

in today's **Federal Register**, we believe that it is more likely than not that the State has corrected the original disapproval deficiencies. Therefore, we are taking this final rulemaking action, effective on publication, finding that the State has corrected the deficiencies. However, we are also providing the public with an opportunity to comment on this final action. If, based on any comments on this action and any comments on our proposed full approval of the State's submittal, we determine that the State's submittal is not fully approvable and this final action was inappropriate, we will either propose or take final action finding that the State has not corrected the original disapproval deficiencies. As appropriate, we will also issue an interim final determination or a final determination that the deficiency has been corrected.

This action does not stop the sanctions clock that started for this area on November 1, 1999. However, this action will stay the imposition of the offsets sanction and will defer the imposition of the highway sanction. If our direct final action fully approving the State's submittal becomes effective, such action will permanently stop the sanctions clock and will permanently lift any imposed, stayed or deferred sanctions. If we must withdraw the direct final action based on adverse comments and we subsequently determine that the State, in fact, did not correct the disapproval deficiencies, we will also determine that the State did not correct the deficiencies and the sanctions consequences described in the sanctions rule will apply. See 59 FR 39832 (August 4, 1994), codified at 40 CFR 52.31.

II. EPA Action

We are taking interim final action finding that the State has corrected the disapproval deficiencies that started the sanctions clock. Based on this action, imposition of the offset sanction will be stayed and imposition of the highway sanction will be deferred until our direct final action fully approving the State's submittal becomes effective or until we take action proposing or finally disapproving in whole or part the State submittal. If our direct final action fully approving the State submittal becomes effective, at that time any sanctions clocks will be permanently stopped and any imposed, stayed, or deferred sanctions will be permanently lifted.

Because we have preliminarily determined that the State has an approvable submittal, relief from sanctions should be provided as quickly as possible. Therefore, we are invoking

the good cause exception to the 30-day notice requirement of the Administrative Procedure Act because the purpose of this notice is to relieve a restriction. See 5 U.S.C. 553(d)(1).

III. 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. This action merely stays and defers federal sanctions. 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 only stays an imposed sanction and defers the imposition of another, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4). For the same reason, this rule also does not significantly or uniquely affect the communities of tribal governments, as specified by Executive Order 13084 (63 FR 27655, May 10, 1998). 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 (64 FR 43255, August 10, 1999), because it merely stays a sanction and defers another one, 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 (62 FR 19885, April 23, 1997), because it is not economically significant.

This rule does not contain technical standards, 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. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" issued under the executive order.

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. However, section 808 provides that any rule for which the issuing agency for good cause finds (and incorporates the finding and a brief statement of reasons therefor in the rule) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest, shall take effect at such time as the agency promulgating the rule determines. 5 U.S.C. 808(2). As stated previously, EPA has made such a good cause finding, including the reasons therefor, and established an effective date of August 27, 2001. 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**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 52

Air pollution control, Environmental protection, Hydrocarbons, Incorporation by reference, Intergovernmental regulations, Ozone, Reporting and recordkeeping, and Volatile organic compounds.

Dated: July 31, 2001.

Jane Diamond,

Acting Regional Administrator, Region IX.

[FR Doc. 01-21437 Filed 8-24-01; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 248-0288a; FRL-7028-7]

Revisions to the California State Implementation Plan, El Dorado County Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve revisions to the El Dorado County Air Pollution Control District (EDCAPCD) portion of the

California State Implementation Plan (SIP). These revisions concern volatile organic compound (VOC) emissions from Phase I gasoline transfer into stationary storage tanks/Phase II gasoline transfer into vehicle fuel tanks, organic liquid loading, and valves and flanges. We are approving local rules and approving the rescission of local rules that regulate these emission sources under the Clean Air Act as amended in 1990 (CAA or the Act). We are also approving a negative declaration that concerns VOC emissions from bulk terminal facilities or external or internal floating roof tank sources. The EDCAPCD has certified that these source categories are not present in the District and this negative declaration is being added to the federally-approved SIP.

DATES: This rule is effective on October 26, 2001 without further notice, unless EPA receives adverse comments by September 26, 2001. 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.

You can inspect copies of the submitted rule 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 rule revisions and TSD at the following locations:

- Environmental Protection Agency, Air Docket (6102), Ariel Rios Building, 1200 Pennsylvania Avenue, NW., Washington DC 20460
- California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 1001 "I" Street, Sacramento, CA 95814
- El Dorado County Air Pollution Control District, 2850 Fairlane Court, Building C, Placerville, CA 95667

FOR FURTHER INFORMATION CONTACT: Al Petersen, Rulemaking Office (AIR-4), U.S. Environmental Protection Agency, Region IX; (415) 744-1135.

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 or rescinding and the negative declaration we are approving with the dates that they were adopted or rescinded by the local air agency and submitted by the California Air Resources Board (CARB).

TABLE 1.—SUBMITTED RULES

Local agency	Rule No.	Rule title	Adopted or (rescinded)	Submitted
EDCAPCD	238	Gasoline Transfer and Dispensing	03/27/01	05/23/01
EDCAPCD	244	Organic Liquid Loading and Transport Vessels	03/27/01	05/23/01
EDCAPCD	245	Valves and Flanges	03/27/01	05/23/01
EDCAPCD	900	Definitions	03/27/01 (Rescinded)	05/23/01
EDCAPCD	901	Submerged Fill Pipe	03/27/01 (Rescinded)	05/23/01
EDCAPCD	902	Phase I Vapor Recovery Requirements	03/27/01 (Rescinded)	05/23/01
EDCAPCD	903	Phase II Vapor Recovery System Requirements	03/27/01 (Rescinded)	05/23/01
EDCAPCD	904	Operation and Maintenance	03/27/01 (Rescinded)	05/23/01
EDCAPCD	905	Delivery Vessels Equipped with Vapor Recovery	03/27/01 (Rescinded)	05/23/01
EDCAPCD	906	Transfer Provisions	03/27/01 (Rescinded)	05/23/01
EDCAPCD	907	Delivery Vessels Not Equipped with Vapor Recovery	03/27/01 (Rescinded)	05/23/01
EDCAPCD	908	Vapor Collection and Disposal System at Loading Facilities	03/27/01 (Rescinded)	05/23/01
EDCAPCD	909	Standards	03/27/01 (Rescinded)	05/23/01
EDCAPCD	910	New or Modified Bulk Petroleum Facilities	03/27/01 (Rescinded)	05/23/01
EDCAPCD	911	Test Methods	03/27/01 (Rescinded)	05/23/01
EDCAPCD	912	Administrative	03/27/01 (Rescinded)	05/23/01
EDCAPCD	913	Compliance	03/27/01 (Rescinded)	05/23/01
EDCAPCD	914	Application and Permit Requirement	03/27/01 (Rescinded)	05/23/01
EDCAPCD	Neg Dec	Bulk Terminal Facilities or External or Internal Floating Roof Tank Sources.	04/03/01	05/23/01

On July 3, 2001, these submittals were 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 These Rules?

We approved a version of Rule 238 into the SIP on October 1, 1999 (64 FR 53210) as Rules 900, 901, 902, 903, and 904. We approved a version of Rule 244 into the SIP on October 1, 1999 (64 FR 53210) as Rules 905, 906, 907, 908, 910, 911, and 912. There are no previous

versions of Rule 245 in the SIP. Rules 909, 913, and 914 were approved into the SIP on October 1, 1999 (64 FR 53210) and are now submitted for rescission.

C. What Are the Purposes of the Submitted Rule Revisions?

The purposes of the revisions contained in Rule 238 are to:

- Remedy the deficiencies cited in the limited approval and limited disapproval of October 1, 1999 (64 FR

53210). Most of these deficiencies addressed enforceability problems.

- Simplify by combining five rules into one.
- Revise the rule to include new CARB standards, reverification testing, inspection procedures, test methods, and recordkeeping.

The purposes of the revisions contained in Rule 244 are to:

- Remedy the deficiencies cited in the limited approval and limited disapproval of October 1, 1999 (64 FR

53210). Most of these deficiencies addressed enforceability problems.

- Simplify by combining seven rules into one.

The purpose of new Rule 245 is to:

- Require that valves and flanges in a petroleum refinery, chemical plant, or oil production field handling VOCs shall be inspected and repaired according to specific requirements and that records be kept for five years.

The purposes of rescinding Rules 909, 913, and 914 are, respectively, to remove a rule without any applications to regulate, to remove a local enforcement rule not appropriate for the SIP, and to remove a permitting rule that has already been replaced.

The purpose of the negative declaration is to certify that there are no sources in the District in the categories of bulk terminal facilities or external or internal floating roof tanks. The TSD has more information about all of these rules.

II. EPA's Evaluation and Actions

A. How Is EPA Evaluating the Rules?

Generally, SIP rules must be enforceable (see section 110(a) of the CAA), must require Reasonably Available Control Technology (RACT) for major sources in nonattainment areas (see section 182(a)(2)(A) and 182(b)(3)(A)), and must not relax existing requirements (see sections 110(l) and 193). The EDCAPCD regulates a severe ozone nonattainment area (see 40 CFR part 81), so Rules 238, 244, and 245 must fulfill the requirements of RACT.

Guidance and policy documents that we used to define specific enforceability and RACT requirements include the following:

- Portions of the proposed post-1987 ozone and carbon monoxide policy that concern RACT, 52 FR 45044, November 24, 1987.
- "Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations; Clarification to Appendix D of November 24, 1987 Federal Register Notice," (Blue Book), notice of availability published in the May 25, 1988 **Federal Register**.

Rule 238 was also evaluated against the EPA Draft *Model Rule, Gasoline Dispensing Facility—Stage II Vapor Recovery* (August 17, 1992). In evaluating RACT, EPA also considered information published since the 1992 Draft *Model Rule*, including documents associated with development of CARB's Enhanced Vapor Recovery Guidelines

(March 23, 2000) and South Coast Air Quality Managements District's Draft Rule 461, Gasoline Transfer and Dispensing (December 15, 1999). EPA, Region IX, has summarized RACT requirements in the Draft *Gasoline Vapor Recovery Guidelines* (April 24, 2000).

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. All of the deficiencies identified in our previous limited approval and limited disapproval action have been adequately addressed as follows:

- (Lack of a specific definition of the facilities to which the rules apply.) Applicability statements were added to all submitted rules.
- (Improper definition of test methods.) Appropriate test methods were added to all submitted rules.
- (Control Officer discretion to require unspecified control equipment.) A CARB certified vapor recovery system is required in Rule 238 and is an alternate requirement in Rule 244. The other alternate in Rule 244, where a CARB-certified system is not required, is to have the same vapor recovery as a CARB-certified system and obtain District approval. Control equipment is not relevant to Rule 245.

• (A higher throughput exemption than allowed by section 182(b)(3) of the CAA.) Throughput exemptions are not now used in any of the submitted rules. Rules 238 and 245 are more stringent than the corresponding existing SIP requirements. Rule 244 is less stringent than the corresponding existing SIP requirements, due to the decreased vapor recovery system efficiency.¹ However, this decrease in efficiency is more than offset by the increased stringency of Rules 238 and 245. Therefore, the combined submittal of Rules 238, 244, and 245 are given full approval as a strengthening of the SIP.

Rescinded Rules 900, 901, 902, 903, and 904 are replaced by Rule 238. Rescinded Rules 905, 906, 907, 908, 910, 911, and 912 are replaced by Rule 244. Rescinded Rule 914 is replaced by SIP Rule 501.

¹ Reducing the vapor recovery system efficiency of displaced vapors was an oversight related to changing the units of measure. EDCAPCD has committed to restoring the required vapor recovery system efficiency to 0.08 pounds per 1,000 gallons (99% of displaced vapors).

Rescinded Rule 913 is not replaced. Rule 913 concerns local enforcement authority which is not appropriate for the SIP, because EPA independently has this authority.

Rescinded Rule 909 is not replaced. A Negative Declaration certifying that the EDCAPCD does not have any Bulk Terminal Facility or External or Internal Floating Roof Tank Sources regulated by Rule 909 is approved. The Negative Declaration is provided to show that there is no such source in the District that needs to meet the requirements of RACT and to demonstrate that there is no relaxation of the SIP by rescinding Rule 909. The TSD has more information on our evaluations.

C. EPA Recommendations To Further Improve the Rules

The TSD describes additional rule revisions that do not affect EPA's current action but are recommended for the next time the local agency modifies the rules.

D. Public Comment and Final Action

As authorized in section 110(k)(3) of the CAA, EPA is fully approving the submitted rules because we believe they fulfill all relevant requirements. We do not think anyone will object to this, so we are finalizing the approval 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 September 26, 2001, 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 October 26, 2001. This will incorporate these rules into the federally-enforceable SIP.

III. Background Information

A. Why Were These Rules Submitted?

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. Table 2 lists some of the national milestones leading to the submittal of these local agency VOC rules.

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.
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 CAA.
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 32111, “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 (Public Law 104-4). This rule also does 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), nor will it 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), because it 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 (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. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the “Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings” issued under the executive order. 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. section 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. section 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 October 26, 2001. 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, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: July 31, 2001.

Jane Diamond,
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 paragraphs (c)(183)(i)(H)(2), (183)(i)(H)(3), (183)(i)(H)(4), (183)(i)(H)(5), (183)(i)(H)(6), and (281) to read as follows:

§ 52.220 Identification of plan.

- * * * * *
- (c) * * *
- (183) * * *
- (i) * * *
- (H) * * *

(2) Previously approved on October 1, 1999 in paragraph (c)(183)(i)(H)(1) of this section and now deleted Rules 900, 901, 902, 903, and 904 (now replaced by Rule 238).

(3) Previously approved on October 1, 1999 in paragraph (c)(183)(i)(H)(1) of this section and now deleted Rules 905, 906, 907, 908, 910, 911, and 912 (now replaced by Rule 244).

(4) Previously approved on October 1, 1999 in paragraph (c)(183)(i)(H)(1) of this section and now deleted Rule 909 (now replaced by a Negative Declaration adopted on April 3, 2001).

(5) Previously approved on October 1, 1999 in paragraph (c)(183)(i)(H)(1) of this section and now deleted without replacement Rule 913.

(6) Previously approved on October 1, 1999 in paragraph (c)(183)(i)(H)(1) of this section and now deleted Rule 914 (now replaced by Rule 501).

* * * * *

(281) New and amended regulations for the following APCDs were submitted on May 23, 2001, by the Governor's designee.

(i) Incorporation by reference.

(A) El Dorado County Air Pollution Control District.

(1) Rules 238, 244, and 245, adopted on March 27, 2001.

* * * * *

3. Section 52.222 is amended by adding paragraph (a)(7)(i) to read as follows:

§ 52.222 Negative Declarations.

* * * * *

(a) * * *

(7) El Dorado County Air Pollution Control District.

(i) Bulk Terminal Facilities or External or Internal Floating Roof Tank Sources was submitted on May 23, 2001 and adopted on April 3, 2001.

* * * * *

[FR Doc. 01-21438 Filed 8-24-01; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[FRL-7039-2]

Amendments for Testing and Monitoring Provisions; Removal of a Provision for Opacity Monitoring

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: We, the EPA, are taking direct final action to remove an amendment

published as part of a final rule entitled "Amendments for Testing and Monitoring Provisions" on October 17, 2000 (65 FR 61744). We are removing this provision because it inadvertently established substantive new requirements for facilities that are subject to the New Source Performance Standards requiring the installation of continuous opacity monitors on effluent streams, although the amendments were explicitly intended to be minor in nature and not substantive.

DATES: Effective Date. This final rule amendment is effective on October 11, 2001 without further notice, unless we receive adverse comments on this direct final rule by September 26, 2001. If we receive timely adverse comments or a timely hearing request, we will publish a withdrawal in the **Federal Register** informing you, the public, that this direct final rule will not take effect.

ADDRESSES: *Comments.* You may submit comments on this rulemaking in writing (original and two copies, if possible) to Docket No. A-97-12 at the following address: Air and Radiation Docket and Information Center (6102), US Environmental Protection Agency, 401 M Street, SW., Room 1500, Washington, DC 20460.

Docket. A docket containing supporting information used in developing this direct final rule amendment is available for public inspection and copying at our docket office located at the above address in Room M-1500, Waterside Mall (ground floor). You are encouraged to phone in advance to review docket materials. To schedule an appointment, call the Air Docket Office at (202) 260-7548. Refer to Docket No. A-97-12. The Docket Office may charge a reasonable fee for copying docket materials.

FOR FURTHER INFORMATION CONTACT: Foston Curtis, Environmental Protection Agency, Office Air Quality Planning and Standards, at 919/541-1063, e-mail: *curtis.foston@epa.gov*, facsimile 919/541-1039.

SUPPLEMENTARY INFORMATION:

Outline. The information in this preamble is organized as follows:

- I. Background
- II. Authority
- III. Administrative Requirements
 - A. Executive Order 12866: "Significant Regulatory Action Determination"
 - B. Regulatory Flexibility
 - C. Paperwork Reduction Act
 - D. Unfunded Mandates Reform Act
 - E. Docket
 - F. Executive Order 13132: Federalism
 - G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

- H. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments
- I. Submission to Congress and the General Accounting Office
- J. National Technology Transfer and Advancement Act
- K. Executive Order 13211 (Energy Effects)

I. Background

On October 17, 2000 (65 FR 61744), we published a notice of final rulemaking to adopt a number of changes to the test methods listed in 40 CFR parts 60, 61, and 63. As the preamble to the final rule explained, these changes were largely intended to be minor, nonsubstantive revisions and represented, in effect, a "housekeeping" effort to correct typographical and technical errors, and eliminate obsolete or no longer applicable material. In addition, we promulgated Performance Specification 15, which contains criteria for certifying continuous emission monitoring systems (CEMS) that use fourier transform infrared spectroscopy, and we changed the outline of the test methods and CEMS performance specifications already listed in parts 60, 61, and 63 to fit a new format recommended by the Environmental Monitoring Management Council. The editorial changes and technical corrections were intended to update the rules and help maintain their original intent.

The amendment made to § 60.13(g) which is affected by today's action applies to facilities that are subject to New Source Performance Standards (NSPS) and are required to install continuous opacity monitors on effluent streams. Specifically, the amendment provides that when the effluents from two or more affected facilities subject to the same opacity standard are combined into a single stack, and if opacity is monitored on each stream, a combiner system comprised of opacity and flow monitoring systems must be installed. In this case, gas flow rates from the individual streams must be known to correct the measured opacity to the exit stack dimensions and therefore must be measured. By contrast, preamended § 60.13(g) only implied, but did not explicitly require, that flow measurements from the individual streams were necessary. The intent of the amendment was to explicitly require such flow measurements and to identify what we perceived to be the most commonly used method of doing that (namely, the use of flow monitors). However, during the public comment period, some members of the utility industry objected to our specifying flow monitors as the only option and suggested that other indicators of flow