

[FR Doc. 99-16376 Filed 6-29-99; 8:45 am]  
BILLING CODE 6560-50-P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[CA 210-0103; FRL-6365-3]

#### Approval and Promulgation of Implementation Plans; California State Implementation Plan Revision, Modoc County Air Pollution Control District, Siskiyou County Air Pollution Control District, Tehama County Air Pollution Control District, and Tuolumne 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 California State Implementation Plan (SIP). This action is an administrative change which revises the definitions in Modoc County Air Pollution Control District (MCAPCD), Siskiyou County Air Pollution Control District (SCAPCD), Tehama County Air Pollution Control District (TCAPCD), and Tuolumne County Air Pollution Control District (TUCAPCD). The intended effect of approving this action is to incorporate changes to the definitions for clarity and consistency and to update the Exempt Compound list in TCAPCD definition's rule to be consistent with the revised federal and state VOC definitions.

**DATES:** This rule is effective on August 30, 1999 without further notice, unless EPA receives adverse comments by July 30, 1999. If EPA receives such comment, it will publish a timely withdrawal in the **Federal Register** informing the public that this rule will not take effect.

**ADDRESSES:** Comments must be submitted to Andrew Steckel at the Region IX office listed below. Copies of these rules, along with EPA's evaluation report for each rule, are available for public inspection at EPA's Region IX office during normal business hours. Copies of the submitted requests for rule revisions are also available for inspection at the following locations:

Rulemaking Office (AIR-4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105

Environmental Protection Agency, Air Docket (6102), 401 "M" Street, S.W., Washington, D.C. 20460

California Air Resources Board, Stationary Source Division, Rule

Evaluation Section, 2020 "L" Street, Sacramento, CA 95812  
Modoc County Air Pollution Control District, 202 West 4th Street, Alturas, CA 96101-3915  
Siskiyou County Air Pollution Control District, 1855 Placer Street, Ste. 101, Redding, CA 96001-1759  
Tehama County Air Pollution Control District, P.O. Box 38 (1750 Walnut St.), Red Bluff, CA 96080-0038  
Tuolumne County Air Pollution Control District, 22365 Airport, Columbia, CA 95310

**FOR FURTHER INFORMATION CONTACT:** Cynthia G. Allen, Rulemaking Office, AIR-4, Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105, Telephone: (415) 744-1189.

#### SUPPLEMENTARY INFORMATION:

##### I. Applicability

The rules with definition revisions being approved into the California SIP include the following: MCAPCD Rule 1.2, Definitions and 7.1, Definitions (Agricultural Burning); SCAPCD Rule 7.1, Agricultural Burning Definitions; TCAPCD Rule 1:2, Definitions; and TUCAPCD Rules 101, Title; 102, Definitions; and Regulation III, Open Burning, Rule 300, General Definitions. These rules were submitted by the California Air Resources Board to EPA on March 26, 1990 (Tuolumne), December 31, 1990 (Modoc and Siskiyou), and May 13, 1991 (Tehama).

##### II. Background

On March 3, 1978, EPA promulgated a list of ozone nonattainment areas under the provisions of the Clean Air Act, as amended in 1977 (1977 Act or pre-amended Act), that included MCAPCD, SCAPCD, TCAPCD, and TUCAPCD. 43 FR 8964, 49 CFR 81.305. In response to section 110(a) of the Act and other requirements, the MCAPCD, SCAPCD, TCAPCD, and TUCAPCD submitted many rules which EPA approved into the SIP.

This document addresses EPA's direct-final action for MCAPCD Rules 1.2, Definitions and 7.1, Definitions (Agricultural Burning); SCAPCD Rule 7.1, Agricultural Burning Definitions; TCAPCD Rule 1.2, Definitions; and TUCAPCD Rules 101, Title; 102, Definitions; and Regulation III, Open Burning, Rule 300, General Definitions. These rules were adopted by TUCAPCD on November 22, 1988; by MCAPCD on May 1, 1989; by SCAPCD on July 11, 1989; and by TCAPCD on April 25, 1989. These rules were submitted by the California Air Resources Board to EPA

on March 26, 1990 (Tuolumne); December 31, 1990 (Modoc and Siskiyou); and May 13, 1991 (Tehama). These submitted rules were found to be complete on February 28, 1991 (Modoc and Siskiyou), July 10, 1991 (Tehama), and June 20, 1990 (Tuolumne), pursuant to EPA's completeness criteria that are set forth in 40 CFR part 51, appendix V<sup>1</sup> and are being finalized for approval into the SIP. The following are EPA's summary and final action for these rules:

##### III. EPA Evaluation and Action

In determining the approvability of a rule, EPA must evaluate the rule for consistency with the requirements of the CAA and EPA regulations, as found in section 110 and part D of the CAA and 40 CFR part 51 (Requirements for Preparation, Adoption, and Submittal of Implementation Plans). The EPA interpretation of these requirements appears in various EPA policy guidance documents.<sup>2</sup>

MCAPCD Rule 1.2, Definitions, is amended by changing the format of the existing rule, and adding and/or revising several definitions. The following new definitions are: A3, Approved Combustibles; B1, Baseline Air Quality; Date; B3, Bulk Plant; C1, Class I Area; C4, Complete Application; C5, Condensed Fumes; D2, Dusts; F1, Fugitive Emissions; I1, Implement of Husbandry; M1, Multi-Component System; N1, Net Emissions Increases; P2, Permit; P4, PM-10; P5, Portable Source; P6, Process; P9, PSD Permit; R1, Regulation; S3, Significance Level; S4, Source Operation; T1, Total Reduced Sulfur (TRS); and T2, Trade Secrets. Rule 7.1, Definitions (Agricultural Burning), is amended by adding the following new definitions: Permit, Agricultural Burning Guidelines, Wildland Vegetation Management Burning, Prescribed Burning, Sensitive Receptor Area, and Burning Permit. Rule 5.3, Definitions, submitted on July 25, 1973 is being superseded by Rule 7.1.

SCAPCD Rule 7.1, Definitions, is amended to include "alumigel" to the list of approved ignition devices.

<sup>1</sup> EPA adopted the completeness criteria on February 16, 1990 (55 FR 5830) and, pursuant to section 110(k)(1)(A) of the CAA, revised the criteria on August 26, 1991 (56 FR 42216).

<sup>2</sup> Among other things, the pre-amendment guidance consists of those 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 Deviation, Clarification to appendix D of November 24, 1987 **Federal Register** document" (Blue Book) (notice of availability was published in the **Federal Register** on May 25, 1988), and the existing control technique guidelines (CTGs).

TCAPCD Rule 1.2, Definitions, is amended by adding the following new definitions: Designated Agency, Garbage, and Volatile Organic Compounds (VOC).

TUCAPCD Rule 101, Title, is being amended for clarity and consistency with the Clean Air Act and 40 CFR part 51. Rule 102, Definitions, is amended by adding the following new definitions: Allowable Emissions, Attainment Pollutant, Baseline Concentration, Best Available Control Technology, Breakdown Condition, Criteria Pollutant, Facility, Federal Land Manager, Fugitive Dust, Lowest Achievable Emission Rate, Major Facility, Major Modification, Modification, Nonattainment Pollutant, Potential to Emit, Precursor, Resource Recovery Facility, Secondary Emissions, Source, and Temporary Source. Regulation III, Open Burning, Rule 300, General Definitions, is a new rule and contains general definitions for terms used or referenced in the district rules. This new rule defines the following terms: (A) Agricultural Operation, (B) Agricultural Wastes, (C) APCD, (D) APCO, (E) Approved Ignition Devices, (F) ARB, (G) Brush Treated, (H) Designated Agency, (I) No-Burn Day, (J) Open Out-Door, (K) Permissive Burn Day, (L) Person, (M) Prescribed Burning, (N) Section, (O) Silviculture, and (P) Timber Operations.

EPA has evaluated the submitted rules and has determined that they are consistent with the CAA, EPA regulations, and EPA policy. Therefore, MCAPCD Rule 1.2, Definitions and 7.1, Definitions (Agricultural Burning); SCAPCD Rule 7.1, Agricultural Burning Definitions; TCAPCD Rule 1:2, Definitions; and TUCAPCD Rules 101, Title; 102, Definitions; and Regulation III, Open Burning, Rule 300, General Definitions are being approved under section 110(k)(3) of the CAA as meeting the requirements of section 110(a) and part D.

EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should adverse comments be filed. This rule will be effective August 30, 1999 without further notice unless the Agency receives adverse comments by July 30, 1999.

If the EPA receives such comments, then EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule will

not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period on this rule. Any parties interested in commenting on this rule should do so at this time. If no such comments are received, the public is advised that this rule will be effective on August 30, 1999 and no further action will be taken on the proposed rule.

#### IV. Administrative Requirements

##### A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order (E.O.) 12866, entitled "Regulatory Planning and Review."

##### B. Executive Order 12875

Under E.O. 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a state, local, or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If the mandate is unfunded, EPA must provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected state, local, and tribal governments, the nature of their concerns, copies of written communications from the governments, and a statement supporting the need to issue the regulation. In addition, E.O. 12875 requires EPA to develop an effective process permitting elected officials and other representatives of state, local, and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates."

Today's rule does not create a mandate on state, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of E.O. 12875 do not apply to this rule.

##### C. Executive Order 13045

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) is determined to be "economically significant" as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria,

the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to E.O. 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

##### D. Executive Order 13084

Under E.O. 13084, EPA may not issue a regulation that is not required by statute, that significantly affects or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, EPA must provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian Tribes. Accordingly, the requirements of section 3(b) of E.O. 13084 do not apply to this rule.

##### E. 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 final rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve

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).

#### F. Unfunded Mandates

Under section 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 annual costs to State, local, or tribal governments in the aggregate; or to 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 approval action promulgated does not include a Federal mandate that may result in estimated annual costs of \$100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves 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.

#### G. Submission to Congress and the Comptroller General

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**. This rule is not a "major" rule as defined by 5 U.S.C. 804(2).

#### H. 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 August 30, 1999. 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.

**Note:** Incorporation by reference of the State Implementation Plan for the State of California was approved by the Director of the Federal Register on July 1, 1982.

Dated: June 8, 1999.

**Nora L. McGee,**

*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)(179)(i)(G), (182)(i)(F)(3) and (G)(2), and (184)(i)(F) to read as follows:

##### § 52.220 Identification of plan.

\* \* \* \* \*

(c) \* \* \*  
(179) \* \* \*  
(i) \* \* \*

(G) Tuolumne County Air Pollution Control District.

(I) Rules 101, 102, and Rule 300, adopted November 22, 1988.

\* \* \* \* \*

(182) \* \* \*  
(i) \* \* \*  
(F) \* \* \*

(3) Rule 1.2 and Rule 7.1, adopted May 1, 1989.

(G) \* \* \*

(2) Rule 7.1, adopted July 11, 1989.

\* \* \* \* \*

(184) \* \* \*

(i) \* \* \*

(F) Tehama County Air Pollution Control District.

(I) Rule 1.2, adopted April 25, 1989.

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[FR Doc. 99-16374 Filed 6-29-99; 8:45 am]

BILLING CODE 6560-50-P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[MS9921: FRL-6348-4]

### Approval and Promulgation of Air Quality Implementation Plans; Mississippi Update to Materials Incorporated by Reference

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

**ACTION:** Final rule; notice of administrative change.

**SUMMARY:** EPA is updating the materials submitted by Mississippi that are incorporated by reference (IBR) into the State implementation plan (SIP). The regulations affected by this update have been previously submitted by the State agency and approved by EPA. This update affects the SIP materials that are available for public inspection at the Office of the Federal Register (OFR), the Air and Radiation Docket and Information Center located in Waterside Mall, Washington, D.C., and the Regional Office.

**EFFECTIVE DATE:** This action is effective June 30, 1999.

**ADDRESSES:** SIP materials which are incorporated by reference into 40 CFR part 52 are available for inspection at the following locations:

Environmental Protection Agency, Region 4, 61 Forsyth Street, SW, Atlanta, GA 30303; Office of Air and Radiation, Docket and Information Center (Air Docket), EPA, 401 M Street, SW, Room M1500, Washington, DC 20460; and Office of the Federal Register, 800 North Capitol Street, NW, Suite 700, Washington, D.C.

**FOR FURTHER INFORMATION CONTACT:** Ms. Michele Notarianni at the above Region 4 address or at (404) 562-9031.

**SUPPLEMENTARY INFORMATION:** The SIP is a living document which the state can revise as necessary to address the unique air pollution problems in the state. Therefore, EPA from time to time must take action on SIP revisions