**DATES:** Comments must be received by July 22, 2002.

**ADDRESSES:** You may mail comments to Commander (map), Ninth Coast Guard District, 1240 E. Ninth Street, Cleveland, Ohio 44199–2060, or deliver them to room 2069 at the same address between 9 a.m. and 2 p.m., Monday through Friday, except Federal holidays.

The Ninth Coast Guard District Marine Safety Office maintains the public docket for this rulemaking. Comments, and documents indicated in this preamble, will become part of this docket and will be available for inspection or copying at room 2069, Ninth Coast Guard District, between 9 a.m. and 2 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Commander Michael Gardiner, Chief, Marine Safety Analysis and Policy Branch, Ninth Coast Guard District Marine Safety Office, at (216) 902–6056.

**SUPPLEMENTARY INFORMATION:**

**Request for Comments**

The Coast Guard encourages interested persons to submit comments on the appropriate size of the special anchorage area. Persons submitting comments should include their names and addresses, identify this docket (CGD09–01–122) and the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and attachments in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. Persons wanting acknowledgment of receipt of comments should enclose stamped, self-addressed postcards or envelopes.

**Background Information**

On March 7, 2000, the Coast Guard published a final rule extending the southern most special anchorage area approximately 1000 feet while keeping the width approximately the same (65 FR 11892). The Harbormaster had requested that the anchorage area be extended to compensate for the loss of safe anchorage area due to lower water levels. Since vessels must request permission from the Henderson Harbor Town Harbormaster before anchoring or mooring in the special anchorage area, the additional area gave the Town Harbormaster increased deepwater areas in which to direct vessels for safe anchorage.

The Coast Guard has received letters and requests from members of the community, as well as town leaders, indicating that they would like to see the anchorage area revert back to the previous smaller size. In response, on January 2, 2002, the Coast Guard published a request for comments (67 FR 17). Before taking any possible action, the Coast Guard would like to solicit additional comments from those affected by the Henderson Harbor Special Anchorage Area. The Coast Guard would like to get these comments within 45 days of the date of this publication so that they may be considered in conjunction with observing vessel traffic and the physical conditions within Henderson Harbor. After reviewing both the comments and the physical aspects of Henderson Harbor, the Coast Guard will determine if a change is appropriate.

Persons submitting comments should do as directed under *Request for Comments,* and reply to the following specific suggested anchorage areas. Form letters simply citing anecdotal evidence or stating support for or opposition to regulations, without providing substantive data or arguments do not supply support for regulations. The following two options are being considered:

1. *Continue to use current enlarged Anchorage Area.*

(a) *Area A.* The area in the southern portion of Henderson Harbor west of the Henderson Harbor Yacht Club bounded by a line beginning at 43°51′08.8″ N, 76°12′08.9″ W, thence to 43°51′09.0″ N, 76°12′19.0″ W, thence to 43°51′33.4″ N, 76°12′19.0″ W, thence to 43°51′33.4″ N, 76°12′09.6″ W, thence to the point of the beginning. These coordinates are based upon North American Datum 1983 (NAD 83).

(b) *Area B.* The area in the southern portion of Henderson Harbor north of Graham Creek Entrance Light bounded by a line beginning at 43°51′21.8″ N, 76°11′58.2″ W, thence to 43°51′21.7″ N, 76°12′05.5″ W, thence to 43°51′33.4″ N, 76°12′06.2″ W, thence to 43°51′33.6″ N, 76°12′00.8″ W, thence to the point of the beginning. All nautical positions are based on North American Datum 1983 (NAD 83).

2. *Revert Anchorage Area A back to previous smaller size.*

(a) *Area A.* The area in the southern portion of Henderson Harbor west of the Henderson Harbor Yacht club bounded by a line beginning at 43°51′08.8″ N, 76°12′08.9″ W, thence to 43°51′09.0″ N, 76°12′19.0″ W, thence to 43°51′23.8″ N, 76°12′19.0″ W, thence to 43°51′23.8″ N, 76°12′09.6″ W, and then back to the beginning. These coordinates are based upon North American Datum 1983 (NAD 83).

(b) *Area B.* The area in the southern portion of Henderson Harbor north of Graham Creek Entrance Light bounded by a line beginning at 43°51′21.8″ N, 76°11′58.2″ W, thence to 43°51′21.7″ N, 76°12′05.5″ W, thence to 43°51′33.4″ N, 76°12′06.2″ W, thence to 43°51′33.6″ N, 76°12′00.8″ W, thence to the point of the beginning. All nautical positions are based on North American Datum 1983 (NAD 83).

**Kurt A. Carlson,**

*Captain, Coast Guard, Acting Commander, Ninth Coast Guard District.*

[FR Doc. 02–14056 Filed 6–4–02; 8:45 am]

**BILLING CODE 4910–15–P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

**[CA264–0348; FRL–7224–2]**

### Revisions to the California State Implementation Plan, South Coast Air Quality Management District

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

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to approve a revision to the South Coast Air Quality Management District's portion of the California State Implementation Plan (SIP). This revision concerns the federal recognition of variances from certain rule requirements. We are proposing to approve the revision under the Clean Air Act as amended in 1990 (CAA or the Act). We are taking comments on this proposal and plan to follow with a final action.

**DATES:** Any comments must arrive by July 5, 2002.

**ADDRESSES:** Mail comments to Ginger Vagenas, Planning Office (AIR–2), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

You can inspect copies of the submitted SIP revision 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:

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 1001 ''I'' Street, Sacramento, CA 95814.
South Coast Air Quality Management District, 21865 E. Copley Drive, Diamond Bar, CA 91765.

**FOR FURTHER INFORMATION CONTACT:** Ginger Vagenas, Planning Office (AIR–2), U.S. Environmental Protection Agency, Region IX, (415)972–3964.

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

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## I. The State's Submittal

### *A. What Rule Did the State Submit?*

Rule 518.2, Federal Alternative Operating Conditions, was adopted by the South Coast Air Quality Management District (South Coast or District) on December 21, 2001 and submitted by the California Air Resources Board (CARB) on March 15, 2002. On April 9, 2002, this rule submittal was found to meet the completeness criteria in 40 CFR part 51, appendix V, which must be met before formal EPA review.

### *B. Are There Other Versions of This Rule?*

There is one previous version of 518.2. It was adopted by the District on January 12, 1996 and CARB submitted it to us on May 10, 1996. We proposed to approve the earlier version of Rule 518.2 into the SIP on September 25, 1998 (63 FR 51325). EPA later withdrew its proposed approval and proposed to disapprove the rule (64 FR 70652, December 17, 1999).

### *C. What Is the Purpose of the Submitted Rule?*

Rule 518.2 is designed to allow federal recognition of variances through a SIP-approved process that provides adequate public and EPA participation and that will ensure that the substantive requirements of the CAA continue to be met. In brief, this rule establishes a procedure through which an applicable requirement in the SIP may be temporarily modified as it applies to a particular source. The rule accomplishes this by establishing a mechanism for the creation of alternative operating conditions (AOCs), a means by which to offset any emissions in excess of the otherwise applicable requirements that would result, and provisions for EPA and public review and EPA veto of proposed AOCs through the title V ''significant'' permit revision process rather than through the source-specific SIP revision process. The public will be notified of its opportunity to comment on each AOC and each AOC will be submitted to EPA for review. If EPA determines that the AOC does not meet applicable requirements it may veto the AOC thereby rendering it ineffective. See Rule 518.2(f).

For additional background, including a detailed discussion of the CAA requirements governing approval of Rule 518.2, please refer to 63 FR 51325 (September 25, 1998), where EPA proposed approval of the original version of Rule 518.2, and 64 FR 70652 (December 17, 1999), where EPA withdrew its proposed approval and proposed to disapprove Rule 518.2. In response to EPA's proposed disapproval, the District has substantially revised the original Rule 518.2 to address the Agency's concerns. By today's action, EPA proposes to approve the revised rule.

## II. EPA's Evaluation and Action

### *A. How Is EPA Evaluating the Rule?*

In determining the approvability of Rule 518.2, EPA must evaluate the rule for consistency with the requirements of the Act and EPA regulations. Because this rule would authorize AOCs that allow a source to temporarily comply with an alternative requirement to the requirement approved into the SIP, we have analyzed the rule under CAA provisions that govern SIP revisions—sections 110(l) and 193—to determine whether the AOCs that would be allowed under the rule would be consistent with the requirements of the CAA that apply to SIPs and whether the process for establishing AOCs provides for public and EPA participation similar to that provided for SIP revisions. Generally, revisions to SIPs require reasonable notice and public hearing and must be submitted to EPA for review. SIP rules must be enforceable (*see* section 110(a) of the Act), must require reasonably available control technology (RACT) for existing sources and lowest achievable emission rates (LAER) and offsets for new major sources and modifications in nonattainment areas (*see* sections 182, 172, and 173), must not relax existing requirements in a manner that would result in interference with other requirements of the Act (*see* sections 110(l) and 193), and must require continuous compliance with emission limits (*see* section 302(k)).

### *B. Do the Rules Meet the Evaluation Criteria?*

In our previous proposed rulemakings on the earlier, 1996 version of Rule 518.2 (63 FR 51325 (September 25, 1998) and 64 FR 70653 (December 17, 1999)) we discussed in detail the CAA and regulatory requirements that apply to this rule and our assessment of whether the rule met them. The September 25, 1998 notice described several aspects of the 1996 version of the rule that rendered the rule not approvable. EPA believes that the December 12, 2001 amendments to Rule 518.2 have addressed the disapproval issues we identified and that the rule now complies with the applicable CAA requirements and implementing regulations. Our analysis of those revisions and their consistency with the CAA is summarized below.

1. Compliance With CAA Section 110(l)

Section 110(l) of CAA provides that the Administrator of EPA shall not approve a SIP revision ''if the revision would interfere with any applicable requirement concerning attainment and reasonable and further progress * * * or any other applicable requirement of [the Act].''

In our proposed disapproval of the 1996 version of Rule 518.2, we explained that the rule ran afoul of section 110(l) because the criteria that governed the circumstances under which an AOC could be granted would permit a source to violate certain applicable requirements of the Act, specifically, the technology-based LAER requirements and new source review (NSR) offset requirements that are mandated by sections 172 and 173 of the Act. (See 64 FR 70653). We noted that case law [1] and EPA regulations [2] can be read to provide for an upset defense in the situation where a malfunction is unavoidable and suggested that Rule 518.2 could be redrafted to narrow the circumstances in which an AOC for LAER-based limits would be allowed. We also noted that the District could solve the NSR offset problem by ensuring that sufficient reductions are set aside to compensate for any excess emissions covered by an AOC.

The District has revised Rule 518.2 so that an AOC for LAER-based [3] limits can only be issued in the narrow instance where the source can demonstrate that an emergency or a breakdown of

[1] In *Marathon Oil* v. *EPA,* 564 F.2d 1253, 1272–73 (9th Cir, 1977), the Ninth Circuit held, in the context of a Clean Water Act case, that EPA must provide an upset defense for technology-based effluent limits to take into account the fact that even properly maintained technology can fail.

[2] *See* 40 CFR 70.6(g).

[3] Under the District's rules the terms ''best available control technology'' and ''BACT'' are used in place of ''lowest achievable emissions rate'' and ''LAER.'' As provided in the District's rules, BACT is at least as stringent as LAER, as defined in the Clean Air Act section 171(3). *See* District Rules 1302(f) and 1303(a).

technology caused the violation. Such an exemption is consistent with the CAA and case law interpreting it. *See* Rule 518.2(c)(4).

While the above provision would ensure that the source continued to apply with the technology-based requirements of the CAA, it does not ensure that the SIP will continue to provide for attainment or maintenance of the NAAQS. To address this issue, Rule 518.2 has been revised to require compensating reductions for the purpose of offsetting all excess emissions, including those resulting from AOCs granted for LAER requirements. These reductions are in the form of Alternative Operating Condition Credits, which are emission reduction credits or mobile source emission reduction credits created pursuant to an EPA approved rule, or alternative credits or allowances approved into the SIP by EPA and held by the District. See paragraphs 518.2(b)(3) and (e)(2)(H). Our criteria for judging the adequacy and approvability of emission reduction credits are based on fundamental CAA requirements and ensure that such credits are surplus, quantifiable, enforceable and permanent. See ''Emissions Trading Policy Statement,'' 51 FR 43814, 43831–43832 (December 4, 1986), and ''Economic Incentive Program Rules,'' 59 FR 16690, 16691 (April 7, 1994). Alternatively, sources may generate intra-facility emissions reductions to compensate for the increased emissions allowed under an AOC. Such reductions must also be real, quantifiable, permanent, enforceable, and surplus. See Rule 518.2(h). EPA believes the provisions under the revised version of 518.2 that require the offsetting of excess emissions allowed under an AOC Alternative Operating Condition ensure compliance with sections 173 and 110(l)of the CAA.

2. Compliance With CAA Section 193

Section 193 of CAA prohibits the modification of any control requirement in effect before November 15, 1990 in an area that is a nonattainment area for any air pollutant unless the modification ensures equivalent or greater emission reductions of such air pollutants. The District has been classified as a nonattainment area for several air pollutants and is thus subject to the anti-backsliding provisions of CAA section 193.

In our December 17, 1999 notice, we pointed out that the 1996 version of Rule 518.2 did not meet this CAA requirement because it allowed the relaxation of pre-1990 rules [4] without ensuring that equivalent, contemporaneous emissions reductions are provided to compensate for the emission increases allowed by AOCs (64 FR 70656). We stated that the rule could be amended to cure this problem by funding the emissions bank with real emission reductions.

EPA has concluded that Rule 518.2 as revised complies with section 193 of the CAA because it ensures that excess emissions allowed by AOCs are offset by equivalent or greater reductions that are real, quantifiable, permanent, enforceable, and surplus. As noted above, the reductions are either maintained in the form of Alternative Operating Condition Credits in the Alternative Operating Condition Credit Bank, or are generated by intra-facility reductions. See paragraphs 518.2 (b)(3) and (4) and 518.2(h).

3. Compliance With 40 CFR 70.6(a)(1)(iii)

40 CFR 70.6(a)(1)(iii) provides that ''[i]f an applicable implementation plan allows determination of an alternative emission limit at a part 70 source, *equivalent to that contained in the plan,* to be made in the permit issuance, renewal, or significant modification process, and the State elects to use such process, any permit containing such equivalency determination shall contain provisions to ensure that any resulting emissions limit has been demonstrated to be quantifiable, accountable, enforceable, and based on replicable procedures.'' Emphasis added.

SIPs are not typically subject to part 70 regulations governing title V permits, but because Rule 518.2 uses the part 70 permitting process as the vehicle for establishing AOCs, the part 70 regulations establishing the requirements that pertain to the permit revision process, including 40 CFR 70.6(a)(1)(iii), apply.

Because the 1996 version of Rule 518.2 did not require real reductions of air pollutants to compensate for any emissions increases allowed under an AOC, it did not meet the part 70 requirement that alternative limits established under the part 70 permit revision process must be equivalent to the limit in the plan. By revising the rule to require that excess emissions are offset by real reductions generated by EPA-approved rules or by intra-facility reductions the District has ensured that emission reductions equivalent to those required in the plan will be achieved. *See* Rule 518.2(e)(2)(H).

4. Conformity With CAA Requirement for Continuous Compliance

Section 110(a)(2) of the CAA requires enforceable emission limitations and section 302(k) requires the limits must be met on a continuous basis. EPA's interpretation of the Act's requirement for continuous compliance is set forth in policy statements regarding the treatment of excess emissions arising during startup, shutdown, and malfunction. [5] In brief, EPA's view is that SIP limits must be met continuously and any exceptions should be narrowly drawn and clearly impose the burden on the source to show that the exceedance was unavoidable.

In our December 17, 1999 proposal to disapprove the 1996 version of Rule 518.2, we stated that the rule could not be approved because criteria for issuance of an AOC allowed a variance to be granted even if the petitioner could have avoided the violation. *See* 64 FR 70657. This provision was problematic because variances are, by their very nature, allowed periods of noncompliance; they create exceptions to the continuous compliance requirement imposed by the Act on emission limitations. EPA then recommended that the criteria be revised to allow AOCs only when the underlying cause of the violation is unavoidable, and pointed to the Agency's September 20, 1999 policy on excess emissions as a source of guidance. In response to our concerns, the District has revised the criteria for granting AOCs for breakdowns so that they focus on the cause of the violation. Thus, if a violation is caused by a

[4] By ''pre-1990 rules,'' we mean rules in effect before November 15, 1990, the date of the enactment of the CAA Amendments of 1990.

[5] See June 21, 1982 memorandum, entitled ''Definition of ''Continuous Compliance'' and Enforcement of O&M Violations,'' from Kathleen M. Bennett, Assistant for Air Noise and Radiation, to the Regional Administrators; the September 28, 1982 and February 15, 1983 memoranda, both entitled ''Policy on Excess Emissions During Startup, Shutdown, and Malfunctions,'' from Kathleen M. Bennett, Assistant Administrator for Air, Noise, and Radiation, to the Regional Administrators; September 20, 1999 memorandum entitled, ''State Implementation Plans: Policy Regarding Excess Emissions During Malfunctions, Startup, and Shutdown,'' from Steven A. Herman, Assistant Administrator for Enforcement and Compliance and Robert Perciasepe, Assistant Administrator for Air and Radiation, to the Regional Administrators; and December 5, 2001 memorandum, entitled ''Re-Issuance of Clarification—State Implementation Plans (SIPs): Policy Regarding Excess Emissions During Malfunctions, Startup, and Shutdown,'' from Eric Schaeffer, Director, Office of Regulatory Enforcement—Office of Enforcement and Compliance Assurance, and John S. Seitz, Director, Office of Air Quality Planning and Standards, Office of Air and Radiation, to the Regional Administrators.

breakdown of technology, a petitioner cannot receive an AOC unless the violation could not have been prevented through careful planning or design; the breakdown could not reasonably have been foreseen and avoided; the air pollution control equipment or processes were maintained and operated to minimize emissions at all times; repairs were or will be made in an expeditious fashion; and the breakdown is not part of a recurring pattern indicative of inadequate design, operation, or maintenance. *See* Rule 518.2(e)(3). The narrowing of the circumstances under which an AOC can be granted, along with the requirement for real emissions reductions that will offset any increases allowed under the AOC, result in a rule that satisfies EPA's concerns regarding continuous compliance.

5. Prohibition on Allowing Variances From Federal Standards

In our 1999 **Federal Register**, we stated that while the 1996 version of Rule 518.2 in general prohibited the issuance of AOCs for federally promulgated standards, it did not clearly prohibit the issuance of AOCs for local or state rules that EPA has deemed equivalent to, and therefore may be substituted for, maximum achievable technology (MACT) standards under section 112 of the Act. See 64 FR 70657. The District has clarified its intent to prohibit such AOCs with the addition of language that exempts District rules that substitute for MACT standards from eligibility for AOCs. *See* 518.2(c)(2).

6. Concern With Disproportionate Impacts

We received a comment on our September 28, 1998 proposal to approve the 1996 version of Rule 518.2 that opposed the approval of the rule because it could result in disproportionate impacts on communities of color and low income communities. In our 1999 proposal, we suggested that inclusion of language based on California Health and Safety Code section 41700 would address the commenter's concerns. *See* 64 FR 70657. This language was added to the revised version of the rule. *See* 518.2(e)(2)(I).

*C. EPA Recommendations to Further Improve the Rules*

The TSD describes additional rule revisions that do not affect EPA's current action but are recommended for future modification of the rule by the District.

*D. Public Comment and Final Action*

Because EPA believes Rule 518.2 fulfills all relevant requirements, we are proposing to fully approve it in accordance with section 110(k)(3) of the Act. We will accept comments from the public on this proposal for the next 30 days. Unless we receive convincing new information during the comment period, we intend to publish a final approval action that will incorporate these rules into the federally enforceable SIP.

EPA notes that Rule 518.2 may not represent the only acceptable approach for variances from operating permit conditions. EPA also recognizes that various interested parties are currently considering alternative approaches to variances and will carefully consider and approve such alternatives, so long as they comply with all Clean Air Act requirements.

**III. Administrative Requirements**

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 proposed 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 proposed 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 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 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 (Public Law 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 proposes to approve 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 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, Reporting and recordkeeping requirements.

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

Dated: May 23, 2002.

**Keith Takata,**

*Acting Regional Administrator, Region IX.*

[FR Doc. 02–14039 Filed 6–4–02; 8:45 am]

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