• 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, Carbon monoxide, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds, Incorporation by reference.

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

Dated: December 15, 2009.

Carol Rushin,

Acting Regional Administrator, Region 8.

■ 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 G—Colorado

■ 2. Section 52.320 is amended by revising (c)(114) to read as follows:

§ 52.320 Identification of Plan.

* * * * *

(c) * * *

(114) On August 1, 2007, the State of Colorado submitted revisions to Colorado Regulation 1 to be incorporated into the Colorado SIP. The submittal revises Section I.I.I.B.2. by adding "and air curtain destructors subject to 40 CFR 60" to the first sentence of Section I.I.I.B.2.

(i) Incorporation by reference.

(A) 5 CCR 1001–3, Code of Colorado Regulations, Regulation Number 1, Emission Control for Particulates, Smokes, Carbon Monoxide and Sulfur Oxides, PARTICULATE MATTER, Section III.B.2, "Incinerators," effective on November 30, 2006. Published in Colorado Register, Volume 29, Number 11.

* * * * *

[FR Doc. 2010–10568 Filed 5–7–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2009–0573; FRL–9146–5]

Disapproval of State Implementation Plan Revisions, South Coast Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is finalizing disapproval of a revision to the South Coast Air Quality Management District (SCAQMD) portion of the California State Implementation Plan (SIP). This action was proposed in the **Federal Register** on September 8, 2009 and concerns volatile organic compound (VOC) emissions from polymeric foam manufacturing operations. Under authority of the Clean Air Act as amended in 1990 (CAA or the Act), this action identifies several deficiencies in SCAQMD Rule 1175.

DATES: *Effective Date:* This rule is effective on June 9, 2010.

ADDRESSES: EPA has established docket number EPA–R09–OAR–2009–0573 for this action. The index to the docket 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: Andrew Steckel, EPA Region IX, (415) 947–4115, *Steckel.andrew@epa.gov.*

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

Table of Contents

I. Proposed Action

On September 8, 2009 (74 FR 46044), EPA proposed to disapprove the following rule that was submitted for incorporation into the California SIP.

Local agency	Rule Number	Rule title	Adopted	Submitted
SCAQMD	1175	Control of Emissions from the Manufacturing of Polymeric Cellular (Foam) Products.	09/07/07	03/07/08

We proposed to disapprove this rule because some rule provisions do not satisfy the requirements of section 110 and part D of the Act. These provisions include the following:

A. The rule must require demonstration, through source testing approved in writing by the Executive Officer, that the systems and techniques in place at a facility achieve 93% collection and reduction of emissions for sources complying with paragraph (c)(4)(B)(iii).

B. The rule must clarify that all operational techniques and parameters needed to achieve 93% control to comply with paragraph (c)(4)(B)(iii) must be clearly defined and enforceable through a federally enforceable permit such as a Title V operating permit.[1] Rule 1175 should also be revised where possible to identify these parameters.

[1] SCAQMD implements a combined Title I preconstruction and Title V operating permit program.

C. The rule must clarify that all operational techniques and parameters needed to achieve 90% collection and 95% destruction to comply with paragraphs (c)(4)(B)(i) and (ii) must be clearly defined and enforceable through a federally enforceable permit such as a Title V operating permit. Rule 1175 should also be revised where possible to identify these parameters.

Our proposed action contains more information on the basis for this rulemaking and on our evaluation of the submittal.

II. Public Comments and EPA Responses

EPA's proposed action provided a 30-day public comment period. During this period, we received comments from the following parties.

A. Shawn Osler, Environmental Compliance Manager, Insulfoam LLC, to Andrew Steckel, EPA, letter dated October 7, 2009.

B. Laki Tisopulos, Assistant Deputy Executive Officer, SCAQMD, to Andrew Steckel, EPA, letter dated October 8, 2009.

The comments and our responses are summarized below.

Comment #1: Insulfoam commented that EPA should reassess the proposed disapproval because the identified rule deficiencies are already adequately addressed by requirements in a Title V permit reviewed by EPA for the only facility affected by EPA's proposed disapproval of Rule 1175. Any changes to this permit would also require EPA review.

Response #1: This comment could be logically extended to suggest that no industry-specific rules are needed in SIPs as long as the state/local agency has an adequate permit program. However, EPA has long interpreted CAA Section 110(a)(2)(A) to require enforceable requirements in SIP-approved regulations, and not just rely on permits.

Comment #2: EPA should also reassess the proposed disapproval because recent SIP approvals within Region 9 indicate that EPA has not required analogous provisions as a condition of approval for all similar rules.

Response #2: The primary provision at issue in SCAQMD Rule 1175 requires 93% emission capture and control. Other SIP-approved stationary source rules that establish analogous emission capture and control requirements generally require both: (a) An initial compliance test to demonstrate the control efficiency, and (b) ongoing monitoring to demonstrate that key parameters (e.g., temperature of afterburner) are maintained consistent with the conditions demonstrated during the successful source test. The deficiencies identified by EPA's proposed disapproval are unusual because Rule 1175 fails to require either initial compliance testing or sufficient ongoing monitoring. We also note that the comment does not identify any specific inconsistent SIP approvals.

Comment #3: At a minimum, EPA should consider partial or conditional approval of Rule 1175 instead of full disapproval.

Response #3: Bethlehem Steel Corp. v. *Gorsuch* (742 F. Second 1028 Seventh Circuit, 1984) limits EPA's ability to publish partial approvals. If we could partially approve Rule 1175, we would likely need to exclude the new 93% compliance option that is the primary subject of our proposed limited disapproval which would have the same effect as our full disapproval action as proposed. *See* Response #7 below regarding conditional approvals.

Comment #4: SCAQMD commented that the pre-September 7, 2007 version of Rule 1175 has served as a model to the rest of the country and has been approved into the SIP without any of the issues raised by EPA.

Response #4: We agree with the comment and acknowledge SCAQMD's leadership in regulating this industry. We note that: (a) The issues we have identified as deficiencies are largely raised by the September 7, 2007 revisions; and (b) our disapproval of the September 7, 2007 version would retain the previous version in the SIP, which has served as a model rule.

Comment #5: The September 7, 2007 amendment further improves the efficacy of the rule by providing the one block foam manufacturer in South Coast with an environmentally superior alternative compliance option.

Response #5: The deficiencies identified in our proposed disapproval largely address our concerns that the new alternative compliance option, as described in the rule, is not adequately enforceable.

Comment #6: The revisions suggested by EPA are not necessary and of limited usefulness at best because SCAQMD already includes permit conditions establishing the required parameters and source testing as EPA requested.

Response #6: See Response #1.

Comment #7: If EPA declines to fully approve the rule, SCAQMD prefers a conditional approval pursuant to CAA Section 110(k)(4) in lieu of the proposed disapproval.

Response #7: The State has not fulfilled the requirements of CAA Section 100(k)(4) for a conditional approval, which include a commitment from the State to adopt specific enforceable measures by a certain date.

Comment #8: Prompt approval of Rule 1175 will expedite implementation by the one affected facility of the environmentally superior alternative compliance option provided in paragraph (c)(4)(B)(iii).

Response #8: While we are not opining on whether paragraph (c)(4)(B)(iii) provides an environmentally superior alternative compliance option, we do not believe that this and related paragraphs in Rule 1175 are fully enforceable as discussed in our proposed action and required by CAA Section 110(a).

Comment #9: AQMD staff will be prepared to develop an administrative amendment that would explicitly require source testing and permits be obtained by any impacted facility.

Response #9: We believe such a rule amendment would address the deficiencies identified in our proposal and we look forward to working with SCAQMD on specific rule text. See also Response #7 above.

Comment #10: AQMD staff would object to the notion that specific parameters be identified in the rule. To establish industry-wide operational parameters within the rule is impractical and that level of detail is best left to be identified during the permitting process.

Response #10: We concur with this comment and believe it is consistent with our proposed action.

III. EPA Action

No comments were submitted that change our assessment of the rule as described in our proposed action. Therefore, as authorized in section 110(k)(3) of the Act, EPA is finalizing a full disapproval of the submitted rule. This action retains the existing SIP rule in the SIP. There are no sanction or FIP implications of this action pursuant to CAA Sections 179 or 110(c), as this is not a required CAA submittal.

IV. Statutory and Executive Order Reviews

A. Executive Order 12866, Regulatory Planning and Review

This action is not a "significant regulatory action" under the terms of Executive Order 12866 (58 FR 51735, October 4, 1993) and is therefore not subject to review under the EO.

B. Paperwork Reduction Act

This action does not impose an information collection burden under the provisions of the Paperwork Reduction

Act, 44 U.S.C. 3501 *et seq.* Burden is defined at 5 CFR 1320.3(b).

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

This rule will not have a significant impact on a substantial number of small entities because SIP disapprovals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply disapprove requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities.

Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of State action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.,* v. *U.S. EPA,* 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

D. Unfunded Mandates Reform Act

Under sections 202 of the Unfunded Mandates Reform Act of 1995 (“Unfunded Mandates Act”), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the disapproval 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 disapproves 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.

E. Executive Order 13132, Federalism

Federalism (64 FR 43255, August 10, 1999) revokes and replaces Executive Orders 12612 (Federalism) and 12875 (Enhancing the Intergovernmental Partnership). Executive Order 13132 requires EPA to develop an accountable process to ensure “meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.” “Policies that have federalism implications” is defined in the Executive Order to include regulations that 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.” Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

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, because it merely disapproves 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. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

F. Executive Order 13175, Coordination With Indian Tribal Governments

Executive Order 13175, entitled “Consultation and Coordination with Indian Tribal Governments” (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure “meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.” This final rule does not have tribal implications, as specified in Executive Order 13175. It will not have substantial direct effects on tribal governments, 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. Thus, Executive Order 13175 does not apply to this rule.

G. Executive Order 13045, Protection of Children From Environmental Health Risks and Safety Risks

EPA interprets Executive Order 13045 (62 FR 19885, April 23, 1997) as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the regulation. This rule is not subject to Executive Order 13045, because it disapproves a State rule implementing a Federal standard.

H. Executive Order 13211, Actions That Significantly Affect Energy Supply, Distribution, or Use

This rule is not subject to Executive Order 13211, “Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use” (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

I. 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.

The EPA believes that VCS are inapplicable to this action. Today’s action does not require the public to perform activities conducive to the use of VCS.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Population

Executive Order 12898 (59 FR 7629 (Feb. 16, 1994)) establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent

practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

EPA lacks the discretionary authority to address environmental justice in this proposed rulemaking. In reviewing SIP submissions, EPA's role is to approve or disapprove state choices, based on the criteria of the Clean Air Act. Accordingly, this action merely disapproves certain State requirements for inclusion into the SIP under section 110 and subchapter I, part D of the Clean Air Act and will not in-and-of itself create any new requirements. Accordingly, it 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.

K. Congressional Review Act

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). This rule will be effective June 9, 2010.

L. 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 July 9, 2010. 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, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: March 18, 2010.

Jared Blumenfeld,

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 paragraph (a)(1)(iii) to read as follows:

§ 52.242 Disapproved rules and regulations.

(a) * * *

(1) * * *

(iii) Rule 1175, "Control of Emissions from the Manufacturing of Polymeric Cellular (Foam) Products," submitted on March 7, 2008 and adopted on September 7, 2007.

* * * * *

[FR Doc. 2010–10921 Filed 5–7–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2010–0286; FRL–9138–6]

Revisions to the California State Implementation Plan, Yolo-Solano 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 Yolo-Solano Air Quality Management District (YSAQMD) portion of the California State Implementation Plan (SIP). These revisions concern oxides of nitrogen (NO_x) emissions from natural gas-fired water heaters, small boilers and nitric acid production facilities. 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 July 9, 2010 without further notice, unless EPA receives adverse comments by June 9, 2010. If we receive such comments, we will publish a timely withdrawal in the **Federal Register** to notify the public that this direct final rule will not take effect.

ADDRESSES: Submit comments, identified by docket number [EPA–R09–OAR–2010–0286], 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 *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* or e-mail. *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. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

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: Idalia Perez, EPA Region IX, (415) 972–3248, *perez.idalia@epa.gov.*

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