
**ENVIRONMENTAL PROTECTION
AGENCY**

40 CFR Part 52

[EPA-R09-OAR-2005-CA-0013, FRL-8489-7]

**Revisions to the California State
Implementation Plan, Kern County Air
Pollution Control District**

AGENCY: Environmental Protection
Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is finalizing full approval of revisions to the Kern County Air Pollution Control District (KCAPCD) portion of the California State Implementation Plan (SIP). EPA is also finalizing full disapproval of a revision to the KCAPCD portion of the California SIP. These actions were proposed in the *Federal Register* on December 19, 2006 and concern permitting requirements. Under authority of the Clean Air Act as amended in 1990 (CAA or the Act), this action directs California to replace the SIP rules with the approved rules and to retain in the SIP the present SIP version of the disapproved rule.

DATES: *Effective Date:* This rule is effective on December 10, 2007.

ADDRESSES: EPA has established docket number EPA-R09-OAR-2005-CA-0013 for this action. The index to the docket is available electronically at 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: Manny Aquitania, Permits Office (AIR-3), U.S. Environmental Protection Agency, Region IX, (415) 972-3977, aquitania.manny@epa.gov.

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

I. Proposed Action

On December 19, 2006 (71 FR 75916), EPA proposed to approve the rules in Table 1 that were submitted for incorporation into the California SIP. We proposed to approve these rules, because they met all requirements.

TABLE 1.—SUBMITTED RULES PROPOSED FOR FULL APPROVAL

Local agency	Rule No.	Rule title	Amended	Submitted
KCAPCD	201	Permits Required	05/02/96	07/23/96
KCAPCD	202.1	Experimental Research Operations	05/02/96	07/23/96
KCAPCD	209.1	Permit Conditions	05/02/96	07/23/96
KCAPCD	210.2	Standards for Permits to Operate	05/02/96	07/23/96
KCAPCD	210.5	Visibility Protection	05/02/96	07/23/96

On December 19, 2006 (71 FR 75916), EPA proposed to disapprove the following rule in Table 2 that was

submitted for incorporation into the California SIP.

TABLE 2.—SUBMITTED RULE PROPOSED FOR FULL DISAPPROVAL

Local agency	Rule No.	Rule title	Amended	Submitted
KCAPCD	203	Transfer	05/02/96	07/23/96

We proposed to disapprove this rule because a rule provision conflicts with section 110 and part D of the Act. This provision is as follows:

- The revision to Rule 203 that allows the transfer of a permit from one location to another is prohibited, because permitting requirements may be different at different locations. A New Source Review must be performed upon changing location. See 40 CFR part 51, sections 165–166.

Our proposed action contains more information on the basis for this rulemaking and on our evaluation of the submittal.

II. Public Comments and EPA Responses

EPA’s proposed action provided a 30-day public comment period. During this period, we did not receive any comments.

III. EPA Action

No comments were submitted that change our assessment of the rules as described in our proposed action.

Therefore, as authorized in section 110(k)(3) of the CAA, EPA is finalizing a full approval of submitted KCAPCD Rules 201, 202.1, 209.1, 210.2, and 210.5.

We are also finalizing a full disapproval of submitted KCAPCD Rule 203. This action will retain the present SIP-approved rule in the SIP. Sanctions will not be imposed as described in CAA section 179 and 40 CFR 52.30–52.32, because the present SIP-approved rule fulfills CAA requirements.

IV. 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

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.*)

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.

This rule 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. 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. 10(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 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 proposes to approve 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.

This rule 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 proposed 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.

EPA specifically solicits additional comment on this proposed rule from tribal officials.

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.

This rule is not subject to Executive Order 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

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

This rule is 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 VCS.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: October 5, 2007.

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)(239)(i)(C)(3) and (4) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(239) * * *

(i) * * *

(C) * * *

(3) Rule 201, adopted on April 18, 1972 and amended on May 2, 1996.

(4) Rules 202.1, 209.1, 210.2, and 210.5, adopted on December 15, 1980, April 5, 1982, December 28, 1976, and November 18, 1985, respectively, and amended on May 2, 1996.

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■ 3. Section 52.242 is amended by adding paragraph (a)(5) to read as follows:

§ 52.242 Disapproved rules and regulations.

(a) * * *

* * * * *

(5) Kern County Air Pollution Control District.

(i) Rule 203, Transfer, submitted on July 23, 1996 and amended on May 2, 1996. Rule 203, submitted on June 30, 1972, is retained.

[FR Doc. E7-21815 Filed 11-7-07; 8:45 am]

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KERN COUNTY AIR POLLUTION CONTROL DISTRICT

RULE 203 - TRANSFER

(Adopted 4/18/72, Amended 8/22/89, 5/2/96)

A Permit to Operate or an Authority to Construct is transferable from one person to another or from one location to another if a new application is filed with and approved by the Control Officer.