

- (5) Permit 4911-033-1319-0 Plant Atkinson conditions 8 through 13.
- (6) Permit 4911-033-6951 Plant McDonough conditions 5 through 10.
- (7) Permit 4922-028-10902 Atlanta Gas Light Company conditions 20 and 21.
- (8) Permit 4922-031-10912 Atlanta Gas Light Company conditions 27 and 28.
- (9) Permit 2631-033-11436 Austell Box Board Corp. conditions 1 through 5.
- (10) Permit 8922-044-10094 Emory University conditions 19 through 26.
- (11) Permit 3711-044-11453 General Motors Corporation conditions 1 through 6 and Attachment A.
- (12) Permit 2077-058-11226 Georgia Proteins Company conditions 16 through 23 and Attachment A.
- (13) Permit 3221-060-10576 Owens-Brockway Glass Container, Inc. conditions 26 through 28 and Attachment A.
- (14) Permit 3296-060-10079 Owens-Corning Fiberglass Corporation conditions 25 through 29.
- (15) Permit 3354-038-6686-0 William L. Bonnell Co. conditions 17 through 30.
- (16) Permit 4922-075-10217 Transcontinental Gas Pipe Line Corporation conditions 21 through 24.
- (17) Permit 9711-033-11456 Lockheed-Georgia Company conditions 1 through 11.
- (18) Permit 3241-060-8670 Blue Circle Incorporated conditions 48 through 54.
- (ii) Other material. None.

[FR Doc. 99-6505 Filed 3-17-99; 8:45 am]

BILLING CODE 6560-50-P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[CA 211-0126 EC; FRL-6235-5]

#### Approval and Promulgation of Implementation Plans; Arizona and California State Implementation Plan Revision; Maricopa County, Arizona, Antelope Valley Air Pollution Control District, San Diego County Air Pollution Control District, San Joaquin Valley Unified Air Pollution Control District, and Ventura County Air Pollution Control District

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

**ACTION:** Direct final rule.

**SUMMARY:** EPA is taking direct final action to approve revisions to the Arizona and California State Implementation Plans (SIP). The

revisions concern rules from the following districts: Maricopa County, Arizona; Antelope Valley Air Pollution Control District, California; San Diego County Air Pollution Control District, California; San Joaquin Valley Unified Air Pollution Control District, California, and Ventura County Air Pollution Control District, California. These revisions concern the adoption of emergency episode plans within federal guidelines. This approval action will incorporate these rules into the Federally approved SIP. The intended effect of approving these rules is to regulate emergency preparedness in accordance with the requirements of the Clean Air Act (CAA or the Act). Thus, EPA is finalizing the approval of these revisions into the Arizona and California SIPs under provisions of the CAA regarding EPA action on SIP submittals, SIPs for national primary and secondary ambient air quality standards and plan requirements for nonattainment areas.

**DATES:** This rule is effective on May 17, 1999 without further notice, unless EPA receives adverse comments by April 19, 1999. If EPA receives such comment, it will publish a timely withdrawal in the **Federal Register** informing the public that this rule will not take effect.

**ADDRESSES:** Written comments must be submitted to Andrew Steckel at the Region IX office listed below. Copies of the rule revision and EPA's evaluation report of each rule are available for public inspection at EPA's Region 9 office during normal business hours. Copies of the submitted rule revisions are also 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.

Maricopa County Environmental Services Department, Air Quality Division, 1001 North Central Avenue, Ste. 201, Phoenix, Arizona 85004-1942;

Antelope Valley Air Pollution Control District, 315 West Pondera Street, Lancaster, California, 93534;

San Diego County Air Pollution Control District, 9150 Chesapeake Drive, San Diego, California 92123-1096; San Joaquin Valley Unified Air Pollution Control District, 1999

Tuolumne Street, Suite 200, Fresno, California, 93721, and Ventura County Air Pollution Control District, 669 County Square Drive, Ventura, California, 93003.

**FOR FURTHER INFORMATION CONTACT:** Andrew Steckel, Rulemaking Office (AIR-4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105-3901, Telephone: (415) 744-1185.

#### SUPPLEMENTARY INFORMATION:

##### I. Applicability

The rules being approved into the Arizona and California SIP include: Maricopa County, Arizona, Regulation VI, Rule 600—Emergency Episode; Antelope Valley APCD, Rule 701—Air Pollution Emergency Contingency Action; San Diego County APCD, Rule 127—Episode Criteria Levels, Rule 128—Episode Declaration, and Rule 130—Episode Actions; San Joaquin Valley Unified APCD, Rule 6010—General Statement, Rule 6020—Applicable Areas, Rule 6030—Episode Criteria Levels, Rule 6040—Episode Stages, Rule 6050—Division of Responsibility, Rule 6060—Administration of Emergency Program, Rule 6070—Advisory of High Air Pollution Potential, Rule 6080—Declaration of Episode, Rule 6081—Episode Action—Health Advisory, Rule 6090—Episode Action Stage 1: (Health Advisory-Alert), Rule 6100—Episode Action Stage 2: (Warning), Rule 6110—Episode Action Stage 3: (Emergency), Rule 6120—Episode Termination, Rule 6130—Stationary Source Curtailment Plans and Traffic Abatement Plans, Rule 6140—Episode Abatement Plan, and Rule 6150—Enforcement; and Ventura County Air Pollution Control District, Rule 150—General, Rule 151—Episode Criteria, Rule 152—Episode Notification Procedures, Rule 153—Health Advisory Episode Actions, Rule 154—Stage 1 Episode Actions, Rule 155—Stage 2 Episode Actions, Rule 156—Stage 3 Episode Actions, Rule 157—Air Pollution Disaster, Rule 158—Source Abatement Plans, and Rule 159—Traffic Abatement Procedures.

These rules were submitted by the Arizona DEP to EPA on January 4, 1990 and by the California Air Resources Board on March 10, 1998 (Antelope Valley); January 28, 1992 (San Diego), March 3, 1997 (San Joaquin), and January 28, 1992 (Ventura).

##### II. Background

The Clean Air Act of 1970 (42 USC s. 7401 *et seq.*; CAA or the Act) required states to develop plans to prevent and

control air quality from degrading to the level of significant harm. By the end of 1971, a regulatory structure was in place that continues to this day, see 40 CFR Part 51.150 *et seq.* (Subpart H) and Appendix L (following 40 CFR Part 51.680). Except for changes in the significant harm level of criteria pollutants and a few other minor changes, the regulatory structure has remained consistent for many years.

Subpart H requires local agencies to determine if they exceed the minimum threshold for criteria pollutants and then to prepare plans to avoid significant harm levels of these pollutants. Agencies are encouraged to develop a graduated response that depends on the level of threat to human health and environmental degradation that the existing and projected pollutant levels indicate.

### III. EPA Evaluation and Action

In determining the approvability of an emergency episode rule, EPA must evaluate the rule for consistency with the requirements of the CAA and EPA regulations, as found in section 110 of the CAA and 40 CFR part 51 (Requirements for Preparation, Adoption and Submittal of Implementation Plans). The EPA interpretation of these requirements, which forms the basis for this action, appears in various EPA policy guidance documents, most notably the Guide for Air Pollution Episode Avoidance (EPA, 1971) and other derivative publications. In general, these guidance documents, as well as other relevant and applicable guidance documents, have been set forth to ensure that submitted emergency episode rules meet Federal requirements and are fully enforceable and strengthen or maintain the SIP.

Maricopa County, Arizona's earlier emergency episode rule was approved into the SIP in 1982. The new rule recasts the information about episode level criteria and adds a section on appropriate control actions to be undertaken as air quality would deteriorate. The administrative requirements section is substantially unchanged.

The Antelope Valley Air Pollution Control District (AVAPCD) has adopted an emergency episode regulation intended to comply with 40 CFR 51.150; this rule will replace South Coast AQMD Rule 701 which has been in the Antelope Valley SIP.

The regulations for APCDs include the following general elements:

(1) The plan shall identify the appropriate criteria pollutants and the levels of those pollutants that would

trigger pollution control and avoidance activities,

(2) The plan shall identify a level of significant harm that meets or exceeds the federal standards as established at 40 CFR s. 51.51,

(3) The plan shall identify specific control and avoidance actions that the district would take when harmful levels of criteria pollutants are reached.

The Maricopa County Environmental Services Department (MCESD), the San Diego County Air Pollution Control District (SDCAPCD), the San Joaquin Valley Unified Air Pollution Control District (SJVUAPCD), and the Ventura County Air Pollution Control District (VCAPCD) have adopted revisions to their earlier emergency episode plans that have incorporated revised federal standards and improved surveillance and control activities. A more detailed discussion of emergency episode requirements and provisions can be found in the Technical Support Document (TSD) for this action, dated November 18, 1998.

EPA has evaluated the submitted rules and has determined that they are consistent with the CAA, EPA regulations and EPA policy. Therefore, Maricopa County Rule 600, Antelope Valley APCD Rule 701, San Diego County APCD Rules 127, 128, and 130, San Joaquin Valley Unified APCD Rules 6010, 6020, 6030, 6040, 6050, 6060, 6070, 6080, 6081, 6090, 6100, 6110, 6120, 6130, 6140, and 6150, and Ventura County APCD Rules 150, 151, 152, 153, 154, 155, 156, 157, 158, and 159 are being approved under section 110 (k)(3) of the CAA as meeting the requirements of section 110 (a)(2)(G) of the Act.

EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should adverse comments be filed. This rule will be effective May 17, 1999 without further notice unless the Agency receives adverse comments by April 19, 1999.

If the EPA receives such comments, then EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period on this rule. Any parties interested in commenting on this rule should do so

at this time. If no such comments are received, the public is advised that this rule will be effective on May 17, 1999 and no further action will be taken on the proposed rule.

### IV. Administrative Requirements

#### A. Executive Order 12866

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

#### B. Executive Order 12875

Under E.O. 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a state, local, or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If EPA complies by consulting, Executive Order 12875 requires EPA to provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected state, local, and tribal governments, the nature of their concerns, copies of written communications from the governments, and a statement supporting the need to issue the regulation. In addition, E.O. 12875 requires EPA to develop an effective process permitting elected officials and other representatives of state, local, and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates." Today's rule does not create a mandate on state, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of E.O. 12875 do not apply to this rule.

#### C. Executive Order 13045

"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 E.O. 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 and 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 E.O. 13045 because it does not involve decisions intended to mitigate environmental health and safety risks.

**D. Executive Order 13084**

Under E.O. 13084, EPA may not issue a regulation that is not required by statute, that significantly affects 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. If the EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, 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, 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 rule does not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of E.O. 13084 do not apply to this 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 final 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 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 annual 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 annual 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 requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

**G. Submission to Congress and the Comptroller General**

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit 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 United States prior to publication of the rule in the **Federal Register**. This rule is not a "major" rule as defined by 5 U.S.C. 804(2).

**H. 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 May 17, 1999. 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, Incorporation by reference, Intergovernmental relations, Ozone, Particulates, Carbon monoxide, Volatile organic compounds, Reporting and recordkeeping requirements.

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

Dated: February 4, 1999.

**Laura Yoshii,**

*Deputy 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 D—Arizona**

2. Section 52.120 is amended by adding paragraph (c) (67) (i) (C) to read as follows:

**§ 52.120 Identification of plan.**

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* * * * *
(c) * * *
(67) * * *
(i) * * *
(C) Amended Regulation VI, Rule 600,
revised on July 13, 1988.
* * * * *
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**Subpart F—California**

3. Section 52.220 is amended by adding paragraphs (c)(187)(i)(B)(3), (187)(i)(D), (199)(i)(D)(3), (244)(i)(E), and (256)(i)(D) to read as follows:

**§ 52.220 Identification of plan.**

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* * * * *
(c) * * *
(187) * * *
(i) * * *
(B) * * *
(3) New rules 150 to 159 amended on
September 17, 1991.
* * * * *
(D) San Diego County Air Pollution
Control District.
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(I) New rules 127, 128, and 130 amended on September 17, 1991.

\* \* \* \* \*

(199) \* \* \*

(i) \* \* \*

(D) \* \* \*

(3) Rules 6010, 6020, 6040, 6050, 6060, 6070, 6080, 6081, 6090, 6100, 6110, 6120, 6130, 6140, and 6150 were adopted on May 21, 1992; amended on December 17, 1992.

\* \* \* \* \*

(244) \* \* \*

(i) \* \* \*

(E) San Joaquin Valley Unified Air Pollution Control District.

(I) Rule 6030 adopted on May 21, 1992; amended on November 13, 1996.

\* \* \* \* \*

(256) \* \* \*

(i) \* \* \*

(D) Antelope Valley Air Pollution Control District.

(I) Rule 701 was amended on January 20, 1998.

\* \* \* \* \*

[FR Doc. 99-6180 Filed 3-17-99; 8:45am]

BILLING CODE 6560-50-P

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Health Care Financing Administration**

**42 CFR Part 488**

[HCFA-2035-FC]

RIN 0938-AJ35

**Medicare and Medicaid Programs; Civil Money Penalties for Nursing Homes (SNF/NF), Change in Notice Requirements, and Expansion of Discretionary Remedy Delegation**

**AGENCY:** Health Care Financing Administration (HCFA), HHS.

**ACTION:** Final rule with comment period.

**SUMMARY:** This final rule with comment period expands current Medicare and Medicaid regulations regarding the imposition of civil money penalties imposed on nursing homes that are not in compliance with program requirements. The existing regulations provide for the imposition of a civil money penalty in a specific amount for each day of noncompliance and provide further that the civil money penalty stays in place until the facility comes into substantial compliance with all participation requirements or the facility is terminated from participation in the program. This new rule adds the ability for HCFA or the State to impose a single civil money penalty amount for

an instance of a nursing home's noncompliance. We are also deleting language to remove the requirement of a maximum notification period for imposition of a remedy.

**DATES: Effective date:** These regulations are effective on May 17, 1999.

**Comment date:** Comments will be considered if we receive them at the appropriate address, as provided below, no later than 5 p.m. on May 17, 1999.

**ADDRESSES:** Mail an original and 3 copies of written comments to the following address: Health Care Financing Administration, Department of Health and Human Services, Attention: HCFA-2035-FC, P.O. Box 26585, Baltimore, MD 21207-0385.

If you prefer, you may deliver an original and 3 copies of your written comments to one of the following addresses: Room 309-G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, D.C. 20201, or Room C5-09-26, 7500 Security Boulevard, Baltimore, Maryland 21244-1850.

Comments may also be submitted electronically to the following e-mail address: HCFA2035FC@hcfa.gov. For e-mail comment procedures, see the beginning of SUPPLEMENTARY INFORMATION. For further information on ordering copies of the **Federal Register** contained in this document, see the beginning of **Supplementary Information**.

**FOR FURTHER INFORMATION CONTACT:** Cynthia Graunke, 410-786-6782

**SUPPLEMENTARY INFORMATION:**

**E-mail, Comments, Procedures, and Availability of Copies**

E-mail comments must include the full name and address of the sender, and must be submitted to the referenced address in order to be considered. All comments must be incorporated in the e-mail message because we may not be able to access attachments. Electronically submitted comments will be available for public inspection at the Independence Avenue address, below. Because of staffing and resource limitations, we cannot accept comments by facsimile (FAX) transmission. In commenting, please refer to file code HCFA-2035-FC. Comments received timely will be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, in Room 309-G of the Department's offices at 200 Independence Avenue, SW., Washington, D.C., on Monday through Friday of each week from 8:30 a.m. to 5 p.m. (phone: (202) 690-7890).

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**I. Background**

To participate in the Medicare and Medicaid programs, long-term care facilities must be certified as meeting Federal participation requirements. Long-term care facilities include skilled nursing facilities for Medicare and nursing facilities for Medicaid. The Federal participation requirements for these facilities are specified in the statute at sections 1819 and 1919 of the Social Security Act (the Act) and in implementing regulations at 42 CFR Part 483, Subpart B.

Section 1864(a) of the Act authorizes the Secretary to enter into agreements with State survey agencies to determine whether skilled nursing facilities meet the Federal participation requirements for Medicare. Section 1902(a)(33)(B) of the Act provides for State survey agencies to perform the same survey tasks for facilities participating or seeking to participate in the Medicaid program. The results of these Medicare and Medicaid surveys are used by HCFA and the State Medicaid agency, respectively, as the basis for a decision