

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

[EPA-R09-OAR-2007-1003; FRL-8492-3]

**Revisions to the California State Implementation Plan, Imperial County and Monterey Bay Unified Air Pollution Control Districts**

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

**ACTION:** Direct final rule.

**SUMMARY:** EPA is taking direct final action to approve revisions to the Imperial County Air Pollution Control District (ICAPCD) and the Monterey Bay Unified Air Pollution Control District (MBUAPCD) portions of the California State Implementation Plan (SIP). This action revises and adds various definitions of terms used by the ICAPCD and MBUAPCD. Under authority of the Clean Air Act as amended in 1990 (CAA or the Act), we are approving local rules that are administrative and address changes for clarity and consistency.

**DATES:** This rule is effective on January 14, 2008 without further notice, unless EPA receives adverse comments by December 17, 2007. If we receive such comments, we will publish a timely withdrawal in the **Federal Register** to notify the public that this direct final rule will not take effect.

**ADDRESSES:** Submit comments, identified by docket number EPA-R09-

OAR-2007-1003, by one of the following methods:

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

2. *E-mail:* [steckel.andrew@epa.gov](mailto:steckel.andrew@epa.gov).

3. *Mail or deliver:* Andrew Steckel (Air-4), U.S. Environmental Protection Agency Region IX, 75 Hawthorne Street, San Francisco, CA 94105-3901.

*Instructions:* All comments will be included in the public docket without change and may be made available online at [www.regulations.gov](http://www.regulations.gov), including any personal information provided, unless the comment includes Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Information that you consider CBI or otherwise protected should be clearly identified as such and should not be submitted through [www.regulations.gov](http://www.regulations.gov) or e-mail.

[www.regulations.gov](http://www.regulations.gov) is an “anonymous access” system, and EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send e-mail directly to EPA, your e-mail address will be automatically captured and included as part of the public comment. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

*Docket:* The index to the docket for this action is available electronically at [www.regulations.gov](http://www.regulations.gov) and in hard copy at EPA Region IX, 75 Hawthorne Street,

San Francisco, California. While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (e.g., copyrighted material), and some may not be publicly available in either location (e.g., CBI). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

**FOR FURTHER INFORMATION CONTACT:** Cynthia G. Allen, EPA Region IX, (415) 947-4120, [allen.cynthia@epa.gov](mailto:allen.cynthia@epa.gov).

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

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**I. The State’s Submittal**

*A. What rules did the State submit?*

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

TABLE 1.—SUBMITTED RULES

Local agency	Rule #	Rule title	Adopted	Submitted
ICAPCD .....	101	Definitions .....	10/10/06	08/24/07
MBUAPCD .....	101	Definitions .....	02/21/07	08/24/07

On September 17, 2007, these rules 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 these rules into the SIP on the dates listed: ICAPCD Rule 101 on November 23, 2005 and MBUAPCD Rule 101 on July 23, 2004.

*C. What is the purpose of the submitted rule revisions?*

Section 110(a) of the CAA requires states to submit regulations that control volatile organic compounds, oxides of nitrogen, particulate matter, and other air pollutants which harm human health and the environment. These rules were

developed as part of the local agency’s program to control these pollutants.

Imperial Rule 101, Definitions, is amended by adding new definitions associated with Rule 207.1, Federal Major Modification, Rule 214.1, Mobile Source Emission Reduction Credit Banking, and Rule 217, Large Confined Animal Facilities. In addition, definitions that became obsolete because of the newly adopted regulations were removed.

Monterey Rule 101, Definitions, is amended by revising the definition of ‘Exempt Compounds and Volatile Organic Compounds’ to be consistent with the federal definition and by updating the definition of ‘Household Rubbish, Garbage, Trash’ to match the definition in Rule 438, Open Outdoor Fires.

EPA’s technical support document (TSD) has more information about these rules.

**II. EPA(s) Evaluation and Action**

*A. How is EPA evaluating the rules?*

These rules describe administrative provisions and definitions that support emission controls found in other local agency requirements. In combination with the other requirements, these rules must be enforceable (see section 110(a) of the Act) and must not relax existing requirements (see sections 110(l) and 193). EPA policy that we used to help evaluate enforceability requirements consistently includes the Bluebook ((Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations, (EPA, May 25, 1988) and the Little

Bluebook ((Guidance Document for Correcting Common VOC & Other Rule Deficiencies, (EPA Region 9, August 21, 2001). However, EPA approval of these definitions in Rule 101 should not be interpreted as EPA approval of the other rules in which these definitions are used.

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

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

#### *C. Public comment and final action*

As authorized in section 110(k)(3) of the Act, EPA is fully approving the submitted rules because we believe they fulfill all relevant requirements. We do not think anyone will object to this approval, so we are finalizing it without proposing it in advance. However, in the Proposed Rules section of this **Federal Register**, we are simultaneously proposing approval of the same submitted rules. If we receive adverse comments by December 17, 2007, 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 January 14, 2008. 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**

#### *A. Executive Order 12866, Regulatory Planning and Review*

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

#### *B. Paperwork Reduction Act*

These rules do not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*)

#### *C. 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.

These 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. U.S. EPA*, 427 U.S. 246, 255-66 (1976); 42 U.S.C. 7410(a)(2).

#### *D. Unfunded Mandates Reform Act*

Under sections 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 costs to State, local, or tribal governments in the aggregate; or to the 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 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.

#### *E. Executive Order 13132, Federalism*

*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.

These 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, 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. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

#### *F. Executive Order 13175, Coordination With Indian Tribal Governments*

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." This final rule does not have tribal implications, as specified in Executive Order 13175. It will not have

substantial direct effects on tribal governments, 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. Thus, Executive Order 13175 does not apply to this rule.

*G. Executive Order 13045, Protection of Children From Environmental Health Risks and Safety Risks*

*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.

These rules are not subject to Executive Order 13045, “Protection of Children from Environmental Health Risks and Safety Risks” (62 FR 19885, April 23, 1997), because it approves a State rule implementing a Federal standard.

*H. Executive Order 13211, Actions That Significantly Affect Energy Supply, Distribution, or Use*

These rules are not subject to Executive Order 13211, “Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use” (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

*I. 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.

*J. Congressional Review Act*

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**. This action is not a “major rule” as defined by 5 U.S.C. 804(2). This rule will be effective December 17, 2007.

*K. 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 January 14, 2008. 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 dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: October 11, 2007.

**Alexis Strauss,**

*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 paragraph (c)(351) to read as follows:

**§ 52.220 Identification of plan.**

\* \* \* \* \*

(c) \* \* \*

(351) New and amended regulation for the following APCDs were submitted on August 24, 2007, by the Governor’s designee.

(i) Incorporation by reference.

(A) Imperial County Air Pollution Control District.

(1) Rule 101, Adopted 7/28/81; revised 9/14/99; 1/16/2001; 12/11/2001; 08/13/02; 01/11/2005; 10/10/2006.

(B) Monterey Bay Unified Air Pollution Control District.

(1) Rule 101, Adopted 9–1–74; Revised 12–21–83; 12–13–84; 11–13–96; 11–12–98; and 12–15–1999; and 4–16–03; and 2–21–07.

\* \* \* \* \*

[FR Doc. E7–21811 Filed 11–14–07; 8:45 am]

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**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

[FRL–8495–1]

**Availability of Federally Enforceable State Implementation Plans for All States**

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

**ACTION:** Notice of availability.

**SUMMARY:** Section 110(h) of the Clean Air Act, as amended in 1990 (the “Act”), requires EPA by November 15, 1995, and every three years thereafter, to assemble the requirements of the Federally enforceable State Implementation Plans (SIPs) in each State and to publish notice in the **Federal Register** of the availability of such documents. This notice of availability fulfills the three-year requirement of making these SIP compilations for each State available to the public.

**DATES:** *Effective Date:* November 15, 2007.

**ADDRESSES:** You may contact the appropriate EPA Regional Office regarding the requirements of the applicable implementation plans for each State in that region. The list below identifies the appropriate regional office for each state. The State Implementation Plan (SIP) compilations are available for public inspection during normal business hours at the appropriate EPA Regional Office. If you want to view these documents, you should make an appointment with the appropriate EPA office and arrange to review the SIP at a mutually agreeable time.