

subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (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. 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.*).

#### *B. 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).

#### *C. 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 December 6, 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, to prevent and control air pollution from the operation of coal preparation plants, coal handling operations, and coal refuse disposal areas in West Virginia, 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, Particulate matter, Reporting and recordkeeping requirements.

Dated: September 13, 2002.

**Donald S. Welsh,**  
*Regional Administrator, Region III.*

40 CFR part 52 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 XX—West Virginia**

2. Section 52.2520 is amended by adding paragraph (c)(47) to read as follows:

#### **§ 52.2520 Identification of plan.**

\* \* \* \* \*

(c) \* \* \*

(47) Revisions to West Virginia Regulations to prevent and control air pollution from the operation of coal preparation plants, coal handling operations, and coal refuse disposal areas, submitted on September 21, 2000 by the West Virginia Division of Environmental Protection:

(i) Incorporation by reference.

(A) Letter of September 21, 2000 from the West Virginia Division of Environmental Protection to EPA transmitting the regulation to prevent and control air pollution from the operation of coal preparation plants, coal handling operations, and coal refuse disposal areas.

(B) Revisions to Title 45, Series 5, 45CSR5, To Prevent and Control Air Pollution from the Operation of Coal Preparation Plants, Coal Handling Operations and Coal Refuse Disposal Areas, effective August 31, 2000.

(ii) Additional Material.

(A) Letter of November 21, 2000 from the West Virginia Division of Environmental Protection to EPA transmitting materials related to revisions of 45CSR5.

(B) Remainder of the State submittal pertaining to the revisions listed in paragraph (c)(47)(i) of this section.

[FR Doc. 02-25291 Filed 10-4-02; 8:45 am]

**BILLING CODE 6560-50-P**

#### **ENVIRONMENTAL PROTECTION AGENCY**

#### **40 CFR Part 52**

[WV052-6023a; FRL-7388-9]

#### **Approval and Promulgation of Air Quality Implementation Plans; West Virginia; Ambient Air Quality Standard for Carbon Monoxide and Ozone**

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

**ACTION:** Direct final rule.

**SUMMARY:** EPA is taking direct final action to approve revisions to the West Virginia State Implementation Plan (SIP). This revision establishes reference test methods for measuring carbon monoxide concentrations in the ambient air, equivalent to the national primary and secondary ambient air quality standards established by EPA. EPA is approving this revision to the SIP in accordance with the Clean Air Act.

**DATES:** This rule is effective on December 6, 2002 without further notice, unless EPA receives adverse written comment by November 6, 2002. If EPA receives such comments, it will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

**ADDRESSES:** Written comments should be mailed to David L. Arnold, Chief, Air Quality Planning and Information Services Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103 and West Virginia Department of Environmental Protection, Division of Air Quality, 7012 MacCorkle Avenue, SE., Charleston, WV 25304-2943.

**FOR FURTHER INFORMATION CONTACT:** Janice Lewis, (215) 814-2185, or by e-mail at [Lewis.Janice@epa.gov](mailto:Lewis.Janice@epa.gov). Please note any comments on this rule must be submitted in writing, as provided in the **ADDRESSES** section of this document.

#### **SUPPLEMENTARY INFORMATION:**

##### **I. Background**

On September 21, 2000, the West Virginia Division of Environmental Protection submitted a revision to its SIP to establish reference test methods for measuring ambient air concentrations for carbon monoxide.

The revision consists of the adoption of revisions to Rule 45CSR9—Ambient Air Quality Standards for Carbon Monoxide and Ozone.

#### A. Summary of the SIP Revision

This revision restructures and reorganizes Regulation 45CSR9, governing the ambient air quality standards for carbon monoxide. The revision also establishes reference test methods for measuring carbon monoxide concentrations in the ambient air. The West Virginia Division of Environmental Protection has reserved sections in Regulation 45CSR9 to address ozone ambient air concentrations and reference test methods. Since the recent litigation of the Federal 8-hour ozone standard, West Virginia will be adopting the 8-hour ozone standard in the future.

#### B. EPA's Evaluation of the SIP Revision

The EPA has determined that this revision to 45CSR9—Ambient Air Quality Standards for Carbon Monoxide and Ozone, for the purpose of establishing reference test methods for measuring ambient air concentrations for carbon monoxide meet all Federal criteria for approval.

## II. Final Action

EPA is approving West Virginia's Rule 45CSR9, submitted as a SIP revision on September 21, 2000, into the West Virginia SIP.

EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comment. However, in the "Proposed Rules" section of today's **Federal Register**, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision if adverse comments are filed. This rule will be effective on December 6, 2002 without further notice unless EPA receives adverse comment by November 6, 2002. If EPA receives adverse comment, EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. EPA will address all public comments in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

## III. Administrative Requirements

#### A. General 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. For

this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). 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 (Pub. L. 104-4). This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, 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 by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does 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). This action 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. This rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (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. 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.*).

#### B. 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).

#### C. 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 December 6, 2002. Filing a petition for reconsideration by the Administrator of this final rule approving revisions to West Virginia's reference test methods for measuring ambient air concentrations for carbon monoxide 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, Carbon monoxide, Incorporation by reference, Ozone, Reporting and recordkeeping requirements.

Dated: September 24, 2002.

**James M. Newsom,**

*Acting Regional Administrator, Region III.*

40 CFR part 52 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 XX—West Virginia**

2. Section 52.2520 is amended by adding paragraph (c)(50) to read as follows:

**§ 52.2520 Identification of plan.**

\* \* \* \* \*

(c) \* \* \*

(50) Revision to West Virginia Rule 45CSR9 submitted on September 21, 2000, by the West Virginia Division of Environmental Protection:

(i) Incorporation by reference.

(A) Letter of September 21, 2000, from the West Virginia Division of Environmental Protection transmitting Regulation 45CSR9—Ambient Air Quality Standard for Carbon Monoxide and Ozone.

(B) Revised Regulation 45CSR9, effective on June 1, 2000.

(ii) Additional Material—Remainder of the State submittal pertaining to the revisions listed in paragraph (c)(50)(i) of this section.

[FR Doc. 02–25283 Filed 10–4–02; 8:45 am]

**BILLING CODE 6560–50–P**

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

[CA 207–0252; FRL–7380–8]

**Revisions to the California State Implementation Plan, Antelope Valley Air Pollution Control District and South Coast Air Quality Management District**

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

**ACTION:** Final rule.

**SUMMARY:** EPA is finalizing disapproval of revisions to the Antelope Valley and South Coast portions of the California State Implementation Plan (SIP). The revisions would provide local agencies broad discretion to suspend rules, regulations or orders during state or federally declared state of emergencies. EPA proposed disapproval of these revisions in the **Federal Register** on March 31, 2000. We are finalizing disapproving under authority of the Clean Air Act as amended in 1990 (CAA or the Act).

**EFFECTIVE DATE:** This rule is effective on November 6, 2002.

**ADDRESSES:** You can inspect copies of the administrative record for this action at EPA’s Region IX office during normal business hours. You can inspect copies of the submitted rule revisions at the following locations:

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 L Street, Sacramento, CA 95812  
 Antelope Valley Air Pollution Control District, 315 W. Pondera Street, Lancaster, California 93534  
 South Coast Air Quality Management District, 21865 E. Cooley Drive, Diamond Bar, CA 91765

**FOR FURTHER INFORMATION CONTACT:** Cynthia G. Allen, Rulemaking Office (AIR–4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105, Telephone (415) 947–4120.

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

**I. Proposed Action**

On March 31, 2000 (65 FR 17229), EPA proposed to disapprove the following rules that were submitted for inclusion into the California SIP.

Local agency	Rule No.	Rule title	Adopted	Submitted
AVAPCD .....	118	Emergencies .....	8/19/97	3/10/98
SCAQMD .....	118	Emergencies .....	12/7/95	5/18/98

We proposed to disapprove these rules because we determined that they did not comply with the relevant CAA requirements. Our proposed action contains more information on the rules and our evaluation.

**II. Public Comments and EPA Responses**

EPA’s proposed action provided a 30-day public comment period. During this period, we received one comment regarding SCAQMD Rule 118, submitted via fax by Barbara Baird of SCAQMD. A signed version of this comment was subsequently submitted dated May 3, 2000, which we are treating as the official comment.

The commenter asserts that EPA must approve Rule 118 because the rule will not interfere with attainment of the National Ambient Air Quality Standards (NAAQS), reasonable further progress (RFP) towards attainment of the NAAQS or any other requirement of the Act. EPA disagrees with this assertion as follows.

1. A state of emergency could potentially last for weeks or even months. During this time (and, in theory, in perpetuity under 118(d)(2)),

Rule 118 would allow suspension of any and all requirements for air pollution sources regardless of the effects on human health or the environment. We do not believe that such a broad grant of immunity is in the public interest or is consistent with the CAA. For example, the CAA prohibits SCAQMD and EPA from relaxing SIP requirements or taking actions that would interfere with attainment, RFP, or any other requirements of the Act.<sup>1</sup> Because Rule 118 is written very broadly, it does not ensure compliance with these CAA provisions.

2. The impacts of suspending requirements under Rule 118 could last far beyond the emergency period. For example, an air pollution source could be constructed or modified during a state of emergency without the pollution controls or public review that are normally required. After the emergency period, such a source could continue to emit air pollution at levels that might interfere with attainment, RFP, permit requirements in CAA section 173 or other requirements of the Act, and even at levels directly harmful to human

health and the environment. Under Rule 118, however, the source might not be held responsible for those consequences because the permitting rules were suspended when it was constructed or modified. Because such a rule is inconsistent with the CAA and contrary to the public interest, it should not be approved into the SIP.

3. The CAA requires SIPs to contain enforceable emission limits and other control measures.<sup>2</sup> Rule 118 would undermine this requirement by allowing SCAQMD broad discretion to suspend enforceable requirements in the SIP without consultation or approval from EPA or the public.

4. The CAA already allows states to suspend SIP requirements during certain emergencies, but is more focused than Rule 118 and provides for federal oversight.<sup>3</sup> We believe it provides the flexibility needed during an emergency while ensuring adequate protection of public health.

The commenter also states that some emergency situations could justify violation of SIP rules. If such situations

<sup>1</sup> See e.g., 42 U.S.C. 7410(i), (1).

<sup>2</sup> See 7410(a)(2)(A).

<sup>3</sup> See 7410(f) and (g).