

treatment code and its corresponding meaning).

(2) The issuer must provide to participants and beneficiaries, as soon as practicable, upon request, the diagnosis code and its corresponding meaning, and the treatment code and its corresponding meaning, associated with any adverse benefit determination or final internal adverse benefit determination. The issuer must not consider a request for such diagnosis and treatment information, in itself, to be a request for an internal appeal under this paragraph (b) or an external review under paragraphs (c) and (d) of this section.

\* \* \* \* \*

(F) *Deemed exhaustion of internal claims and appeals processes*—(1) In the case of an issuer that fails to adhere to all the requirements of this paragraph (b)(3) with respect to a claim, the claimant is deemed to have exhausted the internal claims and appeals process of this paragraph (b), except as provided in paragraph (b)(3)(ii)(F)(2) of this section. Accordingly, the claimant may initiate an external review under paragraph (c) or (d) of this section, as applicable. The claimant is also entitled to pursue any available remedies under State law, as applicable, on the basis that the issuer has failed to provide a reasonable internal claims and appeals process that would yield a decision on the merits of the claim.

(2) Notwithstanding paragraph (b)(3)(ii)(F)(1) of this section, the internal claims and appeals process of this paragraph (b) will not be deemed exhausted based on *de minimis* violations that do not cause, and are not likely to cause, prejudice or harm to the claimant so long as the issuer demonstrates that the violation was for good cause or due to matters beyond the control of the issuer and that the violation occurred in the context of an ongoing, good faith exchange of information between the issuer and the claimant. This exception is not available if the violation is part of a pattern or practice of violations by the issuer. The claimant may request a written explanation of the violation from the issuer, and the issuer must provide such explanation within 10 days, including a specific description of its bases, if any, for asserting that the violation should not cause the internal claims and appeals process of this paragraph (b) to be deemed exhausted. If an external reviewer or a court rejects the claimant's request for immediate review under paragraph (b)(3)(ii)(F)(1) of this section on the basis that the issuer met the standards for the exception under this

paragraph (b)(3)(ii)(F)(2), the claimant has the right to resubmit and pursue the internal appeal of the claim. In such a case, within a reasonable time after the external reviewer or court rejects the claim for immediate review (not to exceed 10 days), the issuer shall provide the claimant with notice of the opportunity to resubmit and pursue the internal appeal of the claim. Time periods for re-filing the claim shall begin to run upon claimant's receipt of such notice.

Signed this 15th day of July 2011.

**Diane O. Williams,**

*Federal Register Liaison, Internal Revenue Service, Department of the Treasury.*

Signed this 20th day of July 2011.

**Daniel J. Maguire,**

*Director, Office of Health Plan Standards and Compliance Assistance, Employee Benefits Security Administration, Department of Labor.*

Signed this 20th day of July 2011.

**Dawn Smalls,**

*Executive Secretary to the Department, Department of Health and Human Services.*

[FR Doc. 2011-18820 Filed 7-22-11; 4:15 pm]

**BILLING CODE 4820-01-P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R09-OAR-2011-0042;FRL-9279-3]

#### Revisions to the California State Implementation Plan, Northern Sierra Air Quality Management District, Sacramento Metropolitan Air Quality Management District, and South Coast 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 Northern Sierra Air Quality Management District (NSAQMD), Sacramento Metropolitan Air Quality Management District (SMAQMD), and South Coast Air Quality Management District (SCAQMD) portions of the California State Implementation Plan (SIP). These revisions concern volatile organic compound (VOC) emissions from gasoline dispensing facilities, polyester resin operations, and spray booth 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 September 26, 2011 without further notice, unless EPA receives adverse

comments by August 25, 2011. 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-2011-0198, by one of the following methods:

1. *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the online instructions.

2. *E-mail:* [steckel.andrew@epa.gov](mailto: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. 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 <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:** David Grounds, EPA Region IX, (415) 972-3019, [grounds.david@epa.gov](mailto:grounds.david@epa.gov).

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

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**I. The State’s Submittal**

*A. What rules did the State submit?*

Table 1 lists the rules we are approving with the dates that they were adopted by the local air agencies and submitted by the California Air Resources Board.

**TABLE 1—SUBMITTED RULES**

Local agency	Rule No.	Rule title	Amended	Submitted
NSAQMD .....	215	Phase II Vapor Recovery .....	02/22/10	07/20/10
SMAQMD .....	465	Polyester Resin Operations .....	09/25/08	09/15/09
SCAQMD .....	1132	Further Control of VOC Emissions From High-Emitting Spray Booth Facilities	05/05/06	01/10/10
SCAQMD .....	1162	Polyester Resin Operations .....	07/08/05	04/06/09

On August 25, 2010, EPA determined that the submittal for NSAQMD Rule 215 met the completeness criteria in 40 CFR Part 51 Appendix V, which must be met before formal EPA review. On January 21, 2010, EPA determined that the submittal for SMAQMD Rule 465 met the completeness criteria. On February 4, 2010, EPA determined that the submittal for SCAQMD Rule 1132 met the completeness criteria. On May 13, 2009, EPA determined that the submittal for SCAQMD Rule 1162 met the completeness criteria.

*B. Are there other versions of these rules?*

We approved an earlier version of SCAQMD Rule 1132 into the SIP on 04/26/04 (69 FR 22445). We approved an earlier version of SCAQMD Rule 1162 into the SIP on 02/12/02 (67 FR 6410). No earlier versions of NSAQMD Rule 215 and SMAQMD Rule 465 were approved into the SIP.

*C. What is the purpose of the submitted rule 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. NSAQMD Rule 215 imposes more stringent requirements on VOC emissions from gasoline dispensing facilities, SCAQMD Rule 1132 imposes more stringent requirements on VOC emissions from spray booth facilities, while SCAQMD Rule 1162 and SMAQMD Rule 465 impose more stringent requirements on VOC emissions from polyester resin operations. EPA’s technical support documents (TSD) have more information about these rules.

**II. EPA’s Evaluation and Action**

*A. How is EPA evaluating the rules?*

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 sections 182(a)(2) and (b)(2)), and must not relax existing requirements (see sections 110(l) and 193). The NSAQMD, SMAQMD, and SCAQMD all regulate ozone nonattainment areas (see 40 CFR part 81), so Rule 215, 465, 1132, and 1162 must fulfill RACT. Guidance and policy documents that we use to 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. “Technical Guidance—Stage II Vapor Recovery Systems for Control of Vehicle Refueling Emissions at Gasoline Dispensing Facilities,” (EPA-450/3-91-022).
4. “Gasoline Dispensing Facilities—Stage II Vapor Recovery,” EPA’s Draft Model Rule, August 17, 1992.
5. “Gasoline Vapor Recovery Guidelines,” EPA Region IX, April 24, 2000.
6. “Control Techniques Guidelines for Industrial Cleaning Solvents,” (EPA-453/R-06-001, 9/06).
7. “Control of VOC Emissions from Manufacture of High-Density Polyethylene, Polypropylene, and Polystyrene Resins,” (EPA-450/3-83-008, 11/83).
8. “Control of VOC Fugitive Emissions from Synthetic Organic Chemical Polymer and Resin manufacturing Equipment,” (EPA-450/3-83-006, 3/84).

9. “Control Techniques Guidelines for Fiberglass Boat Manufacturing Materials,” (EPA-453/R-08-004, 9/08).
10. “Control Techniques for Miscellaneous Metal and Plastic Parts Coatings,” (EPA-453/R-08-003).
11. “Control Techniques Guidelines for Industrial Cleaning Solvents,” (EPA-453/R-06-001, 9/06).

*B. Do the rules meet the evaluation criteria?*

We believe these rules are consistent with the relevant policy and guidance regarding enforceability, RACT, and SIP relaxations. The TSDs have more information on our evaluations.

*C. EPA Recommendations To Further Improve the Rules*

The TSDs describe additional rule revisions that we recommend for the next time the local agencies modify the rules.

*D. Public Comment and Final Action*

As authorized in section 110(k)(3) of the Act, EPA is fully approving the submitted rules because we believe they fulfill 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 rules. If we receive adverse comments by August 25, 2011, 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 September 26, 2011. This will incorporate these rules into the Federally enforceable SIP.

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.

### 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 interfere with Executive Order 12898 (59 FR 7629 (Feb. 16, 1994)) because EPA lacks the discretionary authority to address environmental justice in this rulemaking.
- In addition, these rules do 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.

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 action 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 September 26, 2011. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action 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. Parties with objections to this direct final rule are encouraged to file a comment in response to the parallel notice of proposed rulemaking for this action published in the Proposed Rules section of today's **Federal Register**, rather than file an immediate petition for judicial review of this direct final rule, so that EPA can withdraw this direct final rule and address the comment in the proposed rulemaking. 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, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: February 15, 2011.

**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 52.220 is amended by adding paragraphs (c)(366)(i)(B)(3), (377)(i)(A)(4), (378)(i)(A)(2) and (381)(i)(D) to read as follows:

#### § 52.220 Identification of plan.

- \* \* \* \* \*
- (c) \* \* \*
- (366) \* \* \*
- (i) \* \* \*
- (B) \* \* \*
- (3) Rule 1162, "Polyester Resin Operations," amended on July 8, 2005.
- \* \* \* \* \*
- (377) \* \* \*
- (i) \* \* \*
- (A) \* \* \*
- (4) Rule 465, "Polyester Resin Operations," amended on September 25, 2008.
- \* \* \* \* \*
- (378) \* \* \*
- (i) \* \* \*
- (A) \* \* \*
- (2) Rule 1132, "Further Control of VOC Emissions From High-Emitting Spray Booth Facilities," amended on May 5, 2006.
- \* \* \* \* \*
- (381) \* \* \*
- (i) \* \* \*
- (D) Northern Sierra Air Quality Management District
- (1) Rule 215, "Phase II Vapor Recovery System Requirements," amended on February 22, 2010.
- \* \* \* \* \*

[FR Doc. 2011-18872 Filed 7-25-11; 8:45 am]

**BILLING CODE 6560-50-P**

### FEDERAL COMMUNICATIONS COMMISSION

#### 47 CFR Chapter I

[WC Docket No. 07-245, GN Docket No. 09-51; Report No. 2931]

#### A National Broadband Plan for Our Future; Petition for Reconsideration

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule; petition for reconsideration.

**SUMMARY:** In this document, Petitions for Reconsideration (Petitions) have been filed in the Commission's Rulemaking proceeding concerning a