ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 207–0437; FRL–7804–1]

Revisions to the California State Implementation Plan, Antelope Valley Air Quality Management District and Mojave Desert Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving a revision to the Antelope Valley Air Quality Management District (AVAQMD) and Mojave Desert Air Quality Management District (MDAQMD) portions of the California State Implementation Plan (SIP). These revisions concern federally enforceable limitations on the potential to emit from air pollution sources. We are approving local rules under the Clean Air Act as amended in 1990 (CAA or the Act).

DATES: This rule is effective on November 1, 2004, without further notice, unless EPA receives adverse comments by September 30, 2004. 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: Send comments to Gerardo Rios, Permits Office Chief (AIR–3), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105, or e-mail to *R9airpermits@epa.gov*, or submit comments at *http://www.regulations.gov*.

You can inspect a copy of the submitted SIP revisions and EPA's technical support documents (TSDs) at our Region IX office during normal business hours. You may also see a copy of the submitted SIP revisions and TSDs 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.

Antelope Valley Air Quality Management District, 43301 Division Street, #206, Lancaster, CA 93535.

Mojave Desert Air Quality Management District, 14306 Park Avenue, Victorville, CA 92392.

A copy of the rule may also be available via the Internet at *http://www.arb.ca.gov/drdb/drdbltxt.htm*. Please be advised that this is not an EPA Web site and may not contain the same version of the rule that was submitted to EPA.

FOR FURTHER INFORMATION CONTACT: Manny Aquitania, Permits Office (AIR–3), U.S. Environmental Protection Agency, Region IX, (415) 947–4123, *aquitania.manny@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 addressed by this direct final action with the date that they were adopted by the local air agencies and submitted by the California Air Resources Board.

TABLE 1.—SUBMITTED RULES

Local agency	Rule #	Rule title	Adopted or amended	Submitted
AVAQMD	226	Limitations on Potential to Emit	07/21/98 Amended	02/16/99
MDAQMD	222	Limitations on Potential to Emit	07/31/95 Adopted	10/13/95

On April 23, 1999, the submittal of AVAQMD Rule 226 was found to meet the completeness criteria in 40 CFR part 51, appendix V, which must be met before formal EPA review. On November 28, 1995, the submittal of MDAQMD Rule 222 was found to meet the completeness criteria.

B. Are There Other Versions of These Rules?

There is no previous versions of AVAQMD Rule 226 and MDAQMD Rule 222 in the SIP.

C. What Is the Purpose of the Submitted Rules?

Section 110(a) of the CAA requires states to submit regulations that control volatile organic compounds, nitrogen oxides, and other air pollutants which harm human health and the environment. These rules were developed as part of the local agency's program to regulate these pollutants.

The purposes of the submitted rules are as follows:

- To create federally enforceable limitations on the potential to emit air contaminants such that a facility would not exceed 50% of the Title V threshold for a major source.
- To create federally enforceable alternate operational limitations on the potential to emit for specific source categories, such as gasoline vapor recovery, solvent use or degreasing, and diesel engines, such that a facility would not exceed up to 90% of the Title V threshold for a major source.

These limitations on the potential to emit represent a decrease in air emissions of certain air contaminants, because the potential to emit would be in excess of the threshold for a major source if the facility did not comply with the limitations set forth in this rule. The TSDs have more information about these rules.

II. EPA's Evaluation and Action

A. How Is EPA Evaluating the Rules?

The rules describe provisions and definitions that support emission controls of volatile organic compounds, nitrogen oxides, PM–10, and other air pollutants. In combination with other requirements, this rule must be enforceable (see section 110(a) of the CAA) and must not relax existing requirements (see sections 110(l) and 193).

AVAQMD Rule 226 and MDAQMD Rule 222 are modeled on the California Model Rule developed by the California Association of Air Pollution Control Officers, CARB, and EPA. In its agreement on the Model Rule, EPA expressed certain understandings and caveats. See *Letter and Model Rule*, Lydia Wegman, Deputy Director, Office

of Air Quality Planning and Standards, U.S. EPA, to Peter D. Venturini, Chief, Stationary Source Division, CARB (January 12, 1995). Our review of these rules incorporates the understandings and caveats expressed in the letter.

EPA policy that we used to define specific enforceability requirements includes:

• *Requirements for Preparation, Adoption, and Submittal of Implementation Plans*, U.S. EPA, 40 CFR part 51.

• *Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations*, U.S. EPA (May 25, 1988). (The Bluebook)

• *Options for Limiting the Potential to Emit of a Stationary Source Under Section 112 and Title V of the Clean Air Act*, Letter from John Seitz, Office of Air Quality Planning and Standards, to EPA Air Division Directors (January 25, 1995).

B. Do the Rules Meet the Evaluation Criteria?

The rules improve the SIP by allowing a federally enforceable operational limitation on the potential to emit air pollutants, thereby decreasing air emissions to 50% or less of the threshold for a major source or decreasing air emissions to up to 90% of the threshold for a major source for specific source categories. We believe these rules are consistent with the relevant policy and guidance regarding enforceability and SIP relaxations. The TSD has more information on our evaluation.

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. Proposed Action and Public Comment

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 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 September 30, 2004, 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 November 1, 2004. 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 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 13211, ''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 tribal implications because it will 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). This action also does not have Federalism implications because it does 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). This action 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 ''Protection of Children from Environmental Health Risks and Safety Risks'' (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. 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 November 1, 2004. 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, Incorporation by reference, Intergovernmental relations, Nitrogen oxides, Particulate matter, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: July 23, 2004.

Laura Yoshii,

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)(225)(i)(H) and (262)(i)(E)(*3*) to read as follows:

§ 52.220 Identification of plan.

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(c) * * *

(225) * * *

(i) * * *

(H) Mohave Desert Air Quality Management District.

(*1*) Rule 222, adopted on July 31, 1995.

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(262) * * *

(i) * * *

(E) * * *

(*3*) Rule 226, adopted on March 17, 1998 and amended on July 21, 1998.

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[FR Doc. 04–19817 Filed 8–30–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[WA–04–002; FRL–7807–1]

Approval and Promulgation of Implementation Plans; Washington

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: In this action EPA is approving numerous revisions to the State of Washington Implementation Plan. The Director of the Washington State Department of Ecology (Ecology) submitted two requests to EPA dated September 24, 2001 and February 9, 2004 to revise certain sections of the Puget Sound Clean Air Agency's (PS Clean Air) regulations. The revisions were submitted in accordance with the requirements of section 110 of the Clean Air Act (hereinafter, the Act). EPA is not approving in this rulemaking a number of submitted rule provisions which are inappropriate for EPA approval and is taking no action on a number of other provisions that are unrelated to the purposes of the State implementation plan (SIP).

EPA is also approving certain source-specific SIP revisions relating to Saint Gobain Containers and LaFarge North America.

DATES: This final rule is effective on September 30, 2004.

ADDRESSES: EPA has established a docket for this action under Docket ID No. WA–04–002. Some information is not publicly available (*i.e.*, CBI or other information whose disclosure is restricted by statute). Publicly available docket materials are available in hard copy at the EPA Region 10, Office of Air, Waste, and Toxics (AWT–107), 1200 Sixth Avenue, Seattle, Washington 98101. This Docket facility is open from 8:30–4, Monday through Friday, excluding legal holidays. The Docket telephone number is (206) 553–4273.

FOR FURTHER INFORMATION CONTACT: Roylene A. Cunningham, EPA Region 10, Office of Air, Waste and Toxics (AWT–107), 1200 Sixth Avenue, Seattle, Washington 98101, (206) 553–0513, or email address: *cunningham.roylene@epa.gov.*

SUPPLEMENTARY INFORMATION:

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I. Background

On Friday April 2, 2004, EPA solicited public comment on a proposal to approve for inclusion in the Washington SIP numerous revisions to the PS Clean Air regulations. EPA also proposed not to approve into the SIP a number of PS Clean Air regulations which EPA believes are inappropriate for EPA approval and to take no action on a number of other provisions that are unrelated to the purposes of the SIP. EPA also proposed to approve certain source-specific SIP revisions relating to Saint Gobain Containers and LaFarge North America. A detailed description of our action was published in the **Federal Register** on April 2, 2004. The reader is referred to the proposed rulemaking (69 FR 17368, April 2, 2004) for details.

II. Response to Comments

EPA provided a 30-day review and comment period and solicited comments on our April 2, 2004 proposal. EPA received written comments from two commenters, which raised the same two issues. The following is a summary of the issues raised by the commenters, along with EPA's response to those comments. Copies of the written comments received by EPA are in the docket.

Comment: EPA erred in three respects in denying PS Clean Air's request to remove PS Clean Air Reg. I, Section 9.11, from the SIP. First, in doing so, EPA relied on the fact that Section 9.11 is referred to by cross-reference in Regulation I, Subsection 6.03(a)(8) (adopted July 12, 2001). That version of Subsection 6.03(a)(8), however, is not currently contained in the SIP and is not the subject of this proposed rulemaking. The version of Section 6.03 that is currently contained in the SIP does not cross-reference Section 9.11 in any way. Thus, the perceived relationship between the 2001 version of Section 6.03 and the 1983 version of Section 9.11 is not relevant to this rulemaking. EPA should not base its current proposed denial of PS Clean Air's request to remove Section 9.11 from the SIP on an anticipated future action that is not the subject of this rulemaking. Only when EPA proposes to take action on a version of Section 6.03 that is related in some way to Section 9.11, will EPA's concern be relevant.

Second, even if the SIP contained the 2001 version of Section 6.03, EPA's rationale would still be insufficient. There is no legal principle requiring that all laws in any way related to a SIP to be included in the SIP itself. For example, does a SIP that requires that permit applications be sealed by a licensed professional engineer and refers to the state's engineering licensure statute have to contain that statute? *See, e.g.*, 30 TAC 116.110 (6/17/98) (approved as part of the Texas SIP 67 FR 58709 (September 18, 2002)). This rule requires certain permit applications to be submitted under the seal of a licensed professional engineer, and refers to the Texas Engineering Practice Act. As with the Texas SIP, the answer to both of these questions is no, because neither the Act nor EPA's regulations require such inclusion, and their inclusion is not otherwise necessary to implement the SIP.

Finally, there is no practical problem that would arise from Section 9.11 existing outside of the SIP. Whether or not a source has been previously cited under Section 9.11 for causing air