

Judge finds good cause, the case proceeds pursuant to the Mine Act and the Commission's Procedural Rules in 29 CFR part 2700.

In January 2006, while considering changes to its procedural rules, the Commission determined that its procedures for processing requests for relief should be made more efficient through informal means rather than through the rulemaking process. 71 FR 553, 554, Jan. 5, 2006. The Commission explained that such informal means include making available a summary of the Commission's procedural rules described in simple terms and placing on the Commission's Web site ([www.fmshrc.gov](http://www.fmshrc.gov)) a page of frequently asked questions and answers regarding Commission procedure. *Id.*

The Commission has since employed a number of informal means in an effort to reduce the number of cases resulting in default. For instance, it has worked with the Department of Labor's Mine Safety and Health Administration ("MSHA") to clarify instructions provided to parties for the filing of various documents, including the filing of a contest of a proposed penalty assessment. The Commission did so believing that if such instructions were clearer, parties would be more likely to timely file their documents and avoid default.

In addition, the Commission has created and made available three guides to Commission proceedings intended to clarify Commission procedure. The first guide, "How a Case Proceeds before the Commission," provides charts and summaries of procedural requirements for different types of proceedings before the Commission. The second guide, "Frequently Asked Questions," provides a wide variety of information pertaining to Commission procedure in question and answer format. It includes a section devoted to problems in contesting penalties and provides parties with information for seeking relief from a proposed penalty assessment that becomes a final Commission order after the party failed to file a timely contest of a proposed penalty assessment. The third guide, "Guide to Commission Proceedings," describes Commission proceedings in simple terms. The Commission has made these guides available on its Web site (<http://www.fmshrc.gov/guides/guides.html>). It intends to publish and distribute a paper compilation of the three guides in the near future.

Although the Commission has taken such actions, it has been receiving an increasingly large number of requests for relief from operators large and small, who have failed to file a timely contest

of a proposed penalty assessment. As a result, the Commission is exploring additional means for improving its handling of requests for relief and for decreasing the number of cases that result in default.

One of the Commission's key considerations is whether it should set forth requirements for requesting relief from default in a rule, or whether further guidance should be provided in an informal document. In order to aid its consideration, the Commission is requesting comment from members of the interested public. In considering the feasibility of promulgating a rule pertaining to requests for relief from default, the Commission invites the public to consider any or all of the following questions. Members of the public are not limited to commenting on these questions and may offer any suggestion related to the subject.

**Scope of Rule:** Should a rule be limited to requests for relief from citations and orders that have become final by operation of section 105(a) of the Mine Act when a party failed to timely file a contest of a proposed penalty assessment? Should the rule also address requests for relief from a default order issued by an administrative law judge after a party has failed to timely file an answer to the Secretary of Labor's petition for assessment of penalty? To what extent should the rule be modeled on Rule 60(b)?

**Time Limitations:** When should a request for relief be filed? To what extent should a rule follow the time limitations set forth in Rule 60(b)? How should the Commission interpret the "reasonable time" requirement of Rule 60(b)? Should the one-year time limitation pertaining to Rule 60(b)(1), (2), and (3) be applied in certain circumstances? When an order becomes final by operation of Mine Act section 105(a), what effect should an operator's receipt of a delinquency notice from MSHA have on the time within which the operator should file a motion to reopen?

**Standard for Relief:** What standard should apply to entitle a party to relief? In determining whether to grant relief, how closely should the Commission be guided by federal case law interpreting Rule 60(b)? Should the Commission require a movant to set forth specific facts which support the grounds alleged under Rule 60(b) and, if so, what level of specificity should be required? Should the Commission require a movant to show a meritorious claim or defense as a prerequisite to granting relief? Should the Commission also be guided by the standard for setting aside

defaults in Rule 55(c) of the Federal Rules of Civil Procedure? Should the Commission apply a different standard depending upon certain factors relating to the movant, such as whether the movant is represented by counsel, or the size of an operator?

**Documentation:** Should a rule require that allegations be established by sworn written statements by individuals with personal knowledge of the facts and/or other sufficiently reliable documentation? Should a rule require that the movant include in its request for relief copies of all relevant documents in its possession including, but not limited to, the proposed penalty assessment? Should the signature of an attorney on a request for relief be treated as a substitute for any required documentation?

**Process:** Should requests for relief be filed directly with the Chief Administrative Law Judge or with the Review Commission? What service requirements should apply?

#### Public Review of Comments

All comments responding to this notice will be a matter of public record and available for public inspection and copying by appointment with Ella Waymer, between the hours of 9 a.m. and 5 p.m. on business days at the Federal Mine Safety and Health Review Commission, 601 New Jersey Avenue, NW., 9th Floor, Room 9536, Washington, DC 20001; telephone 202-434-9935.

Dated: August 27, 2008.

**Michael F. Duffy,**

*Chairman, Federal Mine Safety and Health Review Commission.*

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R08-OAR-2008-0340; FRL-8700-6]

#### Approval and Promulgation of Air Quality Implementation Plans; State of Utah; Revised Transportation Conformity Consultation Process, and Approval of Related Revisions

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

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to approve State Implementation Plan (SIP) revisions submitted by the State of Utah on June 26, 2007 and April 17, 2008. The June 26, 2007 revision updates

Section XII of the Utah SIP and Rule R307-110-20 of the Utah Administrative Code (UAC) to meet the federal transportation conformity consultation requirements. The amended Rule R307-110-20 incorporates by reference Section XII, "Transportation Conformity Consultation," of the SIP. The April 17, 2008 revision makes minor changes to UAC sections R307-101-2, "Definitions;" R307-115-1, "Determining Conformity;" R307-170-7, "Performance Specification Audits;" and R307-310-2, "Definitions;" and adds R307-101-3, "Version of CFR Incorporated by Reference." In the "Rules and Regulations" section of this **Federal Register**, EPA is approving the State's SIP revisions as a direct final rule without prior proposal because the Agency views these as noncontroversial SIP revisions and anticipates no adverse comments. A detailed rationale for the approval is set forth in the preamble to the direct final rule. If EPA receives no adverse comments, EPA will not take further action on this proposed rule. If EPA receives adverse comments, EPA will withdraw the direct final rule and it will not take effect. EPA will address all public comments in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

**DATES:** Written comments must be received on or before October 2, 2008.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R08-OAR-2008-0340, by one of the following methods:

- *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *E-mail:* [kimes.jeffrey@epa.gov](mailto:kimes.jeffrey@epa.gov).
- *Fax:* (303) 312-6064 (please alert the individual listed in the **FOR FURTHER INFORMATION CONTACT** if you are faxing comments).
- *Mail:* Callie Videtich, Director, Air Program, Environmental Protection Agency (EPA), Region 8, Mailcode 8P-AR, 1595 Wynkoop Street, Denver, Colorado 80202-1129.
- *Hand Delivery:* Callie Videtich, Director, Air Program, Environmental Protection Agency (EPA), Region 8, Mailcode 8P-AR, 1595 Wynkoop Street, Denver, Colorado 80202-1129. Such

deliveries are only accepted Monday through Friday, 8 a.m. to 4:30 p.m., excluding Federal holidays. Special arrangements should be made for deliveries of boxed information.

Please see the direct final rule which is located in the Rules Section of this **Federal Register** for detailed instruction on how to submit comments.

**FOR FURTHER INFORMATION CONTACT:** Jeffrey Kimes, Air Program, Environmental Protection Agency (EPA), Region 8, Mailcode 8P-AR, 1595 Wynkoop Street, Denver, Colorado 80202-1129, (303) 312-6445, [kimes.jeffrey@epa.gov](mailto:kimes.jeffrey@epa.gov).

**SUPPLEMENTARY INFORMATION:** See the information provided in the Direct Final action of the same title which is located in the Rules and Regulations Section of this **Federal Register**.

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

Dated: July 25, 2008.

**Judith Wong,**  
*Acting Deputy Regional Administrator,*  
*Region 8.*

[FR Doc. E8-20142 Filed 8-29-08; 8:45 am]

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R09-OAR-2006-0714, FRL-8701-5]

### Revisions to the California State Implementation Plan, Antelope Valley Air Quality Management District

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

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to approve revisions to the Antelope Valley Air Quality Management District (AVAQMD) portion of the California State Implementation Plan (SIP). Under authority of the Clean Air Act as amended in 1990 (CAA or the Act), we are proposing to approve minor administrative changes to local rules that address permitting requirements.

**DATES:** Any comments on this proposal must arrive by October 2, 2008.

**ADDRESSES:** Submit comments, identified by docket number EPA-R09-OAR-2006-0714, by one of the following methods:

- *Federal eRulemaking Portal:* [www.regulations.gov](http://www.regulations.gov). Follow the on-line instructions.
- *E-mail:* [R9airpermits@epa.gov](mailto:R9airpermits@epa.gov).
- *Mail or deliver:* Gerardo Rios (Air-3), U.S. Environmental Protection Agency Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

**Instructions:** All comments will be included in the public docket without change and may be made available online at [www.regulations.gov](http://www.regulations.gov), including any personal information provided, unless the comment includes Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Information that you consider CBI or otherwise protected should be clearly identified as such and should not be submitted through [www.regulations.gov](http://www.regulations.gov) or e-mail. [www.regulations.gov](http://www.regulations.gov) is an "anonymous access" system, and EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send e-mail directly to EPA, your e-mail address will be automatically captured and included as part of the public comment. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

**Docket:** The index to the docket for this action is available electronically at [www.regulations.gov](http://www.regulations.gov) and in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California. While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (e.g., copyrighted material), and some may not be publicly available in either location (e.g., CBI). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

**FOR FURTHER INFORMATION CONTACT:** Laura Yannanon, Permits Office (AIR-3), U.S. Environmental Protection Agency, Region IX, (415) 972-3534, [yannanon.laura@epa.gov](mailto:yannanon.laura@epa.gov).

**SUPPLEMENTARY INFORMATION:** This proposal addresses the approval of AVAQMD Rules 101, 102, 106, 108, 109, 208, 210, 212, 218, 220, 221, and 226. In the Rules and Regulations section of this **Federal Register**, we are approving these local rules in a direct final action without prior proposal because we believe this SIP revision is not controversial. If we receive adverse comments, however, we will publish a timely withdrawal of the direct final rule and address the comments in subsequent action based on this proposed rule.

Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.