

(2) The applicant can establish that the proposed new source is a replacement for the shutdown or curtailed source, and the emissions reductions achieved by the shutdown or curtailment met the requirements of paragraphs IV.C.3.i.1. through 2 of this section.

* * * * *

VI. Policy Where Attainment Dates Have Not Passed

In some cases, the dates for attainment of primary standards specified in the SIP under section 110 have not yet passed due to a delay in the promulgation of a plan under this section of the Act. In addition the Act provides more flexibility with respect to the dates for attainment of secondary NAAQS than for primary standards. Rather than setting specific deadlines, section 110 requires secondary NAAQS to be achieved within a "reasonable time". Therefore, in some cases, the date for attainment of secondary standards specified in the SIP under section 110 may also not yet have passed. In such cases, a new source locating in an area designated in 40 CFR 81.300 *et seq.* as nonattainment (or, where section III of this Ruling is applicable, a new source that would cause or contribute to a NAAQS violation) may be exempt from the Conditions of section IV.A if the conditions in paragraphs VI.A through C are met.

A. The new source meets the applicable SIP emission limitations.

B. The new source will not interfere with the attainment date specified in the SIP under section 110 of the Act.

C. The Administrator has determined that conditions A and B of this section are satisfied and such determination is published in the **Federal Register**.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R09-OAR-2005-CA-0013, FRL-8257-7]

Revisions to the California State Implementation Plan, Kern County Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve revisions to the Kern County Air Pollution Control District (KCAPCD) portion of the California State Implementation Plan (SIP). The KCAPCD revisions concern permitting requirements. We are proposing to approve local rules that administer regulations 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 January 18, 2007.

ADDRESSES: Submit comments, identified by docket number EPA-R09-OAR-2005-CA-0013, by one of the following methods:

- Federal eRulemaking Portal: www.regulations.gov. Follow the online instructions.
- E-mail: R9airpermits@epa.gov.
- Mail or deliver: Gerardo Rios (Air-3), U.S. Environmental Protection Agency Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

Instructions: All comments will be included in the public docket without change and may be made available online at 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 or e-mail. 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 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: Manny Aquitania, Permits Office (AIR-3), U.S. Environmental Protection Agency, Region IX, (415) 972-3977, aquitania.manny@epa.gov.

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 the rules we are proposing to approve and Table 2 lists the rule we are proposing to disapprove with the date that they were amended by the local air agency and submitted by the California Air Resources Board (CARB).

TABLE 1.—SUBMITTED RULES PROPOSED FOR FULL APPROVAL

Local agency	Rule No.	Rule title	Amended	Submitted
KCAPCD	201	Permits Required	05/02/96	07/23/96
KCAPCD	202.1	Experimental Research Operations.	05/02/96	07/23/96
KCAPCD	209.1	Permit Conditions	05/02/96	07/23/96
KCAPCD	210.2	Standards for Permits to Operate	05/02/96	07/23/96
KCAPCD	210.5	Visibility Protection	05/02/96	07/23/96

TABLE 2.—SUBMITTED RULE PROPOSED FOR FULL DISAPPROVAL

Local agency	Rule No.	Rule title	Amended	Submitted
KCAPCD	203	Transfer	05/02/96	07/23/96

On October 30, 1996, the submittal of Rules 201, 202.1, 203, 209.1, 210.2, and 210.5 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 these rules?

We approved Rules 201 and 202.1 into the SIP on July 6, 1982 (47 FR 29233). We approved Rule 203 into the SIP on September 22, 1972 (37 FR 19812). We approved Rule 210.2 into the SIP on August 21, 1981 (46 FR 42460). There are no versions of Rules 209.1 and 210.5 in the SIP.

C. What is the purpose of the submitted rule revisions?

Section 110(a) of the CAA requires states to submit regulations that control volatile organic compounds, oxides of nitrogen, particulate matter, and other air pollutants which harm human health and the environment. These rules were developed as part of the local agency's program to control these pollutants.

The purposes of the new rules are as follows:

- Rule 209.1 adds a prohibition to operate equipment contrary to conditions in the Permit to Operate (PTO) issued in accordance with the provisions of Rule 209 in order to comply with the standards of Rules 208 and 208.1.

- Rule 210.5 adds a requirement that the Air Pollution Control Officer (APCO) not issue an Authority to Construct (ATC) unless the analysis required by this rule demonstrates that an adverse impact on visibility in Federal Class I Areas will not occur for any new major stationary source or major modification which would have the potential to emit nitrogen oxides, sulfur dioxide or particulate matter in significant amounts and is required to utilize BACT/LAER for such pollutants. The purposes of revisions relative to the SIP rules are as follows:

- Rule 201 adds a provision that the ATC will serve as the temporary PTO after notifying the APCO of the intent to start-up new or modified equipment and adds a provision that the application for a PTO will serve as the temporary PTO for existing equipment.

- Rule 202.1 is reformatted for clarity.

- Rule 203 replaces the prohibition from transferring a permit with the allowance to transfer a permit from one person to another or from one location to another, providing a new application is filed and approved by the APCO.

- Rule 210.2 deletes the severability provision.

The TSD has more information about these rules.

II. EPA's Evaluation and Action

A. How is EPA evaluating the rules?

Generally, SIP rules must be enforceable (see section 110(a) of the CAA) and must not relax existing requirements (see sections 110(l) and 193).

The following guidance documents were used for reference:

- *Requirements for Preparation, Adoption, and Submittal of Implementation Plans*, U.S. EPA, 40 CFR part 51.
- *Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations*, EPA (May 25, 1988). (The Blue Book)
- *Guidance Document for Correcting Common VOC & Other Rule Deficiencies*, EPA Region IX (August 21, 2001). (The Little Bluebook)

B. Do the rules meet the evaluation criteria?

We believe Rules 201, 202.1, 209.1, 210.2, and 210.5 are consistent with the relevant policy and guidance regarding enforceability and SIP relaxations.

A provision in Rule 203 which does not meet the evaluation criteria is summarized below and discussed further in the TSD.

C. What is the deficiency in Rule 203?

This provision conflicts with section 110 and part D of the CAA and prevents full approval of the SIP revision:

- The revision to Rule 203 to allow transfer of a permit from one location to another is prohibited, because permitting requirements may be different at different locations. A New Source Review must be performed upon changing location. See 40 CFR part 51, sections 165–166.

D. EPA Recommendation to further improve a rule

The TSD describes an additional revision to Rule 201 that does not affect EPA's current action but is

recommended for the next time the local agency modifies the rule.

E. Public comment and final action

As authorized in section 110(k)(3) of the CAA, we are proposing full approval of the submitted KCAPCD Rules 201, 202.1, 209.1, 210.2, and 210.5.

As authorized in sections 110(k)(3) of the CAA, we are proposing a full disapproval of the submitted KCAPCD Rule 203. If finalized, this action would retain the present SIP-approved rule in the SIP. Sanctions would not be imposed as described in CAA section 179 and 40 CFR 52.30–52.32, because the present SIP-approved rule fulfills CAA requirements.

III. Statutory and Executive Order Reviews

A. Executive Order 12866, Regulatory Planning and Review

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

B. Paperwork Reduction Act

This 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.*)

C. 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 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 approve 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. 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. 10(a)(2).

D. Unfunded Mandates Reform Act

Under sections 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 the private sector, of \$100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action proposed does not include a Federal mandate that may result in estimated costs of \$100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action proposes to approve 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.

E. Executive Order 13132, Federalism

Federalism (64 FR 43255, August 10, 1999) revokes and replaces Executive Orders 12612 (Federalism) and 12875 (Enhancing the Intergovernmental Partnership). Executive Order 13132 requires EPA to develop an accountable process to ensure “meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.” “Policies that have federalism implications” is defined in the Executive Order to include regulations that have “substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.” Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not

required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

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

F. Executive Order 13175, Coordination With Indian Tribal Governments

Executive Order 13175, entitled “Consultation and Coordination with Indian Tribal Governments” (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure “meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.” This proposed rule does not have tribal implications, as specified in Executive Order 13175. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes. Thus, Executive Order 13175 does not apply to this rule.

EPA specifically solicits additional comment on this proposed rule from tribal officials.

G. Executive Order 13045, Protection of Children From Environmental Health Risks and Safety Risks

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.

H. Executive Order 13211, Actions That Significantly Affect Energy Supply, Distribution, or Use

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

I. 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. The EPA believes that VCS are inapplicable to this action. Today’s action does not require the public to perform activities conducive to VCS.

List of Subjects in 40 CFR Part 52

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

Dated: November 28, 2006.

Wayne Nastri,

Regional Administrator, Region IX.

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