Such report will note that the physician, dentist, or other health care practitioner is being reported in a supervisory capacity.

Note to paragraph (c): Licensed trainees acting outside the scope of their training program (e.g. acting as admitting officer of the day) will be reported under the provisions of paragraph (b) of this section.

(d) The Director of the facility at which the claim arose has the primary responsibility for submitting the report to the National Practitioner Data Bank and for providing a copy to the practitioner, to the State Licensing Board in each State where the practitioner holds a license, and to the State Licensing Board in which the facility is located. However, the Chief Patient Care Services Officer is also authorized to submit the report to the National Practitioner Data Bank and provide copies to the practitioner and State Licensing Boards in cases where the Chief Patient Care Services Officer deems it appropriate to do so.

§ 46.4 Clinical privileges actions reporting.

(a) VA will file an adverse action report with the National Practitioner Data Bank in accordance with regulations at 45 CFR part 60, subpart B, as applicable, regarding any of the following actions:

(1) An action of a Director after consideration of a professional review action that, for a period longer than 30 days, adversely affects (by reducing, restricting, suspending, revoking, or failing to renew) the clinical privileges of a physician or dentist relating to possible incompetence or improper professional conduct.

(2) Acceptance of the surrender of clinical privileges, including the surrender of clinical privileges inherent in resignation or retirement, or any restriction of such privileges by a physician or dentist either while under investigation by the health care entity relating to possible incompetence or improper professional conduct, or in return for not conducting such an investigation or proceeding whether or not the individual remains in VA service.

(b) The report specified in paragraph (a) of this section will provide the following information—

(1) With respect to the physician or dentist:

(i) Name;

(ii) Work address;

(iii) Home address, if known;

(iv) Social Security number, if known (and if obtained in accordance with section 7 of the Privacy Act of 1974);

(v) Date of birth;

(vi) Name of each professional school attended and year of graduation;

(vii) For each professional license: the license number, the field of licensure, and the name of the State in which the license is held;

(viii) Drug Enforcement Administration registration number, if applicable and known;

(ix) A description of the acts or omissions or other reasons for privilege loss, or, if known, for surrender; and

(x) Action taken, date action was made final, length of action and effective date of the action.

(2) With respect to the VA facility—

(i) Name and address of the reporting facility; and

(ii) Name, title, and telephone number of the responsible official submitting the report.

(c) A copy of the report referred to in paragraph (a) of this section will also be filed with the State Licensing Board in the State(s) in which the practitioner is licensed and in which the facility is located. It is intended that the report be filed within 15 days of the date the action is made final, that is, subsequent to any internal (to the facility) appeal.

(d) As soon as practicable after it is determined that a report shall be filed with the National Practitioner Data Bank and State Licensing Boards under paragraphs (a)(2) and (c) of this section, VA shall provide written notice to the practitioner that a report will be filed with the National Practitioner Data Bank with a copy to the State Licensing Board in each State in which the practitioner is licensed and in the State in which the facility is located.

Subpart C—National Practitioner Data Bank Inquiries

§ 46.5 National Practitioner Data Bank inquiries.

VA will request information from the National Practitioner Data Bank, in accordance with the regulations published at 45 CFR part 60, subpart C, as applicable, concerning a physician, dentist, or other licensed health care practitioner as follows:

(a) At the time a physician, dentist, or other health care practitioner applies for a position at VA Central Office, any of its regional offices, or on the medical staff, or for clinical privileges at a VA hospital or other health care entity operated under the auspice of VA;

(b) No less often than every 2 years concerning any physician, dentist, or other health care practitioner who is on the medical staff or who has clinical privileges at a VA hospital or other health care entity operated under the auspice of VA; and

(c) At other times pursuant to VA policy and needs and consistent with the Act and Department of Health and Human Services Regulations (45 CFR part 60).

Subpart D—Miscellaneous

§ 46.6 Medical quality assurance records confidentiality.

Note that medical quality assurance records that are confidential and privileged under the provisions of 38 U.S.C. 5705 may not be used as evidence for reporting individuals to the National Practitioner Data Bank.

§ 46.7 Prohibitions concerning negotiations.

Reporting under this part (including the submission of copies) may not be the subject of negotiation in any settlement agreement, employee action, legal proceedings, or any other negotiated settlement.

§ 46.8 Independent contractors.

Independent contractors acting on behalf of the Department of Veterans Affairs are subject to the National Practitioner Data Bank reporting provisions of this part. In the following circumstances, VA will provide the contractor with notice that a report of a clinical privileges action will be filed with the National Practitioner Data Bank with a copy with the State Licensing Board in the State(s) in which the contractor is licensed and in which the facility is located: where VA terminates a contract for possible incompetence or improper professional conduct, thereby automatically revoking the contractor's clinical privileges, or where the contractor terminates the contract, thereby surrendering clinical privileges, either while under investigation relating to possible incompetence or improper professional conduct or in return for not conducting such an investigation or proceeding.

(Authority: 38 U.S.C. 5705)

[FR Doc. 01–13989 Filed 6–4–01; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 242–0281; FRL–6990–8]

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

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing a limited approval and limited disapproval of a revision to the Imperial County Air Pollution Control District (ICAPCD) portion of the California State Implementation Plan (SIP). This revision concerns the control of emissions from sulfur compounds. We are proposing action on a local rule that regulates these emissions under the Clean Air Act as amended in 1990 (CAA or the Act). We are taking comments on this proposal and plan to follow with a final action.

DATES: Any comments must arrive by July 5, 2001.

ADDRESSES: Mail comments to Andy Steckel, Rulemaking Office Chief (AIR–4), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

You can inspect copies of the submitted SIP revision and EPA's technical support document (TSD) at our Region IX office during normal business hours. You may also see copies of the submitted SIP revision at the following locations:

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 1001 ''I'' Street, Sacramento, CA 95814.

Imperial County Air Pollution Control District, 150 South 9th Street, El Centro, CA 92243–2801.

FOR FURTHER INFORMATION CONTACT: Christine Vineyard, Rulemaking Office (AIR–4), U.S. Environmental Protection Agency, Region IX, (415) 744–1197.

SUPPLEMENTARY INFORMATION: Throughout this document, ''we,'' ''us'' and ''our'' refer to EPA.

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I. The State's Submittal

A. What Rule Did the State Submit?

Table 1 lists the rule addressed by this proposal with the date that it was adopted by the local air agency and submitted by the California Air Resources Board (CARB).

TABLE 1.—SUBMITTED RULE

Local agency	Rule No.	Rule title	Adopted	Submitted
CAPCD	405	Sulfur Compounds Emission Standards, Limitations.	09/14/99	05/26/00

On October 6, 2000, this rule submittal was found to meet the completeness criteria in 40 CFR Part 51 Appendix V, which must be met before formal EPA review.

B. Are There Other Versions of This Rule?

EPA approved a version of Rule 405 into the SIP on August 11, 1978.

C. What Is the Purpose of the Submitted Rule Revision?

ICAPCD Rule 405 includes the following significant changes from the current SIP:

- The effluent process gas from sulfur recovery units, sulfuric acid units, and fuel burning equipment shall not exceed 500 ppm by volume of sulfur compounds calculated as sulfur dioxide; or 200 lbs. per hour of sulfur compounds calculated as sulfur dioxide. Additionally, sulfur recovery units shall not discharge more than 10 ppm by volume of hydrogen sulfide.
- A person shall not burn any gaseous fuel containing sulfur compounds in excess of 50 grains per 100 cubic feet of gaseous fuel, calculated as hydrogen sulfide at standard conditions; or a sulfur content in excess of 0.5 percent by weight.
- The use of non-complying fuel may be allowed with approval where process conditions or control equipment will reduce emissions at a level equal to or less than emissions associated with the use of complying fuel.
- Several test methods are included to determine compliance. The TSD has more information about this rule.

II. EPA's Evaluation and Action

A. How Is EPA Evaluating the Rule?

Generally, SIP rules for SO_2 must be enforceable (see section 110(a) of the Act) and must not relax existing requirements (see sections 110(l) and 193). ICAPCD is listed as being attainment for the national ambient air quality standards (see 40 CFR 81) for sulfur dioxide (SO_2). Therefore, for purposes of controlling SO_2, Rule 405 needs only to comply with the general provisions of Section 110 of the Act.

Guidance and policy documents that we used to define specific enforceability requirements include the following:

1. ''Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations; Clarification to Appendix D of November 24, 1987 **Federal Register** Notice,'' (Blue Book), notice of availability published in the May 25, 1988 **Federal Register**.
2. ''SO_2 Guideline Document,'' EPA–452/R–94–008.

B. Does the Rule Meet the Evaluation Criteria?

This rule improves the SIP by establishing requirements for sulfur emissions and listing the appropriate test methods. This rule is largely consistent with the relevant policy and guidance regarding enforceability. One deficiency that does not meet the evaluation criteria summarized below and discussed further in the TSD.

C. What Is the Rule Deficiency?

This rule lacks recordkeeping requirements for sources subject to the rule and prevents full approval of the SIP revision.

D. Proposed Action and Public Comment

As authorized in sections 110(k)(3) and 301(a) of the Act, EPA is proposing a limited approval of the submitted rule to improve the SIP. If finalized, this action would incorporate the submitted rule into the SIP, including the identified deficiency. This approval is limited because EPA is simultaneously proposing a limited disapproval of the rule under section 110(k)(3). If this disapproval is finalized, sanctions will be not be imposed under section 179 because this an attainment area and not a required submittal. Note that the submitted rule has been adopted by the ICAPCD, and EPA's final limited disapproval would not prevent the local agency from enforcing it.

We will accept comments from the public on the proposed limited approval and limited disapproval for the next 30 days.

III. Background Information

A. Why Was This Rule Submitted?

Sulfur dioxide is formed by the combustion of fuels containing sulfur compounds and causes harm to human health and the environment. This rule is designed to reduce SO_2 emissions.

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, Regulatory Planning and Review.

B. Executive Order 13045

Executive Order 13045, entitled 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 Equal Opportunity 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 Equal Opportunity 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

C. Executive Order 13132

Executive Order 13132, entitled Federalism (64 FR 43255, August 10, 1999) revokes and replaces Executive Orders 12612, Federalism and 12875, Enhancing the Intergovernmental Partnership. Equal Opportunity 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 Equal Opportunity 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 proposed rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, because it merely acts on 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 proposed rule.

D. Executive Order 13175

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 6, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes.''

This proposed rule does not have tribal implications. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule. In the spirit of Executive Order 13175, and consistent with EPA policy to promote communications between EPA and tribal governments, EPA specifically solicits additional comment on this proposed rule from tribal officials.

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 proposed 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 act on 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.

EPA's proposed disapproval of the state request under section 110 and subchapter I, part D of the Clean Air Act does not affect any existing requirements applicable to small entities. Any pre-existing federal requirements remain in place after this disapproval. Federal disapproval of the state submittal does not affect state enforceability. Moreover, EPA's disapproval of the submittal does not impose any new Federal requirements. Therefore, 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).

D. 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 proposed action 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 proposed Federal action acts on pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

E. 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.

EPA believes that VCS are inapplicable to today's proposed action because it does not require the public to perform activities conducive to the use of VCS.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Sulfur oxides, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

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

Dated: May 8, 2001.

Jane Diamond,

Acting Regional Administrator, Region IX.

[FR Doc. 01–14082 Filed 6–4–01; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Notice of Availability of a Genetics Study for the Status Review of the Yellow-billed Cuckoo in the Western United States and Reopening of Comment Period

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability and reopening of comment period.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), in conjunction with the United States Geological Service (USGS), announce the availability of a genetics study entitled the ''Taxonomic and Evolutionary Significant Unit (ESU) Status of Western Yellow-billed Cuckoos (*Coccyzus americanus*).'' This study, contracted by both agencies, was prepared by Dr. Robert Fleischer of the National Zoological Park, Smithsonian Institute, Washington DC.

We are also providing notice of the reopening of the comment period for the 12-month finding on a petition to list this species as endangered to allow all interested parties to comment simultaneously on the 90-day petition and study. Comments previously submitted need not be resubmitted as they will be incorporated into the public record as part of this reopened comment period, and will be fully considered in the 12-month petition finding.

DATES: We will accept public comments until June 20, 2001.

ADDRESSES: Persons wishing to review the study may receive a copy by contacting the Sacramento Fish and Wildlife Office, 2800 Cottage Way, Room W–2605, Sacramento, California 95825. Written comments and information should be submitted to the Field Supervisor at the address above. For electronic mail address and further instructions on commenting, refer to the Public Comments Solicited section of this notice.

FOR FURTHER INFORMATION CONTACT: Dwight Harvey or Stephanie Brady at the Sacramento Fish and Wildlife Office, at the above address (telephone 916/414–6600).

SUPPLEMENTARY INFORMATION:

Background

On February 17, 2000, we published in the **Federal Register** a 90-day finding on a petition to list the yellow-billed cuckoo (*Coccyzus americanus*) as endangered, pursuant to the Endangered Species Act (Act) of 1973, as amended (16 U.S.C. 1531 *et seq.*) (65 FR 8104). We determined that the petition presented substantial information that the listing of the yellow-billed cuckoo may be warranted, and initiated a status review which will result in a 12-month finding at the conclusion of the review. The information presented suggested that the yellow-billed cuckoo may be endangered in a significant portion of its range (i.e., the western United States), and that the western United States represents the range of a valid subspecies, termed the western yellow-billed cuckoo. In our 90-day petition finding, while we determined that the listing of the yellow-billed cuckoo may be warranted, the taxonomy of the species is unclear.

To clarify the validity and range of a western subspecies, the Service and USGS solicited proposals for a genetic analysis throughout the species breeding range in the United States and Mexico. We selected and funded a proposal submitted by Dr. Robert Fleischer of the Smithsonian Institution from a total of five proposals. We received the final genetics study prepared by Dr. Fleischer on April 24, 2001.

Public Comments Solicited

We will accept written comments and information during this reopened comment period. If you wish to comment, you may submit your comments and materials by any of several methods:

(1) You may submit written comments and information to the Field Supervisor, Sacramento Fish and Wildlife Office, 2800 Cottage Way, Room W–2605, Sacramento, California 95825.

(2) You may send comments by electronic mail (e-mail) to: FW1YBC@fws.gov. If you submit comments by e-mail, please submit them as an ASCII file and avoid the use of special characters and any form of encryption. Please also include your name and return address in your e-mail message. If you do not receive a conformation from the system that we have received your e-mail message, contact us directly by calling our Sacramento Fish and Wildlife Office at telephone number 916/414–6600.

(3) You may hand-deliver comments to our Sacramento Fish and Wildlife Office at the address given above.

Comments and materials received, as well as supporting documentation used in preparation of the 12-month petition finding to list the yellow-billed cuckoo, will be available for inspection, by appointment, during normal business hours at the address listed under (1) above. Copies of the study and the 90-day petition finding are available by writing to the Field Supervisor at the address under (1) above.

Author(s)

The primary authors of this notice are Stephanie Brady (see **ADDRESSES** section), and Barbara Behan, U.S. Fish and Wildlife Service, Regional Office, 911 N.E. 11th Avenue, Portland, Oregon 97232.

Authority: The authority for this action is the Endangered Species Act of 1973, as amended, 16 U.S.C. 1531 *et seq.*.