EPA APPROVED REGULATIONS IN THE DELAWARE SIP—Continued

State citation	Title/subject	State effective date	EPA approval date	Additional explanation
Section 12	Public Participation	6/1/97	January 13, 2000 and 65 FR 2051.	Limited approval.
Section 13	Department Records	6/1/97	January 13, 2000 and 65 FR 2051.	
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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 031–0202; FRL–6508–5]

Approval and Promulgation of Implementation Plans; California State Implementation Plan Revision, South Coast Air Quality Management District, El Dorado County Air Pollution Control District, Yolo-Solano Air Quality Management District, and Ventura County Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is finalizing limited approvals and limited disapprovals of revisions to the California State Implementation Plan (SIP) proposed in the **Federal Register** on February 28, 1997, August 18, 1998 and September 14, 1998. This final action will incorporate these rules into the federally approved SIP. The intended effect of finalizing this action is to regulate emissions of oxides of nitrogen (NO_X) in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). The revised rules control NO_X emissions from boilers and process heaters in petroleum refineries, stationary internal combustion engines, and Boilers, Steam Generators, and Process Heaters. Thus, EPA is finalizing a simultaneous limited approval and limited disapproval under CAA provisions regarding EPA action on SIP submittals and general rulemaking authority because these revisions, while strengthening the SIP, also do not fully meet the CAA provisions regarding plan submissions and requirements for nonattainment areas. As a result of this limited disapproval EPA will be required to impose highway funding or emission offset sanctions under the CAA unless the State submits and EPA approves corrections to the identified deficiencies within 18 months of the effective date of this disapproval. Moreover, EPA will be required to promulgate a Federal implementation plan (FIP) unless the deficiencies are corrected within 24 months of the effective date of this disapproval.

EFFECTIVE DATE: This action is effective on February 14, 2000.

ADDRESSES: Copies of the rule revisions and 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 rule revisions are 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 95814.

South Coast Air Quality Management District 21865 E. Copley Drive, Diamond Bar, CA 91765–4182.

El Dorado County Air Pollution Control District, 2850 Fairlane Court, Building C, Placerville, CA 95667.

Yolo-Solano Air Quality Management District, 1947 Galileo Court,Suite 103, Davis, CA 95616.

Ventura County Air Pollution Control District, 669 County Square Drive, Ventura, CA 93003.

FOR FURTHER INFORMATION CONTACT: For SCAQMD 1109, Mae Wang, For other rules, Thomas C. Canaday, Rulemaking Office, AIR–4, Air Division, US Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105, Telephone: (415) 744–1200 or (415) 744–1202.

SUPPLEMENTARY INFORMATION:

I. Applicability

The rules being approved into the California SIP include: South Coast Air Quality Management District (SCAQMD) Rule 1109, Emissions of Oxides of Nitrogen from Process Heaters and Boilers in Petroleum Refineries, El Dorado County Air Pollution Control District (EDCAPCD) Rule 233, Stationary Internal Combustion Engines, Yolo-Solano Air Quality Management District (YSAQMD) Rule 2.32, Stationary Internal Combustion Engines, and Ventura County Air Pollution Control District (VCAPCD) Rule 74.15.1, Boilers, Steam Generators, and Process Heaters. SCAQMD Rule 1109 was submitted by the California Air Resources Board (CARB) to EPA on March 26, 1990, EDCAPCD Rule 233 on October 20, 1994, YSAQMD Rule 2.32 on September 28, 1994, and VCAPCD Rule 74.15.1 on October 13, 1995.

II. Background

EPA proposed granting limited approval and limited disapproval of the following rules into the California SIP: SCAQMD Rule 1109, Emissions of Oxides of Nitrogen from Process Heaters and Boilers in Petroleum Refineries, on February 28, 1997 in 62 FR 9138; EDCAPCD Rule 233, Stationary Internal Combustion Engines and YSAQMD Rule 2.32, Stationary Internal Combustion Engines, on August 18, 1998 in 63 FR 44211; VCAPCD Rule 74.15.1, Boilers, Steam Generators, and Process Heaters, on September 14, 1998 in 63 FR 49056. Rule 1109 was adopted by SCAQMD on August 5, 1988, EDCAPCD adopted Rule 233 on October 18, 1994, YSAQMD adopted Rule 2.32 on August 10, 1994 and VCAPCD adopted Rule 74.15.1 on June 13, 1995. Rule 1109 was submitted by the CARB to EPA on March 26, 1990, EDCAPCD Rule 233 on October 20, 1994, YSAQMD Rule 2.32 on September 28, 1994, and VCAPCD Rule 74.15.1 on October 13, 1995. These rules were submitted in response to EPA's 1988 SIP Call and the CAA section 182(a)(2)(A) requirement that nonattainment areas fix their reasonably available control technology (RACT) rules for ozone in accordance with EPA guidance that interpreted the requirements of the pre-amendment Act. A detailed discussion of the background for each of the above rules and nonattainment areas is provided in the proposed rules (PR) cited above.

EPA has evaluated all of the above rules for consistency with the

requirements of the CAA and EPA regulations and EPA's interpretation of these requirements as expressed in the various EPA policy guidance documents referenced in the PRs. EPA is finalizing the limited approval of these rules in order to strengthen the SIP and finalizing the limited disapproval requiring the correction of the remaining deficiencies. Because none of the rules are currently in the SIP, the incorporation of these rules into the SIP would decrease the NO_X emissions allowed by the SIP. The submitted rules SCAQMD Rule 1109–Emissions of Oxides of Nitrogen from Process Heaters and Boilers in Petroleum Refineries, EDCAPCD Rule 233–Stationary Internal Combustion Engines, YSAQMD Rule 2.32–Stationary Internal Combustion Engines, and VCAPCD Rule 74.15.1–Boilers, Steam Generators, and Process Heaters, include the following provisions:

- General provisions including applicability, exemptions, and definitions.
- Exhaust emissions standards for oxides of nitrogen (NO_X) and carbon monoxide (CO)
- Administrative and monitoring requirements including compliance schedule, reporting requirements, monitoring and recordkeeping, and test methods.

Rules submitted to EPA for approval as revisions to the SIP must be fully enforceable, must maintain or strengthen the SIP, and must conform with EPA policy in order to be approved by EPA. When reviewing rules for SIP approvability, EPA evaluates enforceability elements such as test methods, record keeping, and compliance testing in addition to RACT guidance regarding emission limits. Incorporation of the Rules strengthens the SIP through the addition of enforceable measures such as record keeping, test methods, definitions, and more stringent compliance testing.

SCAQMD Rule 1109 controls emissions of nitrogen oxides from boilers and process heaters located in petroleum refineries with rated capacities greater than 40 MBtu per hour heat input. The rule requires units to meet a 0.03 pound per million Btu heat input limit in accordance with a phased time schedule.

- The emission limits will strengthen the SIP, but this rule contains deficiencies which must be corrected. Those deficiencies include Executive Officer discretion in approving continuous emission monitoring equipment and test methods, insufficient records to determine compliance, and an unapprovable provision for an alternative emission control plan.

EDCAPCD Rule 233 and YSAQMD Rule 2.32: In both of the Rules, the first option, which applies to existing IC engines that meet the limits by May 31, 1995, sets emission limits of 640 ppmv, 740 ppmv and 700 ppmv for rich-burn spark-ignited engines, lean-burn spark-ignited engines, and diesel engines respectively. In a Proposed Determination of Reasonably Available Control Technology and Best Available Retrofit Control Technology for Stationary Internal Combustion Engines dated December 1997, the State of California Air Resources Board (CARB) determined RACT limits for IC engines rated at 50 brake horsepower or more to be 50 parts per million volume (ppmv) for rich-burn spark-ignited engines, 125 ppmv for lean-burn spark-ignited engines, and 350 ppmv for diesel engines. These limits were determined based on previously implemented regulatory control in Ventura County and San Diego County.

- EPA agrees that these limits are consistent with the Agency's guidance and policy for making RACT determinations in terms of general cost-effectiveness, emission reductions, and environmental impacts. Both EDCAPCD Rule 233 and YSAQMD Rule 2.32 provide three options for demonstrating compliance. The EPA has determined that these limits do not meet RACT for IC engines. Although the monitoring and recordkeeping provisions of EDCAPCD Rule 233 and YSAQMD Rule 2.32 will strengthen the SIP, these rules contain deficiencies related to the emissions limits for oxides of nitrogen (NO_X), as well as other deficiencies. VCAPCD Rule 74.15.1 controls emissions of oxides of nitrogen from boilers, steam generators, and process heaters.
- The Rule provides an automatic exemption from compliance for emissions that occur during start-up, shutdown, or under breakdown conditions. These conditions are not defined in the rule. Such automatic exemptions are not allowed under EPA policy as contained in the EPA policy memorandum signed by Kathleen M. Bennett, ''Policy on Excess Emissions During Startup, Shutdown, Maintenance and Malfunctions,'' dated February 15, 1983, and ''State Implementation Plans: Policy Regarding Excess Emissions During Malfunctions, Startup, and Shutdown,'' US EPA, Office of Air Quality Planning and Standards letter dated September 20, 1999. In order to be consistent with EPA policy, Rule 74.15.1 must be modified to either eliminate this exemption, or to define the conditions of its applicability to conform with the excess emissions memoranda.

A detailed discussion of the rules provisions and evaluations has been provided in the PRs and in technical support documents (TSDs) available at EPA's Region IX office. TSDs prepared by EPA are dated January 22, 1997 for SCAQMD Rule 1109, July 21, 1998 for EDCAPCD Rule 233 and YSAQMD Rule 2.32, and August 18, 1998 for VCAPCD Rule 74.15.1.

III. Response to Public Comments

A 30-day public comment period was provided in 62 FR 9138. EPA received no comments on the proposed NPRs.

IV. EPA Action

EPA is finalizing a limited approval and a limited disapproval of the above-referenced rules. The limited approval of these rules is being finalized under section 110(k)(3) in light of EPA's authority pursuant to section 301(a) to adopt regulations necessary to further air quality by strengthening the SIP. The approval is limited in the sense that the rules strengthen the SIP. However, the rules do not meet the section 182(a)(2)(A) CAA requirement because of the rules deficiencies which were discussed in the PR. Thus, in order to strengthen the SIP, EPA is granting limited approval of these rules under sections 110(k)(3) and 301(a) of the CAA. This action approves the rules into the SIP as federally enforceable rules.

At the same time, EPA is finalizing the limited disapproval of these rules because they contain deficiencies that have not been corrected as required by section 182(a)(2)(A) of the CAA, and, as such, the rules do not fully meet the requirements of Part D of the Act. As stated in the proposed rules, upon the effective date of the final rules, the 18 month clock for sanctions and the 24 month FIP clock will begin. Sections 179(a) and 110(c). If the State does not submit the required corrections and EPA does not approve the submittal within 18 months of the effective date of the final rules, either the highway sanction or the offset sanction will be imposed at the 18 month mark. It should be noted that the rules covered by this FR have been adopted by the Districts and are currently in effect in the Districts. EPA's limited disapproval action will not prevent the Districts or EPA from enforcing the rules.

V. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory

action from Executive Order 12866, entitled ''Regulatory Planning and Review.''

B. Executive Order 13132

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.

The final rules 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. Thus, the requirements of section 6 of the Executive Order do not apply to the rules.

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 Executive Order 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.

The rules are not subject to Executive Order 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

D. Executive Order 13084

Under Executive Order 13084, Consultation and Coordination with Indian Tribal Governments, 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 rules do not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to the rules.

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.

The final rules 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. *US 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**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. The rules are not ''major'' rules as defined by 5 U.S.C. 804(2).

H. 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.

I. 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 March 13, 2000. Filing a petition for reconsideration by the Administrator of the final rules does not affect the finality of the rules 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 rules 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 compound.

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

Dated: November 18, 1999.

Laura Yoshii,

Deputy 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)(H), (c)(199)(i)(E)(*2*), (c)(203), (c)(225)(i)(C) introductory text, and (c)(225)(i)(G) to read as follows:

(c) * * *

(179) * * *

(i) * * *

(H) South Coast Air Quality Management District.

(*1*) Rule 1109 adopted on March 12, 1984 and amended on August 5, 1988.

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(199) * * *

(i) * * *

(E) * * *

(*2*) Rule 2.32 adopted on August 10, 1994.

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(203) New and amended regulations for the following APCDs were submitted on October 20, 1994, by the Governor's designee.

(i) Incorporation by reference.

(A) El Dorado County Air Pollution Control District.

(*1*) Rule 233 adopted on October 18, 1994.

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(225) * * *

(i) * * *

(C) El Dorado County Air Pollution Control District.

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(G) Ventura County Air Pollution Control District.

(*1*) Rule 74.15.1 revised on June 13, 1995.

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[FR Doc. 00–623 Filed 1–12–00; 8:45 am]

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DEPARTMENT OF DEFENSE

48 CFR Parts 205 and 253

[DFARS Case 99–D029]

Defense Federal Acquisition Regulation Supplement; Paid Advertisements

AGENCY: Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: The Acting Director of Defense Procurement has issued a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to eliminate a requirement for contracting officers to use a specific form when requesting approval to advertise in newspapers. DoD has determined that use of the form is no longer necessary.

EFFECTIVE DATE: January 13, 2000.

FOR FURTHER INFORMATION CONTACT: Ms. Melissa Rider, Defense Acquisition Regulations Council, PDUSD (AT&L) DP (DAR), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301–3062. Telephone (703) 602–4245; telefax (703) 602–0350. Please cite DFARS Case 99–D029.

SUPPLEMENTARY INFORMATION:

A. Background

DFARS 205.502 has required DoD contracting activities to use DD Form 1535, Request/Approval for Authority to Advertise, to document approval for the publication of paid advertisements in newspapers. DoD has determined that use of a specific form for this purpose is no longer necessary. Therefore, this final rule amends DFARS 205.502 and Part 253 to remove references to the form.

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

B. Regulatory Flexibility Act

This final rule does not constitute a significant revision within the meaning of FAR 1.501 and Public Law 98–577 and publication for public comment is not required. However, DoD will consider comments from small entities concerning the affected DFARS subparts in accordance with 5 U.S.C. 610. Such comments should cite DFARS Case 99–D029.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the rule does not impose any information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 205 and 253

Government procurement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

Therefore, 48 CFR Parts 205 and 253 are amended as follows:

1. The authority citation for 48 CFR Parts 205 and 253 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

PART 205—PUBLICIZING CONTRACT ACTIONS

2. Section 205.502 is amended by revising paragraph (a)(ii) to read as follows: