

**Correction**

In the **Federal Register** issue of July 10, 1998, in FR Doc. 98-18434, on page 37254, in the first column, correct the DATES caption to read:

EFFECTIVE DATE: October 4, 1998.

Dated: July 16, 1998.

**Stanley F. Mires,**

*Chief Counsel, Legislative.*

[FR Doc. 98-20521 Filed 7-30-98; 8:45 am]

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**ENVIRONMENTAL PROTECTION AGENCY****40 CFR Part 52**

[CA 179-0061; FRL-6131-4]

**Approval and Promulgation of Implementation Plans; California State Implementation Plan Revision; Bay Area Air Quality Management District**

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

**ACTION:** Final rule.

**SUMMARY:** EPA is finalizing the approval of a revision to the California State Implementation Plan (SIP) proposed in the **Federal Register** on April 17, 1997. The revision concerns a rule from the Bay Area Air Quality Management District (BAAQMD). This approval action will incorporate this rule into the Federally approved SIP. The intended effect of approving this rule is to regulate emissions of oxides of nitrogen (NO<sub>x</sub>) in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). The rule concerns the control of NO<sub>x</sub> emissions from utility electric power generating boilers in the San Francisco Bay area. Thus, EPA is finalizing the approval of this revision into the California SIP under provisions of the CAA regarding EPA actions on SIP submittals, and SIPs for national primary and secondary ambient air quality standards. The rule is being approved into the SIP in accordance with the area's ozone maintenance plan.

**DATES:** This action is effective on August 31, 1998.

**ADDRESSES:** Copies of the rule and EPA's evaluation report are available for public inspection at EPA's Region IX office during normal business hours. Copies of the submitted rule are available for inspection at the following locations:

Rulemaking Office (AIR-4), Air Division, U.S. Environmental Protection Agency, Region IX, 75

Hawthorne Street, San Francisco, CA 94105.

Environmental Protection Agency, Air Docket (6102), 401 "M" Street, S.W., Washington, D.C. 20460.

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

Bay Area Air Quality Management District, Rule Development Section, 939 Ellis Street, San Francisco, CA 94109.

**FOR FURTHER INFORMATION CONTACT:**

Thomas C. Canaday, Rulemaking Office (AIR-4), Air Division, U.S.

Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105-3901, Telephone: (415) 744-1202.

**SUPPLEMENTARY INFORMATION:****I. Applicability**

The BAAQMD rule being approved into the California SIP is Regulation 9, Rule 11, Nitrogen Oxides and Carbon Monoxide from Utility Electric Power Generating Boilers. This BAAQMD rule was adopted on February 16, 1994 and amended November 15, 1995. A revision of the amended rule, containing the Reasonably Available Control Technology (RACT) NO<sub>x</sub> provisions required under the Act but omitting state-mandated NO<sub>x</sub> emission limits, was submitted to EPA by the State of California on July 23, 1996. The rule was found to be complete on January 17, 1997, pursuant to EPA's completeness criteria that are set forth in 40 CFR part 51 Appendix V.<sup>1</sup> A subsequent version revised only to correct typographical errors was submitted on February 20, 1998. EPA is taking final action to approve the rule into the SIP.

**II. Background**

On April 17, 1997, EPA proposed to approve Regulation 9, Rule 11 into the California SIP (62 FR 18730). While the BAAQMD was no longer required to submit NO<sub>x</sub> RACT rules pursuant to section 182(b)(2), the BAAQMD incorporated several previously submitted NO<sub>x</sub> rules as contingency measures in its ozone maintenance plan as a requirement for redesignation to attainment. Shortly after being redesignated to attainment of the ozone standard, the Bay Area recorded violations of the Federal ozone standard, therefore triggering the contingency measures of the maintenance plan. In accordance with

<sup>1</sup> EPA adopted the completeness criteria on February 16, 1990 (55 FR 5830) and, pursuant to section 110(k)(1)(A) of the CAA, revised the criteria on August 26, 1991 (56 FR 42216).

the redesignation maintenance plan, and at the request of the BAAQMD, EPA is incorporating the NO<sub>x</sub> measures into the SIP. The BAAQMD submitted the contingency measure being acted on in this document on July 23, 1996. This action encompasses part of the measures identified in the plan as contingency measures. A detailed discussion of the background for BAAQMD Regulation 9, Rule 11 (as submitted on July 23, 1996) is provided in the proposed rule cited above.

EPA has evaluated BAAQMD Regulation 9, Rule 11 for consistency with the requirements of the CAA and EPA regulations and EPA interpretation of these requirements as expressed in the various EPA policy guidance documents referenced in the proposed rule cited above. EPA has found that the BAAQMD submitted rule meets the applicable EPA requirements. A detailed discussion of the BAAQMD rule provisions and EPA's evaluation has been provided in the proposed rule and in the technical support document (TSD), dated January 24, 1997, which is available at EPA's Region IX office.

**III. Response to Public Comments**

A 30-day public comment period was provided in 62 FR 18730. The rule in the present action, along with four additional rules (BAAQMD Regulation 9, Rule 7; Regulation 9, Rule 8; Regulation 9, Rule 9; and Regulation 9, Rule 12) were the subject of a prior direct final action. See 62 FR 18710 (April 17, 1997). EPA received adverse comments on Regulation 9, Rule 11 only. Consequently the previous direct final action was withdrawn. See 62 FR 32687 (June 17, 1997). Following is EPA's response to comments received on Regulation 9, Rule 11 from Pacific Gas and Electric Company (PG&E), a public utility that owns and operates sources affected by Regulation 9, Rule 11. PG&E objected to the presence in BAAQMD Regulation 9, Rule 11 of provisions that relate to carbon monoxide and ammonia emissions on the grounds that these substances are not ozone precursors. However, the BAAQMD submitted the carbon monoxide and ammonia provisions for inclusion into the SIP and there is no basis for EPA to disapprove them.

PG&E also objected to the inclusion in BAAQMD Regulation 9, Rule 11 of references to those portions of the rule which contain state-mandated NO<sub>x</sub> emissions limits and were therefore not included in the rule as submitted to EPA on July 23, 1996. In response to this comment, the State of California removed these typographical errors from

BAAQMD Regulation 9, Rule 11 and resubmitted the corrected version to EPA on February 20, 1998. It is this corrected version, as submitted to EPA by the State of California, that this approval action incorporates into the Federally approved SIP.

#### IV. EPA Action

EPA is finalizing this action to approve the above rule for inclusion into the California SIP. EPA is approving the submittal under section 110(k)(3) as meeting the requirements of section 110(a) and part D of the CAA. This approval action will incorporate this rule into the Federally approved SIP. The intended effect of approving this rule is to regulate emissions of NO<sub>x</sub> in accordance with the requirements of the CAA.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any State implementation plan. Each request for revision to the State implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

#### V. Administrative Requirements

##### A. Executive Orders 12866 and 13045

The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866 review.

The final rule is not subject to E.O. 13045, entitled "Protection of Children from Environmental Health Risks and Safety Risks," because it is not an "economically significant" action under E.O. 12866.

##### B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

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 impose any new requirements, the Administrator certifies that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the CAA, preparation of a 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).

##### C. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to private sector, of \$100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated costs of \$100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new Federal requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

##### D. Submission to Congress and the General Accounting Office

Under section 801(a)(1)(A) of the Administrative Procedure Act (APA) as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of the rule in today's **Federal Register**. This rule is

not a "major rule" as defined by section 804(2) of the APA as amended.

##### E. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 29, 1998. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

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

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

**Note:** Incorporation by reference of the State Implementation Plan for the State of California was approved by the Director of the Federal Register on July 1, 1982.

Dated: July 13, 1998.

**Felicia Marcus,**

*Regional Administrator, Region IX.*

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

#### PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

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

##### Subpart F—California

2. Section 52.220 is amended by adding paragraph (c)(239)(i)(E)(4) to read as follows:

##### § 52.220 Identification of plan.

\* \* \* \* \*

(c) \* \* \*  
(239) \* \* \*  
(i) \* \* \*  
(E) \* \* \*

(4) Rule 9-11 amended November 15, 1995.

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