

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 costs of \$100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This 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.

#### 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.

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

#### I. 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).

#### J. 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 may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

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

Environmental protection, Air pollution control, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: August 29, 2002.

**Laura Yoshi,**

*Deputy 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 52.242 is amended by adding paragraphs (a)(1)(ii) and (a)(2) to read as follows:

#### § 52.242 Disapproved rules and regulations.

(a) \* \* \*

(1) \* \* \*

(ii) Rule 118, Emergencies, submitted on May 21, 1998.

(2) Antelope Valley Air Pollution Control District.

(i) Rule 118, Emergencies, submitted on March 10, 1998.

\* \* \* \* \*

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[CA 272-0369a; FRL-7387-1]

### Revisions to the California State Implementation Plan, Bay Area 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 Bay Area Air Quality Management District (BAAQMD) portion of the California State Implementation Plan (SIP). These revisions concern Oxides of Nitrogen (NO<sub>x</sub>) and Carbon Monoxide (CO)

emissions from boilers, steam generators, and process heaters in petroleum refineries. In accordance with the Clean Air Act as amended in 1990 (CAA or the Act), we are approving a local rule that regulates these emission sources.

**DATES:** This rule is effective on December 6, 2002, without further notice, unless EPA receives adverse comments by November 6, 2002. If we receive such comments, 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 document (TSD) at our Region IX office during normal business hours. You may also see copies of the submitted SIP revisions at the following locations:

Air and Radiation Docket and Information Center, U.S.

Environmental Protection Agency, Room B-102, 1301 Constitution Avenue, NW., (Mail Code 6102T), Washington, DC 20460

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

Bay Area Air Quality Management District, 939 Ellis Street, San Francisco, CA 94109

A copy of the rule may also be available via the Internet at <http://www.arb.ca.gov/drdb/drdbltx.htm>. Please be advised that this is not an EPA website and may not contain the same version of the rule that was submitted to EPA.

**FOR FURTHER INFORMATION CONTACT:** Charnjit Bhullar, EPA Region IX, (415) 972-3960.

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

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**I. The State's Submittal**

local air agency and submitted by the California Air Resources Board (CARB).

*A. What Rule Did the State Submit?*

Table 1 lists the rule we are approving with the dates that it was adopted by the

TABLE 1—SUBMITTED RULES

Local Agency	Rule No.	Rule Title	Adopted	Submitted
BAAQMD .....	9–10	Nitrogen Oxides and Carbon Monoxide from Boilers, Steam Generators, and Process Heaters in Petroleum Refineries.	7/17/02	8/12/02

On September 11, 2002, 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?*

BAAQMD adopted an earlier version of this rule on January 5, 1994, and CARB submitted it to us on July 23, 1996. We published a limited approval and limited disapproval of this previous version of Rule 9–10 into the SIP on March 29, 2001.

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

Rule 9–10 limits the emissions of nitrogen oxides and carbon monoxide from boilers, steam generators, and process heaters in petroleum refineries. On March 29, 2001, the EPA published a limited approval and limited disapproval of a previous version of this rule, because the rule improved the State Implementation Plan (SIP) overall, but some rule provisions failed to satisfy the requirements of section 110 of the Clean Air Act. Specifically, the district did not include adequate monitoring, source test, and recordkeeping requirements in the rule that was submitted to EPA.

On August 12, 2002, the district submitted a revised version of rule 9–10 for approval into the SIP. Rule 9–10, as revised, includes sections pertaining to monitoring, source test, and record keeping requirements to address the deficiencies identified by EPA in 2001. The TSD has more information about this rule.

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

*A. How Is EPA Evaluating This Rule?*

Generally, SIP rule must be enforceable (see section 110(a) of the

Act), must require Reasonably Available Control Technology (RACT) for major sources in nonattainment areas (see sections 182(a)(2)(A) and 182(f)), must not relax existing requirements approved into the SIP prior to 1990 (see section 193) and must not interfere with any applicable requirement or reasonable further progress (see section 110(l)). The BAAQMD regulates an ozone nonattainment area (see 40 CFR part 81), so Rule 9–10 must fulfill RACT.

Guidance and policy documents that we used to help evaluate enforceability and RACT requirements consistently include the following:

1. "Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations," EPA, May 25, 1988 (the Bluebook).
2. "Guidance Document for Correcting Common VOC & Other Rule Deficiencies," EPA Region 9, August 21, 2001 (the Little Bluebook).
3. "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.
4. Requirement for Preparation, Adoption, and Submittal of Implementation Plans, U.S. EPA, 40 CFR part 51.
5. Determination of Reasonably Available Control Technology and Best Available Retrofit Control Technology for Industrial, Institutional, and Commercial Boilers, Steam Generators, and Process Heaters, State of California Air Resources Board, July 18, 1991.

*B. Does This Rule Meet the Evaluation Criteria?*

We believe this rule is consistent with the relevant policy and guidance

regarding enforceability, RACT, and SIP relaxations, and adequately addresses the deficiencies identified in our 2001 limited disapproval. The TSD has more information on our evaluation.

*C. Public Comment and Final Action*

As authorized in section 110(k)(3) of the Act, EPA is fully approving the submitted rule because we believe it fulfills 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 rule. If we receive adverse comments by November 6, 2002, 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 December 6, 2002. This will incorporate this rule into the federally enforceable SIP and will permanently terminate all sanctions and FIP clocks associated with our March 2001 limited disapproval.

**III. Background Information**

*Why Was This Rule Submitted?*

NO<sub>x</sub> helps produce ground-level ozone, smog and particulate matter, which harm human health and the environment. EPA has established a National Ambient Air Quality Standard (NAAQS) for ozone. Section 110(a) of the CAA requires states to submit regulations to achieve and maintain NAAQS. Table 2 lists some of the national milestones leading to the submittal of this local agency NO<sub>x</sub> rule.

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.

TABLE 2.—OZONE NONATTAINMENT MILESTONES—Continued

Date	Event
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. 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.*).

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 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 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: September 13, 2002.

**Keith Takata,**

*Acting 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)(300) to read as follows:

**§ 52.220 Identification of plan.**

\* \* \* \* \*

(c) \* \* \*

(300) Amended regulation for the following AQMD was submitted on August 12, 2002, by the Governor's designee.

(i) Incorporation by reference.

(A) Bay Area Air Quality Management District.

(1) Rule 9-10 adopted on January 5, 1994 and amended on July 17, 2002.

\* \* \* \* \*

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