

Proposed Rules

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Friday, June 26, 2009

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R05-OAR-2007-1131; FRL-8921-6]

Approval and Promulgation of Air Quality Implementation Plans; Illinois; Oxides of Nitrogen Regulations, Phase II

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a request submitted by the Illinois Environmental Protection Agency (Illinois EPA) on October 23, 2007, to revise the Illinois State Implementation Plan (SIP). The rules submitted by Illinois EPA satisfy the requirements of EPA's NO_x SIP Call Phase II Rule (the Phase II Rule). We are proposing to approve these regulations based on Illinois' demonstration that the State will meet the emissions targets set forth in the Phase II Rule through reductions from stationary internal combustion (IC) engines and turbines which are identified in the NO_x plan submittal. Limiting NO_x emissions from IC engines and turbines will enable the State to meet the 7,055 ton reduction requirement contained in the Phase II Rule, thereby improving air quality and protecting the health of Illinois citizens.

DATES: Comments must be received on or before July 27, 2009.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R05-OAR-2007-1131, by one of the following methods:

1. *http://www.regulations.gov*: Follow the on-line instructions for submitting comments.
2. *E-mail*: mooney.john@epa.gov.
3. *Fax*: (312) 692-2551.
4. *Mail*: John M. Mooney, Chief, Criteria Pollutant Section, Air Programs Branch (AR-18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.
5. *Hand Delivery*: John M. Mooney, Chief, Criteria Pollutant Section, Air

Programs Branch (AR-18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604. Such deliveries are only accepted during the Regional Office normal hours of operation, and special arrangements should be made for deliveries of boxed information. The Regional Office official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

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

FOR FURTHER INFORMATION CONTACT:

Andy Chang, Environmental Engineer, Criteria Pollutant Section, Air Programs Branch (AR-18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886-0258, chang.andy@epa.gov.

SUPPLEMENTARY INFORMATION: In the Final Rules section of this **Federal Register**, EPA is approving the State's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If we do not receive any adverse comments in response to this rule, we do not contemplate taking any further action. If EPA receives adverse comments, we will withdraw the direct final rule, and will address all public comments in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should 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. For additional information, see the direct final rule, which is located in the Final Rules section of this **Federal Register**.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations,

Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements.

Dated: June 11, 2009.

Walter W. Kovalick Jr.,

Acting Regional Administrator, Region 5.

[FR Doc. E9-14857 Filed 6-25-09; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R09-OAR-2009-0353; FRL-8923-4]

Revisions to the California State Implementation Plan, California Air Resources Board Consumer Products Regulations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve revisions to the California Air Resources Board's Consumer Products portion of the California State Implementation Plan (SIP). These revisions concern volatile organic compound (VOC) emissions from consumer products. We are approving State rules that regulate these emission sources 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 27, 2009.

ADDRESSES: Submit comments, identified by docket number EPA-R09-OAR-2009-0353, by one of the following methods:

1. *Federal eRulemaking Portal*: <http://www.regulations.gov>. Follow the on-line instructions.
2. *E-mail*: steckel.andrew@epa.gov.
3. *Mail or deliver*: Andrew Steckel (Air-4), U.S. Environmental Protection Agency Region IX, 75 Hawthorne Street, San Francisco, CA 94105-3901.

Instructions: All comments will be included in the public docket without change and may be made available online at <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 <http://www.regulations.gov> or e-mail. <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 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: Stanley Tong, EPA Region IX, (415) 947-4122, tong.stanley@epa.gov.

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

Table of Contents

- I. The State’s Submittal
 - A. What regulations did the State submit?

- B. Are there other versions of these regulations?
- C. What is the purpose of the submitted regulation revisions?
- II. EPA’s Evaluation and Action
 - A. How is EPA evaluating these regulations?
 - B. Do the regulations meet the evaluation criteria?
 - C. EPA recommendations to further improve the regulations.
 - D. Public comment and final action.
- III. Statutory and Executive Order Reviews

I. The State’s Submittal

A. What regulations did the State submit?

Table 1 lists the regulations addressed by this proposal with the dates that they were adopted by the State and submitted by the California Air Resources Board (CARB).

TABLE 1—SUBMITTED REGULATIONS

Regulation	Regulation Title	Adopted/ amended	Submitted
California Code of Regulations Title 17, Division 3, Chapter 1, Subchapter 8.5—Consumer Products.	Article 1—Antiperspirants and Deodorants	05/06/2005	03/27/2008
California Code of Regulations Title 17, Division 3, Chapter 1, Subchapter 8.5—Consumer Products.	Article 2—Consumer Products	09/26/2007	03/27/2008
California Code of Regulations Title 17, Division 3, Chapter 1, Subchapter 8.5—Consumer Products.	Article 3—Aerosol Coating Products	09/26/2007	03/27/2008
California Air Resources Board—Test Method 310	Method 310—Determination of Volatile Organic Compounds (VOC) in Consumer Products and Reactive Organic Compounds in Aerosol Coating Products.	05/06/2005	03/27/2008

These submittals became complete by operation of law on September 27, 2008.

B. Are there other versions of these regulations?

We approved a version of CARB’s Antiperspirant and Deodorant Regulation into the SIP on August 21, 1995 (60 FR 43379). CARB adopted and

submitted revisions to the SIP-approved version on the following dates. While we are acting on only the most recently submitted version, we have reviewed materials provided with previous submittals.

Antiperspirant and deodorant hearing date	Amended	Submitted to EPA
September 28, 1995	January 26, 1996	August 27, 1996.
November 21, 1996	September 25, 1997	December 18, 1998.
November 21, 1996	October 3, 1997.	
November 19, 1998	November 19, 1999	Not submitted—methyl acetate exempted.
October 26, 2000	October 26, 2000	April 3, 2002.

We approved a version of CARB’s Consumer Products Regulation into the SIP on August 21, 1995 (60 FR 43379).

CARB adopted and submitted revisions to the SIP-approved version on the following dates. While we are acting on

only the most recently submitted version, we have reviewed materials provided with previous submittals.

Consumer products hearing date	Amended	Submitted to EPA
September 28, 1995	January 16, 1996	August 27, 1996.
November 21, 1996	September 25, 1997	December 18, 1998.
November 21, 1996	October 3, 1997.	

Consumer products hearing date	Amended	Submitted to EPA
March 27, 1997	March 27, 1997.	
July 24, 1997	May 20, 1998.	
November 19, 1998	November 19, 1999	Not submitted—methyl acetate exempted.
October 28, 1999	August 14, 2000	April 3, 2002.
May 25, 2000	February 12, 2001.	
June 24, 2004	May 6, 2005	March 27, 2008.

We approved the following version of CARB's Aerosol Coating Products Regulation into the SIP on September 13, 2005 (70 FR 53930).

Aerosol coating products hearing date	Amended	Submitted to EPA
May 1, 2001 ..	June 22, 2000.	March 13, 2002.

EPA has not approved any prior version of CARB Test Method 310 into the SIP.

C. What is the purpose of the submitted regulation revisions?

VOCs help produce ground-level ozone and smog, which harm human health and the environment. Section 110(a) of the CAA requires States to submit regulations that control VOC emissions.

The California Health and Safety Code (Section 41712(b)) requires CARB to “adopt regulations to achieve the maximum feasible reduction in volatile organic compounds emitted by consumer products, if the state board determines that adequate data exists to establish both of the following:

- (1) The regulations are necessary to attain state and federal ambient air quality standards.
- (2) The regulations are commercially and technologically feasible and necessary.”

CARB's consumer products regulations are found under the California Code of Regulations Title 17 Chapter 1 Subchapter 8.5 and include:

- Article 1—Antiperspirants and Deodorants
- Article 2—Consumer Products
- Article 3—Aerosol Coating Products
- Article 4—Alternative Control Plan
- Article 5—Hairspray Credit Program

The following are brief descriptions of CARB's consumer product regulations and the amendments adopted by CARB, which we propose to approve into the SIP.

1. Antiperspirants and Deodorants

CARB's Antiperspirants and Deodorants (APDO) regulation limits the percent of high volatility organic compounds (HVOC) and medium volatility organic compounds (MVOC) in products. The original SIP-approved regulation contained two tiers of HVOC/MVOC limits, which took effect in 1992 and 1995. Amendments adopted by CARB include updating the definition of VOC to be more consistent with EPA's definition in 40 CFR 50.100(s), extending the 18-month sell-through period to 3 years to incorporate changes in State law, repealing a zero percent limit for HVOC for aerosol antiperspirants, and clarifying the definition of “deodorant” to distinguish products covered under the APDO regulation from products covered under CARB's general consumer products regulation.

CARB's SIP-approved regulation originally contained an aggressive limit of zero percent HVOC for aerosol antiperspirants. CARB later determined that this limit was not technically feasible, even with a compliance extension, and repealed it in an October 26, 2000 hearing. CARB's April 3, 2002 submittal letter to EPA estimated that this would result in a shortfall in VOC emissions reductions of approximately 1.3 tons per day (tpd) statewide in 2010. CARB indicated, however, that their Mid-term Measure II Consumer Products regulation would achieve approximately 21 tpd of VOC emissions reductions, which more than offset the shortfall. EPA is proposing to act on the APDO and Consumer Products submittals together.

CARB's APDO regulation is more stringent than EPA's national Consumer Products rule (40 CFR part 59, subpart C) in the following ways:

- (a) Contains more stringent two tier HVOC/MVOC limits.
- (b) Limits sell-through period to 3 years (EPA does not have a limit for the sell-through period).
- (c) Requires compliance by laboratory testing or calculation.

(d) Prohibits use of toxic air contaminants.

(e) Covers retailers.

2. Consumer Products

CARB's Consumer Products regulation limits the VOC content in products such as air fresheners, automotive products, bathroom cleaners, hair care products, and insecticides. CARB's 2006 Initial Statement of Reasons (ISOR) indicates consumer products are a significant source of VOC emissions in California and accounted for approximately 260 tpd of VOC emissions in 2005. CARB's ISOR further indicates that as a result of their consumer products regulations over the last 15 years, statewide VOC emissions from consumer products were reduced by over 170 tpd (40 percent reduction) in 2010. Appendix A of the ISOR further points out that “emissions from Consumer Products, in 2020, will be the largest source of VOC emissions in the South Coast Air Basin, and the third largest source in the San Joaquin Valley Air Basin.”

Revisions to the SIP-approved regulation adopted by CARB include repealing the aerosol adhesives VOC limit, postponing the second-tier VOC limit for hairsprays and approximately doubling the number of consumer product categories for regulation.

CARB originally adopted the VOC limit for aerosol adhesives in 1989 with two tiers. The first tier established a VOC limit of 75 percent, effective January 1, 1995, and the second tier established a VOC limit of 25 percent effective January 1, 1997. CARB indicates that the aerosol adhesives category is small, approximately 0.4 tpd and that most manufacturers were “having significant difficulty meeting the 25 percent VOC standard.” Technical problems encountered included freeze thaw stability and solvents drying too slowly, too fast, or dissolving into the substrate. In May 2000, CARB repealed the 25 percent

VOC limit and adopted three new aerosol adhesive categories. EPA's VOC content limit for household aerosol adhesives remains at 75 percent. 40 CFR part 59, subpart C, Table 1.

CARB also indicated it had to postpone the second-tier VOC hairspray limit of 55 percent for 17 months from January 1998 until June 1999. Although CARB concluded that the 55 percent limit was technically feasible, additional time was required by manufacturers to complete product development and testing. CARB explained in its staff report that the delayed implementation would not compromise its SIP commitment because air pollution control districts had not claimed the reductions until the beginning of the 1999 summer ozone season.

Other amendments adopted by CARB include clarifying definitions, requiring notifications for products sold towards the end of a sell-through period, prohibiting solid air fresheners or toilet/urinal care products from containing para-dichlorobenzene (a toxic air contaminant/hazardous air pollutant) and clarifying that for products manufactured after January 1, 2007, the "most restrictive limit" applies to any representation made anywhere on the label, packaging, and all affixed labels. CARB states that it established the sell-through period and most restrictive limits because of a finding that older non-compliant products remained on shelves long after the three year sell-through period and CARB enforcement investigations finding representations made on the principal display panel that were inconsistent with representations on the rest of the label or packaging. CARB noted that "labels have appeared to have been changed to avoid reformulation to meet VOC limits." CARB ISOR May 7, 2004, page V-52. CARB's amendments also clarify that codes indicating date of manufacture are public information and cannot be claimed as confidential.

CARB's 1992 SIP-approved regulation covered approximately 50 categories/subcategories of consumer products. Since that time, CARB has added additional consumer product categories for regulation and has further reduced the VOC limits in existing categories. The amended rule covers 112 categories/subcategories of consumer products.

CARB's Consumer Products regulation is more stringent than EPA's national Consumer Products rule (40 CFR part 59, subpart C) in the following ways:

(a) Contains more stringent two-tier VOC limits.

(b) Covers more categories of consumer products.

(c) Limits the sell-through period to 3 years.

(d) Requires compliance by laboratory testing or calculation.

(e) Prohibits use of toxic air contaminants and ozone depleting substances.

(f) Covers retailers.

3. Aerosol Coating Products

EPA approved CARB's Aerosol Coating Products regulation (adopted May 1, 2001) into the SIP on September 13, 2005. CARB adopted minor updates to test methods in the regulation at a public hearing in 2004 and clarifications to overlapping requirements between the Aerosol Coating Products and Consumer Products regulations at a hearing on November 17, 2006. These amendments covered Rubber and Vinyl Protectants, Fabric Protectants, Vinyl/Fabric/Leather/Polycarbonate Coatings, cosmetic products, and other products used on the human body. The purpose of the 2006 amendments was to clarify that each of these products would be regulated under only one of these two regulations. The amendment also clarified that cosmetics and other products used on the human body are regulated only under the Consumer Products regulation and exempted from CARB's Aerosol Coatings regulation.

4. Method 310

CARB Method 310 incorporates by reference a number of other test methods including those from US EPA, the American Society for Testing and Materials (ASTM), and the National Institute for Occupational Safety and Health (NIOSH). Method 310 also: contains procedures to separate the propellant from the non-propellant portions of aerosol products; allows analysis of the propellant and non-propellant portions for total VOC, exempt VOC or prohibited compounds such as toxic air contaminants; determines the low vapor pressure VOC status of compounds and mixtures; and identifies the reactive organic compounds in aerosol coating products.

The 2005 amendments to Method 310 include updating references to many of the ASTM and EPA test methods and adding an equation to calculate the VOC content of low vapor pressure compounds and/or mixtures.

EPA's technical support document (TSD) has more information on CARB's consumer products regulations.

II. EPA's Evaluation and Action

A. How is EPA evaluating the regulations?

Generally, SIP rules must be enforceable (see section 110(a) of the Act), must require Reasonably Available Control Technology (RACT) for each category of sources covered by a Control Techniques Guidelines (CTG) document as well as each major source in nonattainment areas (see section 182(a)(2) and (b)(2)), and must not relax existing requirements (see sections 110(l) and 193). California's consumer products regulations cover VOC area sources and not stationary sources. While there are no applicable CTGs for these source categories, in 1998 EPA promulgated national rules to regulate VOC emissions from consumer products (63 FR 48831, September 11, 1998) and aerosol coating products (73 FR 15621, March 24, 2008). EPA's national rules largely parallel CARB's earlier SIP-approved rules. The amendments we are proposing to approve today are more stringent than EPA's standards.

Rules, guidance and policy documents that we use to evaluate enforceability and RACT requirements consistently include the following:

1. Portions of the proposed post-1987 ozone and carbon monoxide policy that concern RACT, 52 FR 45044, November 24, 1987.

2. "Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations," EPA, May 25, 1988 (the Bluebook).

3. State Implementation Plans, General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990 (57 FR 13498; April 16, 1992).

4. "Guidance Document for Correcting Common VOC & Other Rule Deficiencies," EPA Region 9, August 21, 2001 (the Little Bluebook).

5. 40 CFR Part 59 Subpart C, National Volatile Organic Compound Emission Standards for Consumer Products; Subpart E, National VOC Emission Standards for Aerosol Coatings.

B. Do the regulations meet the evaluation criteria?

We believe CARB's Consumer Products regulations are consistent with the relevant rules and policy and guidance documents regarding enforceability, RACT, and SIP relaxations. CARB's Antiperspirants and Deodorants, Consumer Products, and Aerosol Coating Products regulations contain more stringent limits and cover more than twice the number of categories covered by EPA's national Consumer Products rule. CARB found,

however, that some technology-forcing limits, such as the aerosol adhesives limit originally adopted in 1989, were not achievable. In those cases, CARB identified limits that were achievable and offset any shortfall in emission reductions through greater reductions in other consumer product categories. The TSDs have more information on our evaluation.

C. EPA Recommendations to Further Improve the Regulations

The TSD for CARB Method 310 suggests an amendment to clarify an equation's legend. EPA recommends that CARB adopt this clarifying amendment the next time it modifies Method 310.

D. Public Comment and Final Action

Because EPA believes the submitted regulations fulfill all relevant requirements, we are proposing to fully approve them consistent with section 110(k)(3) of the Act. We are also proposing to approve CARB Method 310 to support compliance with CARB's APDO, Consumer Products, and Aerosol Coating Products regulations. We will accept comments from the public on this proposal for the next 30 days. Unless we receive convincing new information during the comment period, we intend to publish a final approval action that will incorporate these regulations into the federally enforceable SIP.

III. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities

under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);

- 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);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

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

Dated: June 17, 2009.

Jane Diamond,

Acting Regional Administrator, Region IX.
[FR Doc. E9-15144 Filed 6-25-09; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R09-OAR-2009-0272; FRL-8923-3]

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

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing 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 particulate matter emissions from open burning; wood burning fireplaces and heaters; and the storage, handling, and transportation of coke, coal, and sulfur. We are proposing to approve local rules that regulate 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 27, 2009.

ADDRESSES: Submit comments, identified by docket number EPA-R09-OAR-2009-0272, by one of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the on-line instructions.

- *E-mail:* steckel.andrew@epa.gov.

- *Mail or deliver:* Andrew Steckel (Air-4), U.S. Environmental Protection Agency Region IX, 75 Hawthorne Street, San Francisco, CA 94105-3901.

Instructions: All comments will be included in the public docket without change and may be made available online at <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 <http://www.regulations.gov> or e-mail. <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