

Original amendment submission date	Date of final publication	Citation/description
January 3, 2001	11/16/01	Addition of Chapter 77, Section 7708 to 2001 Title 27 of the Pennsylvania Consolidated Statutes; repeal of the fifth sentence of section 4(b) and section 4.2(f)(5) of the Surface Mining Conservation and Reclamation Act of May 31, 1945 (P.L. 1198, No. 418); repeal of the last sentence of section 5(g) of the Bituminous Mine Subsidence and Land Conservation Act of April 27, 1966 (1st Sp. Sess., P.L. 31, No. 1); repeal of the last sentence of section 5(j) of the Coal Refuse Disposal Control Act of September 24, 1968 (P.L. 1040, No. 318).

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**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

[CA 169-0272a; FRL-7100-6]

**Revisions to the California State Implementation Plan, California State Implementation Plan Revision; San Joaquin Valley Unified Air Pollution Control District, and South Coast Air Quality Management District**

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

**ACTION:** Direct final rule.

**SUMMARY:** EPA is taking direct final action to approve revisions to the San Joaquin Valley Unified Air Pollution Control District (SJVUAPCD), and South Coast Air Quality Management District (SCAQMD) portions of the California State Implementation Plan (SIP). These revisions concern volatile organic compound (VOC) and oxides of nitrogen (NO<sub>x</sub>) emissions from equipment tuning procedure for boilers, steam generators, and process heaters, pumps and compressor seals at petroleum refineries and chemical plants, and residential type, natural gas-fired water heaters. We

are proposing to approve local rules to regulate these emission sources under the Clean Air Act as amended in 1990 (CAA or the Act). We are approving local rules that regulate these emission sources under the Clean Air Act as amended in 1990 (CAA or the Act).

**DATES:** This rule is effective on January 15, 2002 without further notice, unless EPA receives adverse comments by December 17, 2001. If we receive such comment, we will publish a timely withdrawal in the **Federal Register** to notify the public that this rule will not take effect.

**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 revisions and EPA's technical support documents (TSDs) at our Region IX office during normal business hours. You may also see copies of the submitted SIP revisions at the following locations:

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

San Joaquin Valley Unified Air Pollution Control District, 1990 E. Gettysburg, Fresno, CA 93726

South Coast Air Quality Management District, 21865 E. Copley Dr. Diamond Bar, CA 91765-4182

**FOR FURTHER INFORMATION CONTACT:** Charnjit Bhullar, Rulemaking Office (AIR-4), U.S. Environmental Protection Agency, Region IX, (415) 744-1153.

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

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*A. What Rules Did the State Submit?*

Table 1 lists the rules we are approving with the dates that they were adopted by local air agencies and submitted by the California Air Resources Board (CARB).

TABLE 1.—SUBMITTED RULES

Local agency	Rule #	Rule title	Adopted	Submitted
SJVUAPCD	4304	Equipment tuning procedure for boilers, steam generators, and process heaters.	10/19/95	03/26/96
SJVUAPCD	4452	Pumps and compressor seals at petroleum refineries and chemical plants	12/17/92	09/07/99
SCAQMD	1121	Control of nitrogen oxides from residential type, natural gas-fired water heaters.	12/10/99	03/28/00

On May 15, 1996, October 20, 1999, and May 19, 2000 these rule submittals were 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 These Rules?*

There is no previous version of SJVUAPCD Rule 4304 in the SIP. EPA approved an earlier version of Rule 4452, numbered 464.2, which was adopted locally on April 11, 1991. We approved a version of SCAQMD Rule 1121 adopted on March 10, 1995.

*C. What Is the Purpose of the Submitted Rule and Rule Revisions?*

SJVUAPCD Rule 4304 provides tuning procedures for boilers, steam generators, and process heaters to control visible emissions, and both nitrogen oxide (NO<sub>x</sub>) and carbon monoxide (CO) emissions.

SJVUAPCD amended Rule 464.2, is renumbered as Rule 4452. The amendments provide administrative changes, normalize format, and unify numbering system. They are not substantive in nature. The provisions of existing SCAQMD Rule 1121 are amended to establish reduced emission limits of nitrogen oxides from new residential type, natural gas-fired water heaters that are sold or installed in residential or commercial establishments. The TSDs have more information about the rules.

**II. EPA's Evaluation and Action**

*A. How Is EPA Evaluating the Rules?*

Generally, SIP rules must be enforceable (see section 110(a) of the Act), must require Reasonably Available Control Technology (RACT) for major sources in nonattainment areas (see section 182(a)(2)(A)), and must not relax existing requirements (see sections 110(l) and 193).

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

1. "State Implementation Plans; Nitrogen Oxides Supplement to the General Preamble; Clean Air Act Amendments of 1990 Implementation of Title I; Proposed Rule," (the NO<sub>x</sub>

Supplement), 57 FR 55620, November 25, 1992.

2. "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 published in the May 25, 1988 **Federal Register**.

3. September 20, 1999 memo regarding state implementation plans: policy regarding excess emissions during malfunctions, startup, and shutdown, U.S. EPA, Office of Air Quality Planning and Standards.

*B. Do the Rules Meet the Evaluation Criteria?*

We believe the rules are consistent with the relevant policy and guidance regarding enforceability and SIP relaxations. The TSDs have more information on our evaluation.

*C. EPA Recommendations to Further Improve the Rules*

The TSD describes additional rule revisions that do not affect EPA's current action, but are recommended for the next time the local agencies modify the rules.

*D. Public comment and Final Action*

As authorized in section 110(k)(3) of the Act, EPA is fully approving the

submitted rules because we believe they fulfill all relevant requirements. We do not think anyone will object to this approval, so we are finalizing it without proposing it in advance. However, in the Proposed Rules section of this **Federal Register**, we are simultaneously proposing approval of the same submitted rules. If we receive adverse comments by December 17, 2001, we will publish a timely withdrawal in the **Federal Register** to notify the public that the direct final approval will not take effect and we will address the comments in a subsequent final action based on the proposal. If we do not receive timely adverse comments, the direct final approval will be effective without further notice on January 15, 2002. This will incorporate the rules into the federally enforceable SIP.

**III. Background Information**

*A. Why Were the Rules Submitted?*

NO<sub>x</sub> and VOC help produce ground-level ozone, smog and particulate matter, which harm human health and the environment. Section 110(a) of the CAA requires states to submit regulations that control NO<sub>x</sub> and VOC emissions. Table 2 lists some of the national milestones leading to the submittal of these local agency rules.

TABLE 2.—OZONE NONATTAINMENT MILESTONES

Date	Event
March 3, 1978	EPA promulgated a list of ozone nonattainment areas under the Clean Air Act as amended in 1977. 43 FR 8964; 40 CFR 81.305.
May 26, 1988	EPA notified Governors that parts of their SIPs were inadequate to attain and maintain the ozone standard and requested that they correct the deficiencies (EPA's SIP-Call). See section 110(a)(2)(H) of the pre-amended Act.
November 15, 1990	Clean Air Act Amendments of 1990 were enacted. Pub. L. 101-549, 104 Stat. 2399, codified at 42 U.S.C. 7401-7671q.
May 15, 1991	Section 182(a)(2)(A) requires that ozone nonattainment areas correct deficient RACT rules by this date.

**IV. Administrative Requirements**

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. This action merely approves state law as meeting federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional

enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4). For the same reason, this rule also does not significantly or uniquely affect the communities of tribal governments, as specified by Executive Order 13084 (63 FR 27655, May 10, 1998). 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 state rules implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission,

to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 **note**) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" issued under the executive order. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

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 action is not a "major rule" as defined by 5 U.S.C. 804(2).

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 January 15, 2002. 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, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

Dated: October 22, 2001.

**Wayne Nastri,**

*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 paragraphs (c)(230)(i)(D)(2), (269)(i)(C)(2), and (277)(i)(D) to read as follows:

##### § 52.220 Identification of plan.

\* \* \* \* \*

(c) \* \* \*

(230) \* \* \*

(i) \* \* \*

(D) \* \* \*

(2) Rule 4304 adopted on October 19, 1995.

\* \* \* \* \*

(269) \* \* \*

(i) \* \* \*

(C) \* \* \*

(2) Rule 4452 adopted on December 17, 1992.

\* \* \* \* \*

(277) \* \* \*

(i) \* \* \*

(D) South Coast Air Quality Management District.

(1) Rule 1121 adopted on December 10, 1999.

\* \* \* \* \*

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#### ENVIRONMENTAL PROTECTION AGENCY

#### 40 CFR Part 63

[FRL-7100-4]

#### Delegation of National Emission Standards for Hazardous Air Pollutants for Source Categories; State of Arizona; Arizona Department of Environmental Quality

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

**ACTION:** Direct final rule.

**SUMMARY:** EPA is amending certain regulations to reflect the current delegation status of national emission standards for hazardous air pollutants in Arizona. Several NESHAPs were delegated to the Arizona Department of Environmental Quality on March 5,

2001, and the purpose of this action is to update the listing in the Code of Federal Regulations.

**DATES:** This rule is effective on January 15, 2002 without further notice, unless EPA receives relevant adverse comments by December 17, 2001. If EPA receives such comments, then it will publish a timely withdrawal in the **Federal Register** informing the public that this rule did not take effect.

**ADDRESSES:** Comments must be submitted to Andrew Steckel at the Region IX office listed below. Copies of the request for delegation and other supporting documentation are available for public inspection (docket number A-96-25) at the following location: U.S. Environmental Protection Agency, Region IX, Rulemaking Office (AIR-4), Air Division, 75 Hawthorne Street, San Francisco, California 94105-3901.

**FOR FURTHER INFORMATION CONTACT:** Mae Wang, Rulemaking Office (AIR-4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, California 94105-3901, (415) 744-1200.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

##### A. Delegation of NESHAPs

Section 112(l) of the Clean Air Act, as amended in 1990 (CAA), authorizes EPA to delegate to state or local air pollution control agencies the authority to implement and enforce the standards set out in 40 CFR part 63, National Emission Standards for Hazardous Air Pollutants for Source Categories. On November 26, 1993, EPA promulgated regulations, codified at 40 CFR part 63, subpart E (hereinafter referred to as "subpart E"), establishing procedures for EPA's approval of state rules or programs under section 112(l) (*see* 58 FR 62262). Subpart E was later amended on September 14, 2000 (*see* 65 FR 55810).

Any request for approval under CAA section 112(l) must meet the approval criteria in 112(l)(5) and subpart E. To streamline the approval process for future applications, a state or local agency may submit a one-time demonstration that it has adequate authorities and resources to implement and enforce any CAA section 112 standards. If such demonstration is approved, then the state or local agency would no longer need to resubmit a demonstration of these same authorities and resources for every subsequent request for delegation of CAA section 112 standards. However, EPA maintains the authority to withdraw its approval if the State does not adequately