ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 244–0259; FRL–6870–7]

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

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes two actions on Regulations 1 and 2 submitted for the Bay Area Air Quality Management District (''BAAQMD'' or ''District'') portion of the California State Implementation Plan (SIP). The Regulations were submitted for purposes of meeting requirements of the Clean Air Act, as amended in 1990 (''CAA'' or ''Act''), with regard to new source review (NSR) in areas that have not attained the national ambient air quality standards (NAAQS). First, EPA proposes a full approval of Regulation 1—General Provisions and Definitions. Second, EPA proposes a limited approval and limited disapproval of three Regulation 2 rules: Rule 1—Permits, General Requirements; Rule 2—Permits, New Source Review; and Rule 4—Permits, Emissions Banking.

Today's action also serves to stop the federal sanctions clock that started 18 months ago (February 25, 1999)—the effective date of EPA's final limited approval and limited disapproval rulemaking on an earlier version of Regulation 2, Rules 1, 2 and 4. EPA has stopped the sanctions clock associated with our 1999 rulemaking because BAAQMD has substantially corrected all deficiencies identified in that final rulemaking. However, despite the BAAQMD correction of the deficiencies in Regulation 2, EPA has identified two new deficiencies in Regulation 2 preventing our full approval of it. We are taking comments on this proposal and plan to follow with a final action. Upon final action, if either of the deficiencies identified in today's rule remain, a new 18-month sanctions clock will begin on our final action on the rule.

DATES: Any comments must arrive by October 18, 2000.

ADDRESSES: Mail comments to David Wampler, Permits Office (AIR–3), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

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

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 ''L'' Street, Sacramento, CA 95812.

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

FOR FURTHER INFORMATION CONTACT: David Wampler, Permits Office (AIR–3), U.S. Environmental Protection Agency, Region IX, (415) 744–1256.

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

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I. The State's Submittal

A. What rules did the State submit?

Table 1 lists Regulation 1 and the three rules in Regulation 2 [1] addressed by this proposal, with the dates that they were adopted by the BAAQMD and submitted by the California Air Resources Board (CARB).

TABLE 1—SUBMITTED RULES

Agency	Rule No.	Rule title	Adopted	Submitted
BAAQMD	Reg. 1	General Requirements	May 17, 2000	August 3, 2000
BAAQMD	Reg. 2 Rule 1	Permits—General Requirements	May 17, 2000	August 3, 2000
BAAQMD	Reg. 2 Rule 2	Permits—New Source Review	May 17, 2000	August 3, 2000
BAAQMD	Reg. 2 Rule 4	Permits—Emissions Banking	May 17, 2000	August 3, 2000

On August 17, 2000, Regulations 1 and 2 submittals were found to meet the completeness criteria in 40 CFR part 51, appendix V, which must be met before formal EPA review.

B. What is the purpose of the rule revisions?

Regulation 1 and three rules in Regulation 2 (hereinafter ''Reg. 2 rules'') were revised by the BAAQMD in May 2000, in part, to correct rule deficiencies we raised in the final limited approval limited disapproval rulemaking for Regulation 2, rules 1, 2 and 4 on January 26, 1999 (64 FR 3850; see also our proposed rulemaking on November 6, 1998 and the Technical Support Document (TSD) for that rulemaking). Regulation 1—General Provisions was last approved into the SIP on September 29, 1998 (63 FR 51833). BAAQMD made some revisions to Regulation 1 to clarify language. The revisions do not substantially change Regulation 1 as previously approved.

II. EPA's Evaluation and Action

A. How is EPA evaluating the rules?

EPA evaluated Regulation 1 and the Reg. 2 rules for consistency with the requirements of the CAA and EPA regulations, as found in section 110 and part D of the CAA and 40 CFR part 51 (Requirements for Preparation, Adoption, and Submittal of Implementation Plans). Our interpretation of these requirements, which forms the basis for today's action,

[1] Regulation 2 also contains: Rule 3—Power Plants; Rule 6—Major Facility Review; Rule 7—Acid Rain; Rule 8—Interchangeable Emission Reduction Credits. Rule 5 has not yet been adopted and Rules 7 and 8 are not in the current SIP.

also appears in the various EPA policy guidance documents.

EPA has issued a ''General Preamble'' describing EPA's preliminary views on how EPA intends to review SIPs and SIP revisions submitted under part D, including those State submittals containing nonattainment NSR SIP requirements (See 57 FR 13498 (April 16, 1992) and 57 FR 18070 (April 28, 1992)). Because EPA is describing its interpretations here only in broad terms, the reader should refer to the General Preamble for a more detailed discussion.

The Act requires States to comply with certain procedural requirements in developing implementation plans and plan revisions for submission to EPA. Section 110(a)(2) and section 110(l) of the Act require that each implementation plan or revision to an implementation plan submitted by a State must be adopted after reasonable notice and public hearing. Section 172(c)(7) of the Act requires that plan provisions for nonattainment areas shall meet the applicable provisions of section 110(a)(2).

In addition, we reviewed the Reg. 2, rules to determine whether the BAAQMD revisions adequately corrected six deficiencies that we had identified in our final limited approval and limited disapproval action dated January 26, 1999. (See also our proposed action dated November 6, 1998 at 63 FR 59924). Our review determined that the BAAQMD Reg. 2 rule revisions substantially corrected the six deficiencies we had earlier identified. However, in part because of the correction of the prior deficiencies, the Reg. 2 rules now contain two additional deficiencies (discussed below) which prevent full approval under part D of the CAA. Therefore, EPA today is proposing a limited disapproval of the Reg. 2 rules. If EPA finalizes this limited disapproval of the Reg. 2 rules, BAAQMD will have 18 months from the date of the final action to correct any deficiencies to avoid federal sanctions. See CAA section 179(b). Further, the final disapproval triggers the Federal implementation plan requirements under 110(c).

B. What are the rule deficiencies?

This discussion summarizes how certain provisions in the revised Reg. 2 rules conflict with section 110 and part D of the Act and prevent full approval of the SIP revision. We have included in our discussion suggested corrections to the deficiencies. A detailed discussion of the rule deficiencies is included in the Technical Support Document (TSD) for this rulemaking. The TSD is available from the EPA Region IX office.

• *BAAQMD Regulation 2 Rule 2—Alternative Siting Analysis*

For a proposed new major facility or a proposed major modification, CAA section 173(a)(5) requires BAAQMD to analyze alternative sites, sizes, production processes, and environmental control techniques for a proposed source and determine if the analysis demonstrates that the benefits of the proposed source significantly outweigh the environmental and social costs imposed as a result of its location, construction or modification. Reg. 2, rule 2 has omitted the required alternatives analysis and determination.

Discussion: When the District was developing the corrections to the Reg. 2 rules, we informally notified them that rule 2 should be amended to include the section 173(a)(5) alternative siting analysis requirement. The District had included the requirement in a April 12, 2000 draft version of the rule and we had acknowledged it as approvable in our March 15, 2000 NSR Rule comment letter. However, prior to Board adoption of the rule, the District decided to remove the provision (see document in SIP submittal entitled ''Changes from the April 12 Draft''). Therefore, the adopted rule does not contain the section 173(a)(5) requirement. This omission is a rule deficiency that must be corrected before EPA can grant full approval of the submitted rule. To correct the deficiency, BAAQMD could re-insert the rule language that they had previously included in the April 12, 2000 draft rule.

• *Rule 2–2–423. Demonstration of Offset Program Equivalence*

EPA's final January 26, 1999 limited disapproval found that rule 2 was deficient because it did not require emission reductions to be surplus at the time of use. Instead, the rule only required emission reductions to be surplus when they were generated and banked. In response, BAAQMD added section 2–2–423 (and supporting section 2–2–246). We find that these provisions substantially, although not completely, correct the deficiency. Therefore, the correction is sufficient to stop the sanctions clock and prevent imposition of immediate sanctions. However, to ensure that the deficiency is fully corrected, we are proposing to cite section 2–2–423 as a new deficiency. This new deficiency arises because it is not clear what steps the District will take (and by when) if the annual offset analysis fails to make the required demonstration of offset equivalency and the small facility bank does not have sufficient surplus emission reductions.

Discussion: In our final rulemaking on January 26, 1999, EPA stated that all emission reduction credits (ERCs) ''must be adjusted at the time of use pursuant to the requirements of sections 173(a), 173(c)(1) and 173(c)(2) of the Clean Air Act ('Act').''

In response, BAAQMD added section 2–2–423 requiring the District to provide an annual demonstration to EPA that the number of offsets provided for all new or modified sources,[2] less adjustments to those offsets for federal purposes [3] occurring between credit generation and use, exceed the number of offsets required that year under federal law for new major stationary sources (>100 tons per year) or major modifications (>40 tons per year). EPA believes that this system to demonstrate equivalency is acceptable for satisfying the CAA section 173(c)(2) offset requirements.

Section 2–2–423 also includes a remedy if the annual analysis fails to make the required demonstration. If triggered, the remedy requires the District to provide sufficient offsets to make up the difference out of the small facility bank (see 2–4–414). If the small facility bank does not contain the necessary additional surplus emission reductions, the District, ''shall obtain the necessary emission reductions.'' EPA has determined that the District's unspecified commitment to provide additional surplus offsets limits our ability to fully approve the rule. The rule does not indicate what the District will do to find the necessary 1surplus reductions and does not identify a deadline.

How the Deficiency Can be Corrected. To correct the deficiency the District must amend the provision at 2–2–423. Either of the two following options may be approvable:

[2] BAAQMD requires more stationary sources to obtain offsets than is required under federal law. For example, for ozone precursors, federal law requires new stationary sources with a potential to emit (PTE) above 100 tons per year to be offset at a 1.15:1 ratio. BAAQMD Rule 2–2–302 requires offsets at a 1.15:1 ratio for stationary sources with a PTE above 50 tons per year. For new stationary sources with a PTE between 15 and 50 tons per year, BAAQMD requires offsets at a 1.0:1.0 ratio.

[3] Adjustments for federal purposes are included in rule 2–2–423.1 through 3 and are required if: BAAQMD adopts a rule to meet the federal attainment demonstration requirements (see CAA section 171(c)); a measure is approved into the SIP and it applies to BAAQMD; or EPA promulgates a New Source Performance Standard or Maximum Achievable Control Technology standard. For more information on adjusting previously banked emission reduction credits, please see August 26, 1994 EPA memorandum entitled, ''Response to Request for Guidance on Use of Pre-1990 ERC's and Adjusting for RACT at Time of Use,'' from John Seitz, Director of OAQPS to David Howekamp, Director, Region IX, Air and Toxics Division.

• If the small facility bank does not contain the necessary surplus emission reductions, the District must not issue permits to new major stationary sources or major modifications of non-attainment pollutants until the District demonstrates that the deficit has been balanced; or

• If the small facility bank does not contain the necessary surplus emission reductions, the District may continue to issue permits for new major sources or major modifications provided the offsets for those sources are demonstrated to be surplus at the time the permit is issued. This remedy would be in effect until the remaining shortfall is eliminated by securing the necessary emission reductions. EPA believes any shortfall must be eliminated in a timely manner not to exceed one year.

C. Proposed Action and Public Comment

As authorized in sections 110(k)(3) and 301(a) of the Act, today's action is separated into two parts: first, EPA is proposing a full approval of Regulation 1 and; second, EPA is proposing a limited approval and limited disapproval of Regulation 2, rules 1, 2 and 4. Each of these actions strengthens the SIP. If finalized, this action would incorporate all the submitted rules into the SIP, including those provisions identified as deficient.

EPA proposes full approval of Regulation 1 because the BAAQMD only modified the rule slightly to clarify some definitions and remove a regulatory exclusion for emergency standby engines. None of the changes significantly alter the existing SIP-approved version.

The approval of the Reg. 2 rules is limited because EPA is simultaneously proposing a limited disapproval of the rules under section 110(k)(3). If this disapproval is finalized, sanctions will be imposed under section 179 of the Act unless EPA approves subsequent SIP revisions that correct the rule deficiencies within 18 months. These sanctions would be imposed according to 40 CFR 52.31. A final disapproval would also trigger the federal implementation plan (FIP) requirement under section 110(c). Note that the submitted rules have been adopted by the BAAQMD, and EPA's final limited disapproval would not prevent the local agency from enforcing them.

We will accept comments from the public on the proposed limited approval and limited disapproval for the next 30 days.

III. Background Information

Why Were These Rules Submitted?

These rules were submitted primarily to correct the six deficiencies identified in our January 26, 1999 final rulemaking (60 FR 3850). Please refer to the TSD for more information on the rule changes that were made to correct the deficiencies.

IV. Administrative Requirements

A. Executive Order 12866

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

B. Executive Order 13045

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

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

C. Executive Order 13084

Under Executive Order 13084, Consultation and Coordination with Indian Tribal Governments, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the OMB in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments ''to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities.''

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

D. Executive Order 13132

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

This proposed rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, because it merely acts on a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. Thus, the requirements of section 6 of the

Executive Order do not apply to this proposed rule.

E. Regulatory Flexibility Act

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

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

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

F. 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 proposed action 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 proposed 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.

G. 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 proposed action because it does not require the public to perform activities conducive to the use of VCS.

List of Subjects in 40 CFR Part 52

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

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

Dated: August 25, 2000.

Keith Takata,

Acting Regional Administrator, Region IX.

[FR Doc. 00–23945 Filed 9–15–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 260, 261, 268 and 271

[FRL–6870–6]

RIN–2050–AE65

Land Disposal Restrictions; Treatment Standards for Spent Potliners From Primary Aluminum Reduction (K088) and Regulatory Classification of K088 Vitrification Units

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; reopening of the comment period.

SUMMARY: On July 12, 2000 (65 FR 42937), EPA issued a proposed rule presenting potential revisions to the Land Disposal Restrictions treatment standards applicable to spent potliners from primary aluminum reduction (EPA hazardous waste: K088). The proposal requested comment on the proposed treatment standards, the Agency's proposal to classify K088 vitrification units as RCRA subpart X miscellaneous treatment units, and the appropriateness of extending the rational proposed for K088-vitrification units to all vitrification units treating RCRA hazardous waste. The Agency is extending the comment period because several commenters have requested more time to address the issues raised in the proposal, and to generate data on hazardous concentrations in untreated and treated K088 waste. This document extends the comment period for the proposed rule.

DATES: The comment period for this proposed rule is extended from the original closing date of September 11, 2000 to December 11, 2000.

ADDRESSES: If you wish to comment on this notice of proposed rulemaking (NPRM), you must send an original and two copies of the comments referencing docket number F–2000–TSSP–FFFFF to: RCRA Docket Information Center, Office of Solid Waste (5305G), U.S. Environmental Protection Agency Headquarters (EPA, HQ), Ariel Rios Building, 1200 Pennsylvania Avenue, NW, Washington, D.C. 20460. Hand deliveries of comments should be made to the Arlington, VA, address listed below. You may also submit comments electronically by sending electronic mail through the Internet to: rcradocket@epamail.epa.gov. You should identify comments in electronic format with the docket number F–2000–TSSP–FFFFF. You must submit all electronic comments as an ASCII (text) file, avoiding the use of special characters and any form of encryption. If you do not submit comments electronically, EPA is asking prospective commenters to voluntarily submit one additional copy of their comments on labeled personal computer diskettes in ASCII (text) format or a word processing format that can be converted to ASCII (text). It is essential to specify on the disk label the word processing software and version/edition as well as the commenter's name. This will allow EPA to convert the comments into one of the word processing formats utilized by the Agency. Please use mailing envelopes designed to physically protect the submitted diskettes. EPA emphasizes that submission of comments on diskettes is not mandatory, nor will it result in any advantage or disadvantage to any commenter.

You should not submit electronically any confidential business information (CBI). You must submit an original and two copies of CBI under separate cover to: RCRA CBI Document Control Officer, Office of Solid Waste (5305W), U.S.