

impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the CAA, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its action 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).

#### C. 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 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 proposed 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 Federal requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

#### List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

**Authority:** 42 U.S.C. 7401-7671q.

Dated: September 2, 1998.

**Felicia Marcus,**

*Regional Administrator, Region IX.*

[FR Doc. 98-24609 Filed 9-11-98; 8:45 am]

BILLING CODE 6560-50-P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[CA 162-0098; FRL-6160-5]

#### Approval and Promulgation of Implementation Plans; California State Implementation Plan Revision; Ventura County Air Pollution Control District

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

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing a limited approval and limited disapproval of a revision to the California State Implementation Plan (SIP) for ozone. This revision concerns the control of oxides of nitrogen (NO<sub>x</sub>) from boilers, steam generators, and process heaters. The intended effect of proposing limited approval and limited disapproval of this rule is to regulate emissions of NO<sub>x</sub> in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). EPA's final action on this proposed rule will incorporate this rule into the Federally approved SIP. EPA has evaluated this rule and is proposing a simultaneous limited approval and limited disapproval under provisions of the CAA regarding EPA actions on SIP submittals and general rulemaking authority. This revision, while strengthening the SIP, does not fully meet the CAA provisions regarding plan submissions and requirements for nonattainment areas.

**DATES:** Comments on this proposed action must be received in writing on or before October 14, 1998.

**ADDRESSES:** Comments may be mailed to: Andrew Steckel, Rulemaking Office (AIR-4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105-3901.

Copies of the rule and EPA's evaluation report of the rule are available for public inspection at EPA's Region IX office during normal business hours. Copies of the submitted rule are also available for inspection at the following locations:

Environmental Protection Agency, Air Docket (6102), 401 "M" Street, SW, Washington, DC 20460.

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 "L" Street, Sacramento, CA 95812.

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

**FOR FURTHER INFORMATION CONTACT:** Thomas C. Canaday, Rulemaking Office

(AIR-4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105, Telephone: (415) 744-1202.

#### SUPPLEMENTARY INFORMATION:

##### I. Applicability

The rule being proposed for limited approval and limited disapproval into the SIP is Ventura County Air Pollution Control District (VCAPCD) Rule 74.15.1, Boilers, Steam Generators, and Process Heaters. Rule 74.15.1 was submitted by the State of California to EPA on October 13, 1995.

##### II. Background

On November 15, 1990, the Clean Air Act Amendments of 1990 were enacted. Pub. L. 101-549, 104 Stat. 2399, codified at 42 U.S.C. 7401-7671q. The air quality planning requirements for the reduction of NO<sub>x</sub> emissions through reasonably available control technology (RACT) are set out in section 182(f) of the Clean Air Act.

Section 182(f) of the Clean Air Act requires States to apply the same requirements to major stationary sources of NO<sub>x</sub> ("major" as defined in section 302 and sections 182(c), (d), and (e)) as are applied to major stationary sources of volatile organic compounds (VOCs), in moderate or above ozone nonattainment areas. VCAPCD is classified as serious;<sup>1</sup> therefore this area is subject to the RACT requirements of section 182(b)(2) and the November 15, 1992 deadline cited below.

Section 182(b)(2) requires submittal of RACT rules for major stationary sources of VOC (and NO<sub>x</sub>) emissions (not covered by a pre- or post-enactment control technologies guidelines (CTG) document) by November 15, 1992. There are no pre- or post-enactment NO<sub>x</sub> CTG documents. RACT rules covering NO<sub>x</sub> sources and submitted as SIP revisions are expected to require final installation of the actual NO<sub>x</sub> controls as expeditiously as practicable, but no later than May 31, 1995.

This document addresses EPA's proposed action for Ventura County Air Pollution Control District (VCAPCD) Rule 74.15.1, Boilers, Steam Generators, and Process Heaters. VCAPCD adopted Rule 74.15.1 on June 13, 1995. The State of California submitted Rule 74.15.1 on October 13, 1995. The rule was found to be complete on November 28, 1995, pursuant to EPA's completeness criteria

<sup>1</sup> VCAPCD retained its designation of nonattainment and was classified by operation of law pursuant to sections 107(d) and 181(a) upon the date of enactment of the CAA. See 55 FR 56694 (November 6, 1991).

that are set forth in 40 CFR Part 51 Appendix V.<sup>2</sup>

NO<sub>x</sub> emissions contribute to the production of ground level ozone and smog. VCAPCD Rule 74.15.1 specifies exhaust emission standards for NO<sub>x</sub> and carbon monoxide (CO). The rule was adopted as part of VCAPCD's efforts to achieve the National Ambient Air Quality Standards (NAAQS) for ozone, and in response to the CAA requirements cited above. The following is EPA's evaluation and proposed action for this rule.

### III. EPA Evaluation and Proposed Action

In determining the approvability of a NO<sub>x</sub> rule, EPA must evaluate the rule for consistency with the requirements of the CAA and EPA regulations, as found in section 110 and part D of the CAA and 40 CFR part 51 (Requirements for Preparation, Adoption and Submittal of Implementation Plans). EPA's interpretation of these requirements, which forms the basis for this action, appears in the NO<sub>x</sub> Supplement (57 FR 55620) and various other EPA policy guidance documents.<sup>3</sup> Among these provisions is the requirement that a NO<sub>x</sub> rule must, at a minimum, provide for the implementation of RACT for stationary sources of NO<sub>x</sub> emissions.

For the purpose of assisting State and local agencies in developing NO<sub>x</sub> RACT rules, EPA prepared the NO<sub>x</sub> Supplement to the General Preamble. In the NO<sub>x</sub> Supplement, EPA provides preliminary guidance on how RACT will be determined for stationary sources of NO<sub>x</sub> emissions. While most of the guidance issued by EPA on what constitutes RACT for stationary sources has been directed towards application for VOC sources, much of the guidance is also applicable to RACT for stationary sources of NO<sub>x</sub> (see section 4.5 of the NO<sub>x</sub> Supplement). In addition, pursuant to section 183(c), EPA is issuing alternative control technique documents (ACTs), that identify alternative controls for all categories of stationary sources of NO<sub>x</sub>. The ACT documents will provide information on control technology for stationary sources that emit or have the potential to emit 25 tons per year or

more of NO<sub>x</sub>. However, the ACTs will not establish a presumptive norm for what is considered RACT for stationary sources of NO<sub>x</sub>. In general, the guidance documents cited above, as well as other relevant and applicable guidance documents, have been set forth to ensure that submitted NO<sub>x</sub> RACT rules meet Federal RACT requirements and are fully enforceable and strengthen or maintain the SIP.

The California Air Resources Board (CARB), developed a guidance document entitled Determination of Reasonably Available Control Technology and Best Available Retrofit Control Technology for Industrial, Institutional, and Commercial Boilers, Steam Generators, and Process Heaters. EPA has used CARB's guidance document, dated July 18, 1991, in evaluating Rule 74.15.1 for consistency with the CAA's RACT requirements.

There is currently no version of Ventura County Air Pollution Control District (VCAPCD) Rule 74.15.1, Boilers, Steam Generators, and Process Heaters in the SIP. The submitted rule includes the following provisions:

- General provisions including applicability, exemptions, and definitions.
- Exhaust emissions standards for oxides of nitrogen (NO<sub>x</sub>) 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. Rule 74.15.1 strengthens the SIP through the addition of enforceable measures such as record keeping, test methods, definitions, and more stringent compliance testing. Because there is no existing SIP rule, the incorporation of Rule 74.15.1 into the SIP would decrease the NO<sub>x</sub> emissions allowed by the SIP. However, VCAPCD Rule 74.15.1 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. 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 February 15, 1983 memorandum. A more detailed discussion of EPA's evaluation of VCAPCD Rule 74.15.1 can be found in the Technical Support Document, dated August 18, 1998, prepared by EPA for this rule.

Although the emission limits, monitoring, and recordkeeping provisions of VCAPCD Rule 74.15.1 will strengthen the SIP, this rule is deficient with respect to the automatic exemption from compliance for emissions that occur during start-up, shutdown, or under breakdown conditions. Because of this deficiency, EPA cannot grant full approval of this rule under section 110(k)(3) and part D. Also, because the submitted rule is not composed of separable parts which meet all the applicable requirements of the CAA, EPA cannot grant partial approval of the rule under section 110(k)(3). However, EPA may grant a limited approval of the submitted rule 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 because EPA's action also contains a simultaneous limited disapproval. In order to strengthen the SIP, EPA is proposing a limited approval of VCAPCD's submitted Rule 74.15.1 under sections 110(k)(3) and 301(a) of the CAA as meeting the requirements of section 110(a) and part D. At the same time, EPA is also proposing a limited disapproval of this rule because it contains deficiencies which must be corrected in order to fully meet the requirements of sections 182(a)(2), 182(b)(2), 182(f), and part D of the CAA. Under section 179(a)(2), if the Administrator disapproves a submission under section 110(k) for an area designated nonattainment, based on the submission's failure to meet one or more of the elements required by the Act, the Administrator must apply one of the sanctions set forth in section 179(b) unless the deficiency has been corrected within 18 months of such disapproval. Section 179(b) provides two sanctions available to the Administrator: highway funding and offsets. The 18 month period referred to in section 179(a) will begin on the effective date of EPA's final limited disapproval. Moreover, the final disapproval triggers the Federal implementation plan (FIP) requirement

<sup>2</sup> EPA adopted the completeness criteria on February 16, 1990 (55 FR 5830) and, pursuant to section 110(k)(1)(A) of the CAA, revised the criteria on August 26, 1991 (56 FR 42216).

<sup>3</sup> Among other things, the pre-amendment guidance consists of those portions of the proposed post-1987 ozone and carbon monoxide policy that concern RACT, 52 FR 45044 (November 24, 1987); "Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations, Clarification to Appendix D of November 24, 1987 Federal Register Notice" (Blue Book) (notice of availability was published in the Federal Register on May 25, 1988).

under section 110(c). It should be noted that the rule covered by this document has been adopted and is currently in effect in Ventura County. EPA's final limited disapproval action will not prevent the VCAPCD or EPA from enforcing this rule.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any State implementation plan. Each request for revision to the State implementation plan shall be considered separately in light of specific technical, economic and environmental factors and in relation to relevant statutory and regulatory requirements.

## V. Administrative Requirements

### A. Executive Orders 12866 and 13045

The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866 review.

The proposed rule is not subject to E.O. 13045, entitled "Protection of Children from Environmental Health Risks and Safety Risks," because it is not an "economically significant" action under E.O. 12866.

### B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under sections 110 and 301, and subchapter I, part D of the CAA do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the CAA, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its action 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).

### C. 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 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 proposed 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 Federal requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

### List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

**Authority:** 42 U.S.C. 7401-7671q.

**Dated:** September 2, 1998.

**Felicia Marcus,**

*Regional Administrator, Region IX.*

[FR Doc. 98-24608 Filed 9-11-98; 8:45 am]

**BILLING CODE 6560-50-P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[AL-047-1 9825b; FRL 6156-8]

### Approval and Promulgation of Implementation Plans Alabama: Revisions to Several Chapters of the Alabama Department of Environmental Management (ADEM) Administrative Code for the Air Pollution Control Program

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

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) proposes to approve the

State Implementation Plan (SIP) revision submitted by the State of Alabama through the Department of Environmental Management. On March 5, 1998, the State of Alabama through the Department of Environmental Management (ADEM) submitted a SIP submittal to revise the ADEM Administrative Code for the Air Pollution Control Program. Revisions were made to Chapters 335-3-1, 335-3-12, 335-3-14, and Appendix F. In the final rules section of this **Federal Register**, the EPA is approving Alabama's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to the direct final rule, no further activity is contemplated in relation to this proposed rule. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this rule. Any parties interested in commenting on this rule should do so at this time.

**DATES:** To be considered, comments must be received by October 14, 1998.

**ADDRESSES:** Written comments should be addressed to Kimberly Bingham, at the EPA Regional Office listed below. The interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the visiting day. Copies of the documents relative to this action are available for public inspection during normal business hours at the following locations.

Air and Radiation Docket and Information Center (Air Docket 6102), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460

U.S. Environmental Protection Agency, Atlanta Federal Center, Region 4, Air Planning Branch, 61 Forsyth Street, Atlanta, Georgia 30303-3104.

**FOR FURTHER INFORMATION CONTACT:** Kimberly Bingham of the EPA Region 4, Air Planning Branch at (404) 562-9038 and at the above address.

**SUPPLEMENTARY INFORMATION:** For additional information see the direct final rule which is published in the rules section of this **Federal Register**.