

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 226-0186a; FRL-6606-3]

Approval and Promulgation of Implementation Plans; California State Implementation Plan Revision, Antelope Valley Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action on revisions to the California State Implementation Plan for the Antelope Valley Air Pollution Control District (AVAPCD). The six revisions consist of: three rule rescissions with accompanying negative declarations for source categories that emit volatile organic compounds (VOC); two negative declarations for source categories that emit oxides of nitrogen (NO_x), and one rule rescission for a source category that emits oxides of sulfur (SO_x). The intended effect of this action is to bring the AVAPCD SIP up to date in

accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). EPA is finalizing the approval of rescissions from the California SIP and the approval of these negative declarations as additional information to the California 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.

DATES: This rule is effective on July 17, 2000 without further notice, unless EPA receives adverse comments by June 16, 2000. 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, Chief, Rulemaking Office at the Region IX office listed below. Copies of the rule revisions and EPA's technical support document are available for public inspection at EPA's Region IX office during normal business hours. Copies of the submitted rule revisions 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, SW., Washington, DC 20460

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

Antelope Valley Air Pollution Control District, 43301 Division Street, Suite 206, Lancaster, CA 93539-4409

FOR FURTHER INFORMATION CONTACT: Julie A. Rose, Rulemaking Office, AIR-4, Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105, Telephone: (415) 744-1184.

SUPPLEMENTARY INFORMATION:

I. Applicability

The rules being approved for rescission and the negative declarations being approved for the Antelope Valley Air Pollution Control District (AVAPCD) portion of the California SIP are listed in the following Table:

SUBMITTED RECISSIONS AND NEGATIVE DECLARATIONS

Rule number and title	Adoption date	Submittal date	Type of revision
1105, Fluid Catalytic Cracking Units—Oxides of Sulfur	04-21-98	05-13-99	Rescission.
1109, Emissions of Oxides of Nitrogen from Boilers and Process Heaters in Petroleum Refineries.	04-21-98	05-13-99	Negative Declaration.
1112, Emissions of Oxides of Nitrogen from Cement Kilns	03-16-99	07-23-99	Negative Declaration.
1115, Motor Vehicle Assembly Line Coating Operations	11-18-97	01-12-99	Rescission/Negative Declaration.
1117, Emissions of Oxides of Nitrogen from Glass Melting Furnaces	03-16-99	07-23-99	Rescission/Negative Declaration.
1123, Refinery Process Turnarounds	11-08-97	02-16-99	Rescission/Negative Declaration.

II. Background

On March 3, 1978, EPA promulgated a list of ozone nonattainment areas under the provisions of the Clean Air Act, as amended in 1977 (1977 Act or pre-amended Act), that included the Southeast Desert Modified Air Quality Maintenance Area and the Los Angeles-South Coast Air Basin Area. 43 FR 8964, 40 CFR 81.305. On May 26, 1988, EPA notified the Governor of California, pursuant to section 110(a)(2)(H) of the 1977 Act, that the above SCAQMD's portion of the California SIP was inadequate to attain and maintain the ozone standard and requested that deficiencies in the existing SIP be corrected (EPA's SIP-Call). On November 15, 1990, the Clean Air Act Amendments of 1990 were enacted. Public Law 101-549, 104 Stat. 2399, codified at 42 U.S.C. 7401-7671q. In amended section 182(a)(2)(A) of the CAA, Congress statutorily adopted the

requirement that nonattainment areas fix their deficient reasonably available control technology (RACT) rules for ozone and established a deadline of May 15, 1991 for states to submit corrections of those deficiencies. Amended section 182(f) of the CAA contains the air quality planning requirements for the reduction of NO_x emissions through RACT.

Section 182(a)(2)(A) applies to areas designated as nonattainment prior to enactment of the amendments and classified as marginal or above as of the date of enactment. It requires such areas to adopt and correct RACT rules pursuant to pre-amended section 172(b) as interpreted in pre-amendment guidance.¹ EPA's SIP-Call used that

guidance to indicate the necessary corrections for specific nonattainment areas.

Section 182(f) of the CAA requires States to apply the same requirements to major stationary sources of NO_x ("major" as defined in section 302 and section 182(c), (d), and (e)) as are applied to major stationary sources of VOCs, in moderate or above ozone nonattainment areas.

The Southeast Desert Modified Air Quality Maintenance Area is classified as Severe-17, therefore, this area was subject to the RACT fix-up requirement and the May 15, 1991 deadline. The Los Angeles-South Coast Air Basin Area is classified as Extreme and was also

¹ Among other things, the pre-amendment guidance consists of those portions of the proposed Post-1987 ozone and carbon monoxide policy that concern RACT, 52 FR 45044 (November 24, 1987); "Issues Relating to VOC Regulation Cutpoints,

Deficiencies, and Deviations, Clarification to Appendix D of November 24, 1987 **Federal Register** document" (Blue Book) (notice of availability was published in the **Federal Register** on May 25, 1988); and the existing control technique guidelines (CTGs).

subject to the RACT fix-up requirements and the May 15, 1991 deadline.

The Antelope Valley Air Pollution Control District (AVAPCD) was created pursuant to California Health and Safety Code (CHSC) section 40106 and assumed all air pollution control responsibilities of the South Coast Air Quality Management District (SCAQMD) in the Antelope Valley region of Los Angeles County,² effective July 1, 1997. AVAPCD is the successor agency to SCAQMD in the Antelope Valley portion of the Southeast Desert Modified Air Quality Maintenance Area. The AVAPCD remains subject to the RACT requirements.

The AVAPCD has rescinded Rules 1105, 1115, 1117, and 1123 and has submitted negative declarations to certify that there are no sources covered by these rules within the jurisdiction of the AVAPCD. One minor source in AVAPCD, previously regulated by Rule 1115, is now equivalently regulated under Rule 1151, which was recently approved by EPA into the SIP.

AVAPCD also submitted negative declarations for Rules 1109 and 1112 to certify that there are no sources covered by these rules within the jurisdiction of the AVAPCD. There is no action to rescind Rules 1109 and 1112 since they are not contained in the federally enforceable SIP for the SCAQMD.

The State of California submitted these rule revisions for incorporation into its SIP on January 12, 1999, February 16, 1999, May 13, 1999, and July 23, 1999. The revisions submitted on these dates were found complete on March 19, 1999, April 23, 1999, June 10, 1999, and August 24, 1999, respectively. The rules were reviewed pursuant to EPA's completeness criteria that are set forth in 40 CFR part 51, Appendix V.³

This document addresses EPA's direct-final action for the rescission of AVAPCD Rule 1105, Fluid Catalytic Cracking Units-Oxides of Sulfur, Rule 1115, Motor Vehicle Assembly Line Coating Operations, Rule 1117, Emissions of Oxides of Nitrogen from Glass Melting Furnaces, and Rule 1123, Refinery Process Turnarounds. AVAPCD Rule 1105 limits SO_x emissions produced by Catalytic Cracking Units. AVAPCD Rule 1115 controls volatile organic compound (VOC) emissions from automobile

assembly line surface coating operations. AVAPCD Rule 1117 limits oxides of nitrogen (NO_x) emissions produced by Glass Melting Furnaces. AVAPCD Rule 1123 controls VOC emissions from petroleum refineries.

This document also addresses EPA's direct-final action of two negative declarations for AVAPCD Rule 1109, Emissions of Oxides of Nitrogen from Boilers and Process Heaters in Petroleum Refineries and Rule 1112, Emissions of Oxides of Nitrogen from Cement Kilns. Rule 1109 controls NO_x emissions from boilers and process heaters in petroleum refineries and Rule 1112 controls NO_x emissions from cement kiln operations. Rules 1109 and 1112 are currently not part of the SCAQMD SIP.

The rules were originally adopted as part of SCAQMD's effort to achieve the National Ambient Air Quality Standard (NAAQS) for ozone and in response to EPA's SIP-Call and the section 182(a)(2)(A) CAA requirement. The following is EPA's evaluation and final action for these rule rescissions and negative declarations.

III. EPA Evaluation and Action

EPA evaluated all the appropriate background and submittal documentation and has determined that the rescission of AVAPCD Rules 1105, 1115, 1117, and 1123 is approvable. EPA also evaluated all the appropriate background and submittal documentation for the negative declarations for Rules 1109 and 1112, 1115, 1117, and 1123 and has determined that they are approvable. The AVAPCD has certified with Negative Declarations that the sources regulated by all of the rules listed in this action are not present in the AVAPCD. Further, the AVAPCD also stated that they do not anticipate these types of sources in the future.

The rule rescissions and the negative declarations are consistent with the CAA, EPA regulations, and EPA policy. Therefore, the rescission of AVAPCD Rules 1105, 1115, 1117, and 1123 is being approved under section 110(k)(3) of the CAA as meeting the requirements of section 110(a) and part D. The negative declarations for Rules 1109, 1112, 1115, 1117, and 1123 are being approved under section 110(k)(3) of the CAA as meeting the requirements of section 110(a) and part D.

The source categories represented by AVAPCD Rules 1109, 1112, 1115, 1117, and 1123 will now be inserted into the listing of negative declarations in 40 CFR 52.222, Negative Declarations.

Three additional source categories for AVAPCD are being inserted into 40 CFR

52.222 in this action. The negative declarations are Marine Vessel Coating Operations, Marine Tank Vessel Operations, and Thermally Enhanced Oil Recovery Wells. These negative declarations were adopted on January 20, 1998, submitted on June 23, 1998, and approved in the **Federal Register** on January 13, 1999 (64 FR 2141).

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 July 17, 2000 without further notice unless the Agency receives adverse comments by June 16, 2000.

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 July 17, 2000 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 12866, entitled "Regulatory Planning and Review."

B. Executive Order 13132

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

²The Antelope Valley region of Los Angeles County is contained within the Federal area known as the Southeast Desert Modified Air Quality Management Area and the region identified by the State of California as the Mojave Desert Air Basin.

³EPA 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).

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 (64 FR 43255, August 10, 1999), 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.

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 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.

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 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 mandate is unfunded, EPA must 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 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 Executive Order 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**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This rule is not a "major" rule as defined by 5 U.S.C. 804(2).

H. 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 the use of VCS.

I. 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 17, 2000. 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, Sulfur oxides, Volatile organic compounds.

Dated: April 24, 2000.

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)(159)(v)(E), revising paragraph (c)(184) introductory text, and adding paragraphs (c)(184)(i)(B)(9), and (c) (222)(i)(A)(2) to read as follows:

§ 52.220 Identification of plan.

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- (c) * * *
(159) * * *
(v) * * *

(E) Previously approved on July 12, 1990 and now deleted without replacement for implementation in the Antelope Valley Air Pollution Control District Rules 1105 and 1117.

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(184) New and amended regulations for the following APCDs were submitted on May 13, 1991, by the Governor's designee.

- (i) * * *
(B) * * *

(9) Previously approved on August 11, 1992 and now deleted without replacement for implementation in the Antelope Valley Air Pollution Control District Rule 1123.

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- (222) * * *
(i) * * *
(A) * * *

(2) Previously approved on July 14, 1995 and now deleted without replacement for implementation in the Antelope Valley Air Pollution Control District Rule 1115.

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3. Section 52.222 is being amended by adding paragraphs (a)(6) and (b)(4) to read as follows:

§ 52.222 Negative declarations.

- (a) * * *

(6) Antelope Valley Air Pollution Control District.

(i) Motor Vehicle Assembly Line Coating Operations submitted on January 12, 1999 and adopted on November 18, 1997.

(ii) Refinery Process Turnarounds submitted on February 16, 1999 and adopted on November 18, 1997.

(iii) Marine Vessel Coating Operations, Marine Tank Vessel Operations, and Thermal Enhanced Oil Recovery Wells submitted on June 23, 1998 and adopted on January 20, 1998.

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(4) Antelope Valley Air Pollution Control District.

(i) Boilers and Process Heaters In Petroleum Refineries submitted on May 13, 1999 and adopted on April 21, 1998.

(ii) Cement Kilns and Glass Melting Furnaces submitted on July 23, 1999 and adopted on March 16, 1999.

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[FR Doc. 00-11996 Filed 5-16-00; 8:45 am]

BILLING CODE 6560-50-P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[CS Docket No. 97-98; FCC 00-116]

Rules and Policies Governing Pole Attachments

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document addresses issues raised in the Notice of Proposed Rulemaking relating to the formula used to calculate maximum just and reasonable rates utilities may charge for pole attachments made to a pole, duct, conduit or right-of-way pursuant. This document amends the formula so that it reflects the Commission's current accounting rules that apply to local exchange carriers; clarifies the treatment of accumulated depreciation attributable to removal costs to eliminate negative results; and adopts a conduit methodology for determining the maximum just and reasonable rates utilities may charge cable systems and telecommunications carriers for their use of conduit systems.

DATES: Effective June 16, 2000, except for §§ 1.1404 and 1.1409, which contain information collection requirements that have not been approved by the Office of Management and Budget. The Commission will publish a document in the Federal Register announcing the effective date of these sections. Written comments by the public on any new and/or modified information collection requirements should be submitted on or before July 17, 2000.

ADDRESSES: A copy of any comments on the information collection requirements contained herein should be submitted to Judy Boley, Federal Communications Commission, Room 1-C804, 445 12th Street, SW, Washington, DC 20554 or via the Internet to jboley@fcc.gov.

FOR FURTHER INFORMATION CONTACT: Kathleen Costello at (202) 418-7200 or via the Internet at kcostell@fcc.gov, or Cheryl King at (202) 418-2284 or via the Internet at cking@fcc.gov. For additional information concerning the information collection requirements contained herein, contact Judy Boley at (202) 418-0214, or via the Internet at jboley@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, CS Dkt. No. 97-98, FCC 00-116, adopted March 29, 2000; released April 3, 2000. The full text of the Commission's Report and Order is available for inspection and copying during normal business hours in the FCC Reference Center (Room CY-A257) at its headquarters, 445 12th Street, SW, Washington DC 20554, or may be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857-3800, 1231 20th Street, NW, Washington, DC 20036, or may be reviewed via Internet at http://www.fcc.gov/csb/.