

16.2 Basic Standards

16.2.1 Description of Express Mail Open and Distribute and Priority Mail Open and Distribute

[Revise the second sentence of 16.2.1 and add a new third sentence to clarify the requirement to leave containers unsealed and present a PS Form 3152 as follows:]

* * * Mailers prepare the mailings according to standards for the enclosed class of mail and enclose the mail in containers for expedited service as either Express Mail Open and Distribute or Priority Mail Open and Distribute. The containers must be presented unsealed, with the affixed barcoded address label and applicable tag, to the Business Mail Entry Unit or authorized USPS facility with a completed PS Form 3152, *Confirmation Services Certification*, by the critical entry time for USPS shipment under 16.0. * * *

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16.5 Preparation

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16.5.4 Tags 161 and 190—Priority Mail Open and Distribute

[Revise the first sentence of the introductory paragraph of 16.5.4 to remove the optional use of facsimiles as follows:]

Tag 161 and Tag 190 provide a place to affix Priority Mail postage and the address label for the destination facility. * * *

[Revise 16.5.4a by adding a new second sentence as follows:]

a. * * * This tag also must be affixed to containers used for Priority Mail Open and Distribute shipments prepared under 16.5.1c or 16.5.1d.

[Revise the second sentence in 16.5.4b to remove the option of a facsimile to read as follows:]

b. * * * This tag also must be affixed to containers used for Priority Mail Open and Distribute shipments prepared under 16.5.1c or 16.5.1d.

[Revise heading of 16.5.5 to read as follows:]

16.5.5 Tray Boxes—Express Mail Open and Distribute and Priority Mail Open and Distribute

[Revise 16.5.5 to read as follows:]

As an alternative to sacks for Express Mail Open and Distribute and Priority Mail Open and Distribute shipments, unless prepared under 16.5.1c or 16.5.1d, mailers may use USPS-supplied tray boxes for this service. Mailers must place a 1-foot or 2-foot letter tray into the appropriate size tray box.

16.5.6 Address Labels

[Revise the first sentence of 16.5.6 by removing Label 23 as follows:]

In addition to Tag 157, Tag 161, or Tag 190, USPS-supplied containers and envelopes and mailer-supplied containers used for Express Mail Open and Distribute or Priority Mail Open and Distribute must bear an address label that states "OPEN AND DISTRIBUTE AT:" followed by the facility name. * * *

* * * * *

16.6 Enter and Deposit

[Delete the heading 16.6.1, Verification and Entry, and move text under 16.6. Revise 16.6 to include the requirements to present PS Form 3152 and to leave containers unsealed until verification and acceptance of contents as follows:]

Mailers must prepare Express Mail Open and Distribute and Priority Mail Open and Distribute shipments under 16.2 through 16.5. Shipments must be presented with PS Form 3152, *Confirmation Services Certification*, to a business mail entry unit (BMEU) or other location designated by the postmaster to accept both the enclosed mail and Priority Mail or Express Mail. Open and Distribute containers must not be sealed until the BMEU verification and acceptance of the contents has been completed. Mailers must present shipments to the BMEU with enough time for acceptance, processing, and dispatch before the facility's critical entry time for Express Mail or Priority Mail.

* * * * *

We will publish an appropriate amendment to 39 CFR 111 to reflect these changes if our proposal is adopted.

Stanley F. Mires,
Chief Counsel, Legislative.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R09-OAR-2009-0269; FRL-9107-6]

Approval and Promulgation of Implementation Plans; State of California; Legal Authority

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to clarify the contents of the applicable

implementation plan for the State of California under the Clean Air Act. Specifically, EPA is proposing to clarify that the statutory provisions submitted by California and approved by EPA in 1972 supporting the State's legal authority chapter of the original implementation plan were superseded by a subsequent approval by EPA in 1980 of California's revision to the legal authority chapter of the plan. EPA is proposing this action to clarify the status in the California plan of the statutory provisions submitted and approved in 1972.

DATES: Any comments must arrive by March 1, 2010.

ADDRESSES: Submit comments, identified by docket number EPA-R09-OAR-2009-0269, by one of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the online instructions.
- *E-mail:* rios.gerardo@epa.gov.
- *Mail or deliver:* Gerardo Rios, Chief, Permits Office (AIR-3), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

Instructions: All comments will be included in the public docket without change and may be made available online at <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 <http://www.regulations.gov> or e-mail. <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 <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 below.

FOR FURTHER INFORMATION CONTACT: Gerardo Rios, Chief, Permits Office (AIR-3), U.S. Environmental Protection Agency, Region IX, (415) 972-3974: rios.gerardo@epa.gov.

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

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I. Summary of Today’s Proposed Action

In today’s action, under the Clean Air Act (CAA or “Act”), we are proposing to clarify that the statutory provisions submitted by California in 1972 supporting the State’s legal authority chapter of the original implementation plan were superseded by a subsequent approval by EPA in 1980 of a revision to California’s legal authority chapter of the plan.

II. Background

Pursuant to the Clean Air Act (CAA or “Act”), as amended in 1970, EPA promulgated national ambient air quality standards (NAAQS) for certain air pollutants, including photochemical oxidants, hydrocarbons, carbon monoxide, nitrogen dioxide, sulfur oxides, and particulate matter. The 1970 Amended Act required each state to submit to EPA a plan which provides for the implementation, maintenance, and enforcement of the NAAQS within the state. These plans are referred to as state implementation plans (SIPs).

The 1970 Amended Act also established content requirements for SIPs. Among other elements, the 1970 Amended Act required SIPs to provide “necessary assurances that the State will have adequate * * * authority to carry out such implementation plan, * * *.” See section 110(a)(2)(F)(i) of the 1970 Amended Act. In 40 CFR 51.11 (now codified at 40 CFR 51.230–51.232), EPA regulations further specify that “Each plan shall show that the State has legal authority to carry out the plan, including authority to (1) Adopt emission standards and limitations, * * *. (2) Enforce applicable laws, regulations, standards, * * *.” EPA regulations further specify: “The provisions of law or regulation which the State determines provide the authorities required under this section shall be specifically identified, and

copies of such laws or regulations shall be submitted with the plan.” See 40 CFR 51.11(c) (1972). In other words, the laws or regulations relied upon by the State to provide the necessary assurances of adequate legal authority must be identified in the plan, but copies of the actual laws or regulations themselves, while they must be submitted with the plan, need not be part of the plan itself.

On February 21, 1972, Governor Ronald Reagan submitted the original California SIP to EPA. The original SIP consisted of 13 parts, the first of which was referred to as the “State General Plan.” The other parts contained air-basin-specific elements and appendices. The “State General Plan” was divided into eight chapters. Chapter 7 (“Legal Considerations,” or, as referred to herein, the “legal authority” chapter) was submitted as part of the original SIP to meet the statutory and regulatory requirements described above in connection with legal authority. Chapter 7 describes, among other things, the history of air pollution control in California, the legal authority of the California Air Resources Board (ARB) and the local air districts to adopt emission limitations, enforce applicable laws, prevent new construction, obtain emission information, require source monitoring, and describes various principles governing transportation and land use controls. Chapter 7 includes many citations to individual sections within the California Health & Safety, Penal, Civil Procedure, Government, and Vehicle codes, as well as citations to (then) recently approved legislation, and attorney general opinions as support for the assurance that adequate legal authority exists in the state to meet CAA and EPA SIP requirements.

The state included an appendix to chapter 7 (entitled “Appendix II: State Statutes and other Legal Documents Pertinent to Air Pollution Control in California”) in the plan (herein, “appendix II”) that included the specific sections of California code and other legal documents cited in chapter 7, but also included many sections of the California Health & Safety Code (CH&SC) that were not cited specifically in chapter 7. Appendix II was organized into 14 categories: CH&SC provisions related to air pollution and pertinent 1971 amendments (not then yet codified), certain Penal Code sections, Senate Bill 678 (related to authority of attorney general to protect the environment), the California Emergency Services Act, an order approved by the Governor related to emergencies, certain California Code of Civil Procedure sections, certain Government Code sections, examples of continuous

monitoring rules, the California Public Records Act, a Letter Opinion of the California Attorney General dated March 8, 1971 related to authority for regulating fuel composition, a Letter Opinion of the California Attorney General dated October 6, 1971 related to authority of the San Francisco Bay Area air pollution control district to prevent new construction, certain California Vehicle Code sections related to bus and commuter freeway lanes, SB 325 (1971) establishing a sales tax on gasoline, and various land use laws, including Assembly Bill (AB) 2070 (1970) related to land use planning requirements and the establishment of the Office of Planning and Research, certain California Government Code provisions, and AB 1301 (1970) related to consistency between zoning and general plans.

In May 1972, EPA approved in part and disapproved in part the original California SIP. See 37 FR 10842 (May 31, 1972) and 40 CFR 52.220(b). With respect to legal authority, EPA approved the submittal but found that the SIP did not meet certain requirements related to air pollution emergencies and availability of emission data. See 37 FR 10842, at 10852 and 40 CFR 52.225. EPA’s approval included both chapter 7 and the statutory and other documents contained in appendix II as described above.

In response to EPA’s request and in response to the Clean Air Act Amendments of 1977, California undertook a comprehensive update to the California SIP. On March 16, 1979, the ARB submitted a revision to the legal authority chapter of the SIP, entitled “Chapter 3—Legal Authority, Revision to State of California Implementation Plan for the Attainment and Maintenance of Ambient Air Quality Standards (December 1978),” (also referred to herein as the revised “legal authority” chapter). Much like the original legal authority chapter, the revised legal authority chapter provides an overview of air pollution control in California, generally describes the statutory responsibilities and authority of the ARB and the air pollution control districts, and addresses specific legal authorities for enforcement of the SIP, right of entry and source information gathering, public availability of data, emergency episodes, new source review, vehicular controls, and transportation and land use controls. While the general topics covered in the revised legal authority chapter were similar to those covered in the original legal authority chapter, the discussion is completely reorganized and updated to reflect, among other things, recodifications of statutory

provisions. Also, like the legal authority chapter in the original SIP, the revised legal authority chapter includes numerous citations to individual sections of the CH&SC (which had been re-numbered and re-codified since the time of the original SIP), certain citations to other California codes (e.g., Business and Professions Code, Administrative Code, Government Code and Vehicle Code) and an attorney general's letter opinion. However, unlike the legal authority chapter in the original SIP, the revised legal authority chapter, as submitted in 1979, did not include physical copies of the actual statutory provisions nor the other documents cited in the chapter. Instead, the 1979 SIP revision simply incorporates by reference the 1978 edition of *California Air Pollution Control Laws* as "appendix 3-A" to the chapter. Later in 1979, we proposed approval of the revised SIP "Chapter 3—Legal Authority" as an update and clarification of the 1972 SIP. See 44 FR 38912 (July 3, 1979). The following year, we took final action, effective September 10, 1980, to approve the revised legal authority chapter. See 45 FR 53136 (August 11, 1980) and 40 CFR 52.220(c)(48). Since that time, EPA has not approved any other revision to the chapter that addresses legal authority in the California SIP.

Recently, the status of the statutory provisions from the original SIP has come into question in the context of third party litigation, an EPA rulemaking action on a revision to new source review rules in the San Joaquin Valley, and a lawsuit filed against EPA challenging certain EPA actions on the premise that such actions were arbitrary and capricious if a certain statutory provision submitted and approved by EPA in connection with the original SIP remains in effect as part of the current applicable California SIP.¹ Thus, we

believe that clarification of the status of the statutory provisions (and other legal documents) submitted in connection with the original SIP is necessary and appropriate at this time.

III. Proposed Action

As shown from the State's submittals and the regulatory history of EPA's actions on the legal authority chapter, and revisions thereto, of the California SIP (as described in the previous section of this document), the statutory provisions and other legal documents submitted in support of the legal authority chapter in the original SIP are no longer part of the California SIP. The statutory provisions and other legal documents were superseded by our 1980 approval of the revised legal authority chapter of the California SIP (codified at 40 CFR 52.220(c)(48)). Our conclusion in this regard follows from our finding, based on the nature and scope of the revised chapter and the mismatch between the statutory citations in the revised chapter and those contained in the original chapter, that the 1979 submittal of the revised legal authority chapter represented a wholesale replacement of the original chapter.² We also note that the actual statutory provisions and other legal documents relied upon to support a state's assurance of adequate legal authority need not be approved into the

remain in effect as part of the current applicable California SIP. For the purposes of State law, effective January 1, 2004, Senate Bill 700 (2003) repealed the full permitting exemption for agricultural sources then in CH&SC 42310(e) and added a new section that provides a limited permitting exemption for minor agricultural sources. However, the California SIP has historically included, and continues to include, certain local district permitting rules that explicitly exempt agricultural sources or refer to the statutory agricultural exemption. EPA expects California to continue the process of revising local district permitting rules as necessary to amend the SIP consistent with the provisions of Senate Bill 700.

² ARB described the nature and purpose of that agency's comprehensive update of the California SIP during the late 1970's as follows: "The [EPA] has formally requested that the [ARB] update the *State of California Implementation Plan for Achieving and Maintaining the National Ambient Air Quality Standards*, usually referred to simply as the 'SIP.' The original SIP document, submitted to EPA in 1972, has become obsolete largely because of the many modifications to federal, state, and local air pollution rules and regulations and substantial advancements in technical aspects of air pollution prediction and control. A new *SIP 1978 Working Document* has been prepared as an initial response to the EPA request and contains an updated summary and description of the California SIP. * * * The SIP 1978 Working Document is a step towards replacing the obsolete 1972 SIP." See page 1 of Chapter 1 ("Introduction") (April 1978) of the SIP—78 Working Document. Therefore, the revised legal authority was intended by ARB, and approved by EPA, as a wholesale replacement of the original legal authority chapter, including the related statutory provisions and other materials submitted in support of the original chapter.

SIP under CAA section 110 or EPA's SIP regulations in 40 CFR part 51 (although such provisions are required to be submitted with the plan). Thus, EPA could approve, consistent with CAA and EPA requirements, and did so in this instance, a wholesale revision to the original legal authority chapter without also approving the actual statutory provisions and other legal documents cited therein.³

To memorialize our interpretation of the effect of our 1980 approval of the revised legal authority chapter of the California SIP and thereby clarify the status of the statutory and other legal documents submitted in connection with the original California SIP's legal authority chapter, we propose today under CAA section 301(a)(1)⁴ to revise 40 CFR 52.220(b)(12)(i).

The relevant provision of the CFR, 40 CFR 52.220(b)(12), currently lists certain CH&SC provisions related to variances that EPA deleted from the California SIP in 2004. See 69 FR 67062 (November 16, 2004). In today's action, we are proposing to revise 40 CFR 52.220(b)(12) to clarify that none of the statutory provisions (and other legal documents) submitted in connection with chapter 7 (Legal Considerations) of the original California SIP remain in the SIP, not just the few provisions currently listed. We propose to revise 40 CFR 52.220(b)(12) to codify the date (September 10, 1980) on which the statutory provisions (and other legal documents) were superseded in the California SIP.

The effect of our action, if finalized as proposed, would be to clarify that the subject statutory provisions, including the statutory-based agricultural permitting exemption contained in CH&SC section 24265, have not been part of the California SIP since the effective date (September 10, 1980) of our 1980 approval of the revised legal authority chapter of the California SIP.⁵

³ We view the revised legal authority chapter's incorporation (as appendix 3-A) of the 1978 edition of *California Air Pollution Control Laws* as simply providing a general reference to where the statutory citations in the chapter could be located rather than as having the effect of a literal reading of the provisions into the chapter.

⁴ CAA section 301(a)(1) states: "The Administrator is authorized to prescribe such regulations as are necessary to carry out his functions under this chapter. * * *." We believe that our rule proposed herein today is necessary to clarify the contents of the California SIP and thereby carry out the functions of EPA in connection with the state's plan.

⁵ However, as noted in footnote #1 in this document, the California SIP has historically included, and continues to include, certain local district permitting rules that explicitly exempt agricultural sources or refer to the statutory agricultural exemption. EPA expects California to continue the process of revising local district

¹ See *Ass'n of Irrigated Residents v. C&R Vanderham Dairy*, No. 1:05-CV-01593(OWW) (E.D. Cal.) (third-party litigation); 73 FR 9260 (February 20, 2008) (EPA proposed rule approving changes to San Joaquin Valley new source review rules); and *Sierra Club v. EPA*, No. 08-70395 (9th Cir. filed January 28, 2008) (petition for review of three EPA actions). The particular provision at issue in these examples is CH&SC section 24265, which excludes certain categories of emissions sources, including equipment used in agricultural operations in the growing of crops or raising of fowls or animals, from the general grant of authority to local air districts to require permits for new and existing emissions sources. CH&SC section 24265 was not cited specifically in the legal authority chapter of the original SIP but was included within the large excerpt from the CH&SC submitted by the State of California in support of the original legal authority chapter. (CH&SC section 24265 was later re-codified as CH&SC section 42310.) As proposed in this action, it is clear that the statutory agricultural permitting exemption from the original SIP does not

IV. Public Comment and Final Action

Under CAA section 301(a)(1) and for the reasons discussed above, EPA is proposing to clarify that the statutory provisions and other legal documents submitted in connection with the legal authority chapter of the original 1972 California SIP were superseded by EPA's approval of a revised legal authority chapter in 1980 (and codified at 40 CFR 52.220(c)(48)). To memorialize EPA's interpretation of the effect of the 1980 final rule on the earlier submitted and approved statutory provisions and other legal documents, EPA is proposing to revise 40 CFR 52.220(b)(12)(i) to read as follows:

“(i) Previously approved on May 31, 1972 and deleted without replacement, effective September 10, 1980, chapter 7 of part I and all of the statutory provisions and other legal documents contained in appendix II to chapter 7 (Legal Considerations).”

EPA is soliciting public comments on the issues discussed in this document and will accept comments for the next 30 days. These comments will be considered before taking final action.

V. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely proposes to clarify the effect of a previous approval by EPA of a state submittal as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- Is not a “significant regulatory action” subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely

affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);

- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this proposed rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Oxides of nitrogen, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Accordingly, 40 CFR Part 52 is proposed to be 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.*

2. Section 52.220 is amended by revising paragraph (b)(12)(i) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(b) * * *
(12) * * *

(i) Previously approved on May 31, 1972 and deleted without replacement, effective September 10, 1980, chapter 7 of part I and all of the statutory provisions and other legal documents contained in appendix II to chapter 7 (Legal Considerations).

* * * * *

Dated: January 21, 2010.

Jared Blumenfeld,

Regional Administrator, Region IX.

[FR Doc. 2010–1839 Filed 1–28–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2010–0062; FRL–9107–5]

Approval and Promulgation of Implementation Plans, State of California, San Joaquin Valley Unified Air Pollution Control District, New Source Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: Under section 110(k)(6) of the Clean Air Act, EPA is proposing to correct our May 2004 final approval of revisions to the San Joaquin Valley Unified Air Pollution Control District portion of the California State Implementation Plan. EPA is also proposing to take action on three amended District rules, one of which was submitted on March 7, 2008 and the other two of which were submitted on March 17, 2009. Two of the submitted rules reflect revisions to approved District rules that provide for review of new and modified stationary sources (“new source review” or NSR) within the District, and the third reflects revisions to an approved District rule that provides a mechanism by which existing stationary sources may be exempt from the requirement to secure a Federally-mandated operating permit. The NSR rule revisions relate to exemptions from permitting and from offsets for certain agricultural operations, to the establishment of NSR applicability and offset thresholds consistent with a classification of “extreme” nonattainment for the ozone standard, and to the implementation of EPA's NSR Reform Rules. With respect to the revised District NSR rules, EPA is proposing a limited approval and limited disapproval because, although the changes would strengthen the SIP, there are deficiencies in enforceability that prevent full approval. With respect to the operating permit rule, EPA is proposing a full approval. Lastly, EPA is proposing to rescind certain obsolete permitting requirements from the District portion of the California plan.

If EPA were to finalize the limited approval and limited disapproval action, as proposed, then a sanctions clock, and EPA's obligation to