

§ 4.87 Schedule of ratings—ear.

DISEASES OF THE EAR

6200 Chronic suppurative otitis media, mastoiditis, or cholesteatoma (or any combination):

During suppuration, or with aural polyps .....

Note: Evaluate hearing impairment, and complications such as labyrinthitis, tinnitus, facial nerve paralysis, or bone loss of skull, separately.

6201 Chronic nonsuppurative otitis media with effusion (serous otitis media):

Rate hearing impairment

6202 Otosclerosis:

Rate hearing impairment

6204 Peripheral vestibular disorders:

Dizziness and occasional staggering ..

Occasional dizziness .....

Note: Objective findings supporting the diagnosis of vestibular disequilibrium are required before a compensable evaluation can be assigned under this code. Hearing impairment or suppuration shall be separately rated and combined.

6205 Meniere's syndrome (endolymphatic hydrops):

Hearing impairment with attacks of vertigo and cerebellar gait occurring more than once weekly, with or without tinnitus .....

Hearing impairment with attacks of vertigo and cerebellar gait occurring from one to four times a month, with or without tinnitus ....

Hearing impairment with vertigo less than once a month, with or without tinnitus .....

Note: Evaluate Meniere's syndrome either under these criteria or by separately evaluating vertigo (as a peripheral vestibular disorder), hearing impairment, and tinnitus, whichever method results in a higher overall evaluation. But do not combine an evaluation for hearing impairment, tinnitus, or vertigo with an evaluation under diagnostic code 6205.

6207 Loss of auricle:

Complete loss of both .....

Complete loss of one .....

Deformity of one, with loss of one-third or more of the substance .....

6208 Malignant neoplasm of the ear (other than skin only) .....

Note: A rating of 100 percent shall continue beyond the cessation of any surgical, radiation treatment, antineoplastic chemotherapy or other therapeutic procedure. Six months after discontinuance of such treatment, the appropriate disability rating shall be determined by mandatory VA examination. Any change in evaluation based on that or any subsequent examination shall be subject to the provisions of § 3.105(e) of this chapter. If there has been no local recurrence or metastasis, rate on residuals.

6209 Benign neoplasms of the ear (other than skin only):

Rate on impairment of function.

6210 Chronic otitis externa:

Swelling, dry and scaly or serous discharge, and itching requiring frequent and prolonged treatment .....

6211 Tympanic membrane, perforation of .....

6260 Tinnitus, recurrent .....

Note: A separate evaluation for tinnitus may be combined with an evaluation under diagnostic codes 6100, 6200, 6204, or other diagnostic code, except when tinnitus supports an evaluation under one of those diagnostic codes.

(Authority: 38 U.S.C. 1155)

6. Section 4.87a is revised to read as follows:

§ 4.87a Schedule of ratings—other sense organs.

6275 Sense of smell, complete loss .....

6276 Sense of taste, complete loss .....

Note: Evaluation will be assigned under diagnostic codes 6275 or 6276 only if there is an anatomical or pathological basis for the condition.

(Authority: 38 U.S.C. 1155)

§ 4.87b [Removed]

7. Section 4.87b is removed.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[NV 030-0015; FRL-6339-4]

Clean Air Act Approval and Promulgation of New Source Review Provisions Implementation Plan for Nevada State Clark County Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The EPA is promulgating approval of the new source review (NSR) program submitted by the Clark County Air Pollution Control District (CCAPCD) for the purpose of meeting the nonattainment and prevention of significant deterioration (PSD) NSR requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). The requested revision was submitted by the State to satisfy certain Federal requirements for an approvable nonattainment new source review SIP. This submittal also satisfies the requirements for a Prevention of Significant Deterioration (PSD) program. The intended effect of this rulemaking is to regulate air pollution in accordance with the Act. Thus, EPA is finalizing the approval of these revisions into the Nevada state implementation plan (SIP) 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. EFFECTIVE DATE: This action is effective on June 10, 1999.

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

Permits Office (Air-3), Air Division, EPA Region IX, 75 Hawthorne Street, San Francisco, CA 94105

Environmental Protection Agency, Air Docket (6102), 401 "M" Street, SW, Washington, DC 20406.

Clark County Health District, 625 Shadow Lane, Las Vegas, NV 89127 Nevada Division of Environmental Protection, 333 W. Nye Lane, Carson City, NV 89710

FOR FURTHER INFORMATION CONTACT: Steve Branoff, Environmental Engineer, Permits Office (Air-3), Air Division, EPA Region IX, 75 Hawthorne Street, San Francisco, CA 94105, Telephone: (415) 744-1290.

SUPPLEMENTARY INFORMATION:

Background and Purpose

The air quality planning requirements for nonattainment NSR are set out in Part D of Title I of the Act, with implementing regulations at 40 CFR 51.160 through 51.165. The air quality planning requirements for PSD are set out in Part C of Title I of the Act, with implementing regulations at 40 CFR 51.166. On November 30, 1993, CCAPCD submitted its NSR rules to EPA as a proposed revision to the SIP. On July 28, 1995, EPA proposed to approve with contingencies, and to disapprove in the alternative, the submitted SIP revisions. See 61 FR 17675. Full approval as a final action was contingent upon CCAPCD making required changes to the submitted rules. EPA requested public comments on the proposed approval and received none.

CCAPCD has since submitted to EPA revised NSR rules. The revisions contain the required changes and EPA is therefore promulgating final approval of the revised rules. The specific changes that CCAPCD made to its rules are detailed below.

The Clark County Board of Health (the governing board for the CCAPCD) adopted changes to the new source review rules in "installments" at public hearings on December 21, 1995; December 19, 1996; January 23, 1997; April 24, 1997; June 26, 1997, January 22, 1998 and April 23, 1998. There was substantial input from the public and the regulated community at these

hearings and the workshops that preceded them.

For Rule 58, CCAPCD submitted the revised rule to the State of Nevada for inclusion to the SIP on November 18, 1996. The State submitted Rule 58 to EPA on January 17, 1997. The SIP revision was reviewed by EPA and determined to be complete on March 10, 1997. For Rules 0 and 12, CCAPCD submitted the revised rules to the State of Nevada for inclusion to the SIP on March 3, 1999. The State submitted Rules 0 and 12 to EPA on March 15, 1999. The SIP revision was reviewed by EPA and determined to be complete on March 30, 1999.

In its July 28, 1995 proposed approval, EPA identified a number of deficiencies in CCAPCD's November 30, 1993 submittal which had to be corrected as a condition of full approval. At that time, CCAPCD had proposed draft rules which corrected the deficiencies. EPA's technical support document (TSD) for the July 28, 1995 proposed approval contains a discussion of how CCAPCD's proposed draft rules would correct the deficiencies, as well as how they would meet the general NSR requirements of the Act. The rules in CCAPCD's current submittal are substantially similar to the draft rules upon which EPA based its proposed approval. Below is a discussion of the portions of CCAPCD's January 17, 1997 and March 15, 1999 submittals which correct the deficiencies identified by EPA.

### Corrected Deficiencies

#### Rule 0

**Modification:** In its July 28, 1995 proposed approval, EPA specified that "the rule fails to require review for modifications which involve a major increase in actual emissions, but no increase in potential to emit. To correct this deficiency, calculations in the District rule must be based on increases in actual emissions." In the March 15, 1999 submittal, CCAPCD corrected the definition of modification to reference a change resulting in a "net emissions increase." As suggested in EPA's proposed approval, the federal definition of "net emissions increase" was also incorporated into the rule. In concert, these definitions satisfy EPA's requirement for review of modifications.

**Regulated Air Pollutant:** EPA specified that "the definition of regulated air pollutant in the submitted rule . . . should be corrected for rule consistency." With revisions to the definition in the March 15, 1999 submittal, CCAPCD satisfies EPA's suggestion.

**Volatile Organic Compound:** EPA's proposed approval described CCAPCD's definition of Volatile Organic Compound "contains a list of substances exempt from regulation as VOCs which is inconsistent with the exemption list in 40 CFR 51.100(s)." CCAPCD's March 15, 1999 submittal corrected this discrepancy by incorporating the CFR definition verbatim. This language satisfies EPA's requirements.

#### Rule 12

**Public Notice:** In its July 28, 1995 proposed approval, EPA specified that a "thirty-day public comment period should be required for each permit application, as specified by 40 CFR 51.166(q). All public comment, oral and written, received within the specified time, should be considered in making the final decision on the approvability of the permit application." The March 15, 1999 submittal includes section 12.3.4.2, to require consideration of public comments, and section 12.3.4 to require a minimum thirty-day public comment period. The addition of these sections satisfies EPA's requirements.

**Variance to Rule Requirements:** EPA specified that "no variance may be granted to a source required by federal standards to undergo new source review." The March 15, 1999 submittal removed provisions for a variance to the major source impact analysis for NO<sub>x</sub> and therefore satisfies EPA's requirements in that regard.

**Fugitive Emissions:** EPA's proposed approval explained that "fugitives must also be included in the major source applicability determination, defined by a source's potential to emit, for all other regulated pollutants, if the source belongs to one of the source categories listed in 40 CFR 51.165(a)(1)(iv)(C)." Revisions to the definitions of potential to emit, section 0.116, and stationary source, section 0.133, ensured that fugitive emissions would be included in applicability determination. The language in the March 15, 1999 submittal satisfies EPA's requirements.

**Additional Impact Analysis for Attainment Pollutants:** EPA specified that the rule failed to require an additional impact analysis for VOC, lead and CO: "The rule must be amended to require the additional impact analysis for pollutants subject to regulation under the Act which will be emitted by the new source or modifications." In sections 12.2.5.7, 12.2.10.6, 12.2.13.6, 12.2.15.7, 12.2.16.7, and 12.2.17.6, the March 15, 1999 submittal requires such analysis for all criteria pollutants at major sources and major modifications

in attainment areas. The language satisfies EPA's requirement.

**Alternative Siting Analysis:** EPA specified that the rule lacked a requirement that an alternative siting analysis, required by CAA section 173(a)(5), be performed by all permit applicants for sources located within a nonattainment area. CCAPCD has added section 12.1.4.1.k to require a demonstration that the benefits of a proposed major source or modification significantly outweigh the environmental and social costs imposed as a result of its location in the nonattainment area. The language in the March 15, 1999 submittal satisfies EPA's requirements.

**Class I Area Visibility Protection:** EPA specified that the rule lacked the visibility protection requirements of CAA section 169(a) and described in 40 CFR 51.307. While there are currently no Class I areas in Clark County, the requirement needed to be incorporated into the rule. The March 15, 1999 submittal included such provisions in sections 12.2.5.8, 12.2.10.7, 12.2.13.7, 12.2.15.8, 12.2.16.8, and 12.2.17.7 and satisfies EPA's requirements.

**PSD Ambient Air Increments:** EPA specified that the rule lacked "provisions which set the maximum allowable increases in PM-10, SO<sub>2</sub>, and NO<sub>2</sub> to those increments listed in 40 CFR 51.166(c), for designated attainment or unclassifiable areas." The March 15, 1999 submittal lists these increments in sections 12.2.5.6, 12.2.15.6, and 12.2.16.6, and therefore satisfies EPA's requirements.

**Offsets:** EPA specified that the submitted rule failed to meet the requirements of CAA section 173, which requires offsets to be federally enforceable prior to the issuance of an Authority to Construct Permit, and in effect by the time operation commences. The March 15, 1999 submittal lists this requirement in sections 12.4.1.4, 12.4.2.4, 12.4.3.4, and 12.4.4.4 and therefore satisfies EPA's requirements.

**Additional Requirements:** EPA specified that the submitted rule failed to "require new source review for a source or modification which becomes major due to a relaxation in a federally-enforceable limit." Section 0.133.b.2 of the March 15, 1999 submittal includes the following language from the "major stationary source" definition in 40 CFR 51.165(a)(5)(ii): "at such time that a particular source or modification becomes a major stationary source . . . the requirements of regulations approved pursuant to this shall apply to the source or modification as though construction had not yet commenced." This satisfies EPA's requirements.

**Hazardous Air Pollutants:** EPA specified that the rule's list of hazardous air pollutants needed to "include the pollutants listed in 40 CFR 51.166(b)(23)(I), which are not also regulated by Section 112(b)(1) of the Act." The March 15, 1999 submittal includes definition 0.123, "Regulated Air Pollutant," which satisfies EPA's requirements under PSD.

#### Rule 58

**Adjustment at Time of Use:** EPA noted the submitted rule was not clear that emission reduction credits (ERCs) must be surplus at time of use to all federally-enforceable requirements, including, but not limited to, Reasonably Available Control Technology (RACT) requirements. Section 58.8 of the January 17, 1997 submittal prescribes that ERCs must be surplus at the time of use. This satisfies EPA's requirements.

**Prior Shutdowns:** EPA specified that the submitted rule must not disallow "prior shutdown" credits as required in 40 CFR 51.165(a)(1)(xxv). Section 58.3.3.1 of the January 17, 1997 submittal limits shutdown credits as defined by this CFR section. The federal regulation limits shutdown credits either when the District attainment plan has been disapproved, or when this plan is not yet due, but a due date during the creation of this plan is missed. In this case, sources which seek ERCs due to a shutdown must do so at the time operation of the source ceases. This section satisfies EPA's requirements.

**Property Rights:** EPA specified that the submitted rule incorrectly referred to procedures for banking ERCs "in a legally protected manner." The January 17, 1997 submittal did not include language suggesting that banked ERCs could be protected under property rights laws and, therefore, this submittal can be approved by EPA.

**Mobile and Area Sources:** EPA specified that the submitted rule allowed reductions generated by mobile and area sources to be credited as ERCs which may be used as offsets but failed to provide for the federal enforceability and quantification of these credits. The January 17, 1997 submittal removed all credits for area and mobile source reductions and therefore can be approved by EPA.

#### Final Action and Implications

EPA is promulgating final approval of CCAPCD's NSR program as submitted on January 17, 1997 and on March 15, 1999. This submittal consists of Clark County Air Pollution Control Regulations sections 0 (Definitions), 12 (Preconstruction Review for New or

Modified Stationary Sources), and 58 (Emission Reduction Credits).

EPA did not receive any comments on the changes detailed above that were necessary to make CCAPCD's program fully approvable. The scope of this approval applies to all new or modified sources (as defined in the program) within the Clark County Air Pollution Control District.

#### Scope of This Approval

As discussed above, the submitted rules (0, 12, and 58) contain provisions which satisfy the federal requirements for approval of nonattainment New Source Review (NSR) and Prevention of Significant Deterioration (PSD) programs. In addition, these rules contain provisions which are outside the scope of the above two programs, such as requirements for stationary sources of hazardous air pollutants and requirements for both minor stationary sources and stationary sources located in attainment areas to obtain emission reduction credits. Today's approval of rules 0, 12, and 58 is promulgated for the purpose of meeting the nonattainment and PSD program requirements of the Clean Air Act only, and does not imply approval of requirements contained in these rules for any other purpose. Therefore, approval of these rules does not constitute approval of the CCAPCD requirements to develop a program to regulate new or modified sources of hazardous air pollutants, as described by section 112(g) of the Act. In addition, approval of these rules does not constitute approval of emission reduction credit programs (such as the "road paving" offset program contained in section 12.4.5 of the current submittal) for the purpose of ensuring emissions reductions required to reach attainment of the PM-10 or PM-2.5 national ambient air quality standards.

#### Administrative Review

Copies of CCAPCD's submittal and other information relied upon for this final approval are contained in docket number NSRR 2-95 CCAPCD, at the EPA Regional Office. The docket is an organized and complete file of all the information submitted to, or otherwise considered by, EPA in development of this final approval. The docket is available for public inspection at the location listed under the ADDRESSES section of this document.

#### Administrative Requirements

##### A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory

action from Executive Order (E.O.) 12866, Regulatory Planning and Review.

##### B. Executive Order 12875

Under Executive Order 12875, Enhancing the Intergovernmental Partnership, 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, or EPA consults with 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 any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 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 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 E.O. 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

##### D. 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 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, 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 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., versus 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. 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 July 12, 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).)

#### H. 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).

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

Environmental Protection, Air pollution control, Carbon monoxide, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, and Volatile organic compounds.

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

Dated: April 21, 1999.

**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 DD—Nevada

2. Section 52.1470 is amended by adding paragraphs (c)(36) and (c)(37) to read as follows:

#### § 52.1470 Identification of plan.

\* \* \* \* \*

(c) \* \* \*

(36) On January 17, 1997, regulations for the following Health District were submitted by the Governor's designee.

(i) Incorporation by reference.

(A) Clark County Air Pollution Control District.

(J) Section 58 revised on December 21, 1995.

(37) On March 15, 1999, regulations for the following Health District were submitted by the Governor's designee.

(i) Incorporation by reference.

(A) Clark County Air Pollution Control District.

(J) Sections 0 and 12 revised on April 23, 1998.

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