2) .....	[payment of fees] .....	10/26/82	03/27/84 at 49 FR 11626 .....	Approval.
NAC 445.715 .....	Operation permits: Revocation .....	10/26/82	03/27/84 at 49 FR 11626 .....	Disapproval.

We are proposing approval of the rescission request for NAQR article 13.1.3(3), which applies a control technology requirement defined by Best Available Control Technology (BACT) to certain new sources in attainment areas for the following reasons:

- Air pollution permit programs developed by States under section 110 of the Clean Air Act are not required to impose a BACT requirement on new sources in attainment areas so long as the program is not intended to satisfy part C of title I of the Act;

- Rescission of the SIP BACT requirement would only act prospectively and would not relax emission limits in any existing permits;

- Rescission would not eliminate the BACT requirement for all new sources in Nevada given that BACT continues to be a requirement for new major sources and major modifications in attainment areas under EPA's prevention of significant deterioration regulations at 40 CFR 52.21 (see 40 CFR 52.1485); and

- We find no evidence to suggest that Nevada is relying on the BACT requirement in NAQR article 13.1.3(3) to maintain the National Ambient Air Quality Standards (NAAQS) in any area.

Thus, we find that rescission of the BACT requirement in NAQR article 13.1.3(3) from the SIP would not interfere with continued attainment of the NAAQS and can therefore be approved under CAA section 110(l).

We are proposing approval of the rescission request for NAC 445.706(2), which relates to permit fees, because permit fee rules are no longer required for the NDEP portion of the Nevada SIP under CAA section 110(a)(2)(L) given our approval of NDEP's title V program (and related fee requirements). Our proposed approval of the rescission

requests for NAQR article 13.1.3(3) and NAC 445.706(2) is contingent upon receipt of documentation from NDEP of notice and public hearing for repeal or rescission of these provisions as required under CAA section 110(l) for all SIP revisions.

We are proposing disapproval of the rescission request for NAQR article 1.60 because it defines a term, "effective date," that is relied upon by other terms in the existing SIP that NDEP intends to retain, such as "existing source" as defined in NAQR article 1.73 and "new source" as defined in NAQR article 1.114. We find that the rescission requests for NAQR article 1.72 and NAC 445.715 could otherwise be approved but for the fact that we are proposing disapproval of the submitted set of rules comprising NDEP's current stationary source permitting program (listed in table 2, above). NAQR article 1.72 and NAC 445.715 need to be retained in connection with the stationary source permitting program as approved in the existing SIP, and thus we are proposing to disapprove their related rescission requests at this time. The TSD provides more details concerning our proposal and rationale with respect to each of the rules listed in table 3.

#### *C. Public Comment and Proposed Action*

Under CAA section 110(k)(3) and for the reasons stated above, EPA is proposing, under the Clean Air Act, approval of certain revisions to the applicable Nevada SIP and full disapproval of certain other revisions. These revisions involve State rules governing applications for, and issuance of, permits for stationary sources, but not including pre-construction review and permitting of major sources and

major modifications under parts C and D of title I of the Clean Air Act. NDEP submitted the rules that are the subject of this proposal on January 12, 2006 and re-submitted amendments to some of these rules on December 8, 2006.

Specifically, we are proposing approval of three specific submitted rules and disapproval of one such rule (see table 1, above); full disapproval of the rest of the submitted rules that comprise NDEP's stationary source permitting program (see table 2, above); and approval of two, and disapproval of three, requests for rescission of rules from the existing SIP (see table 3, above). The rescission requests for which we propose approval are contingent upon receipt of public notice and hearing documentation from the State. We will accept comments from the public on this proposal for the next 60 days.

Unless we receive convincing new information during the comment period, we intend to publish a final rule that will approve three rules shown in table 1, above, as revisions to the Nevada SIP;<sup>5</sup> disapprove one rule shown in table 1 and all of the submitted rules shown in table 2, above; rescind two rules shown in table 3, above, from the Nevada SIP (contingent upon receipt of public notice and hearing documentation); and retain three rules (also shown in table 3) in the Nevada SIP. If we finalize our disapproval of the relevant submitted rules, we will not be imposing sanctions under CAA section

<sup>5</sup> Final approval of these rules would supersede the following rules in the applicable SIP (superseding rules shown in parentheses) upon the established compliance date for any new or amended requirements in the superseding rules: NAC 445B.22083, as submitted on November 30, 2003 (NAC 445B.22083); NAQR article 2.16.1 (NAC 445B.250); and NAC 445.682 (NAC 445B.252).

179 and 40 CFR 52.31 because the State of Nevada has an approved stationary source permitting program in the applicable SIP and is not required under the Clean Air Act to submit its updated stationary source permitting program to EPA for approval.<sup>6</sup>

### III. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this proposed 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 proposes to approve or disapprove new or amended state rules, or to approve or disapprove requests for rescission of previously-approved state rules, as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this proposed 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 proposes to approve or disapprove 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 proposed 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 proposes to approve or disapprove new or amended state rules, or to approve or disapprove requests for rescission of previously-approved state rules, implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This proposed 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 proposed 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.*).

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

Environmental protection, Air pollution control, Intergovernmental relations, Lead, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides.

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

Dated: April 4, 2007.

**Jane Diamond,**

*Acting Regional Administrator, Region IX.*

[FR Doc. E7–7285 Filed 4–16–07; 8:45 am]

**BILLING CODE 6560–50–P**

### ENVIRONMENTAL PROTECTION AGENCY

#### 40 CFR Part 63

[EPA–HQ–OAR–2002–0034; FRL–8299–8]

**RIN 2060–AM85**

#### National Emission Standards for Hazardous Air Pollutants for Iron and Steel Foundries

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

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing amendments to the national emission standards for hazardous air pollutants for iron and steel foundries. The proposed amendments add alternative compliance options for cupolas at existing foundries and clarify several provisions to increase operational flexibility and improve understanding of the final rule requirements.

**DATES:** Comments must be received on or before May 17, 2007, unless a public hearing is requested by April 27, 2007. If a hearing is requested on the proposed rule, written comments must be received by June 1, 2007.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2002–0034, by one of the following methods:

- [www.regulations.gov](http://www.regulations.gov): Follow the on-line instructions for submitting comments.
- *E-mail:* [a-and-r-docket@epa.gov](mailto:a-and-r-docket@epa.gov).
- *Fax:* (202) 566–1741.
- *Mail:* National Emission Standards for Hazardous Air Pollutants for Iron and Steel Foundries Docket, Environmental Protection Agency, Mailcode: 6102T, 1200 Pennsylvania Ave., NW., Washington, DC 20460. Please include a total of two copies.

• *Hand Delivery:* EPA Docket Center, Public Reading Room, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC 20460. 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–HQ–OAR–2002–0034. EPA’s policy is that all comments received will be included in the public docket without change and may be made available online at <http://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](http://www.regulations.gov) or e-mail. The [www.regulations.gov](http://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](http://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

<sup>6</sup> In this context, we are referring to NDEP’s program for issuing pre-construction permits for all new sources and modifications other than those for which part C (i.e., PSD) or part D (i.e., Nonattainment NSR) of title I of the CAA apply and for issuing operating permits under title I of the CAA (not title V).