

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

D. Submission to Congress and the General Accounting Office

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**. This rule is not a "major" rule as defined by 5 U.S.C. 804(2).

E. 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 October 13, 1998. 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, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compound, sulfur oxides.

Note: Incorporation by reference of the State Implementation Plan for the State of California was approved by the director of the Federal Register on July 1, 1982.

Dated: July 28, 1998.

Sally Seymour,

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)(244)(i)(A)(2) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(244) * * *

(i) * * *

(A) * * *

(2) Rule 404, adopted on October 16, 1996.

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[FR Doc. 98-21353 Filed 8-10-98; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 022-0087a; FRL-6138-2]

Approval and Promulgation of State Implementation Plans; California State Implementation Plan Revision; South Coast Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve a revision to the California State Implementation Plan

(SIP). The revision concerns South Coast Air Quality Management District (SCAQMD) Rule 1135. This rule controls oxides of nitrogen (NO_x) from electric power generating systems. This action will incorporate the rule into the Federally approved SIP. The intended effect of approving this rule is to regulate emissions of NO_x in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). Thus, EPA is finalizing the approval of this rule into the California SIP under provisions of the CAA regarding EPA action on SIP submittals, SIPs for national primary and secondary ambient air quality standards, and plan requirements for nonattainment areas.

DATES: This action is effective on October 13, 1998 without further notice, unless EPA receives relevant adverse comments by September 10, 1998. If EPA receives such comment, then it will publish a timely withdrawal in the **Federal Register** informing the public that this rule will not take effect.

ADDRESSES: Comments must be submitted to Andrew Steckel at the Region IX office listed below. Copies of the rule and EPA's evaluation report 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:

U.S. Environmental Protection Agency, Region IX, Rulemaking Office (AIR-4), Air Division, 75 Hawthorne Street, San Francisco, CA 94105-3901.

U.S. Environmental Protection Agency, Air Docket (6102), 401 "M" Street, S.W., Washington, D.C. 20460.

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 "L" Street, Sacramento, CA 95814.

South Coast Air Quality Management District, 21865 E. Copley Drive, Diamond Bar, CA 91765-4182.

FOR FURTHER INFORMATION CONTACT: Andrew Steckel, Rulemaking Office (AIR-4), Air Division, U.S.

Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105-3901, telephone: (415) 744-1185.

SUPPLEMENTARY INFORMATION:

I. Applicability

The rule being approved into the California State Implementation Plan (SIP) is South Coast Air Quality Management District (SCAQMD) Rule 1135, Emissions of Oxides of Nitrogen from Electric Power Generating Systems, adopted by SCAQMD on July 19, 1991.

II. Background

On November 15, 1990, the Clean Air Act Amendments of 1990 (CAA or the Act) 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 emissions of oxides of nitrogen (NO_x) through reasonably available control technology (RACT) are set out in section 182(f) of the CAA. On November 25, 1992, EPA published a notice of proposed rulemaking entitled "State Implementation Plans; Nitrogen Oxides Supplement to the General Preamble; Clean Air Act Amendments of 1990 Implementation of Title I; Proposed Rule," (the NO_x Supplement) which describes and provides preliminary guidance on the requirements of section 182(f). 57 FR 55620. The NO_x Supplement should be referred to for further information on the NO_x requirements and is incorporated into this document by reference.

Section 182(f) of the Clean Air Act requires States to apply the same requirements to major stationary sources of NO_x ("major" as defined in section 302 and section 182(c), (d), and (e)) as are applied to major stationary sources of volatile organic compound (VOC) emissions, in moderate or above ozone nonattainment areas. The Los Angeles-South Coast Air Basin Area is classified as extreme;¹ therefore this area was subject to section 182(f), the RACT requirements of section 182(b)(2), and the November 15, 1992 deadline, cited below. This **Federal Register** action for the South Coast Air Quality Management District excludes the Los Angeles County portion of the Southeast Desert AQMA, otherwise known as the Antelope Valley Region in Los Angeles County, which is now under the jurisdiction of the Antelope Valley Air Pollution Control District as of July 1, 1997.²

Section 182(b)(2) requires submittal of RACT rules for major stationary sources

¹ The Los Angeles-South Coast Air Basin Area 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).

² The State has recently changed the names and boundaries of the air basins located within the Southeast Desert Modified AQMA. Pursuant to State regulation the Coachella-San Jacinto Planning Area is now part of the Salton Sea Air Basin (17 Cal. Code Reg. § 60114); the Victor Valley/Barstow region in San Bernardino County and Antelope Valley Region in Los Angeles County are parts of the Mojave Desert Air Basin (17 Cal. Code Reg. § 60109). In addition, in 1996 the California Legislature established a new local air agency, the Antelope Valley Air Pollution Control District, to have the responsibility for local air pollution planning and measures in the Antelope Valley Region (California Health & Safety Code § 40106).

of VOC (and NO_x) emissions not covered by either a pre-enactment or post-enactment control techniques guideline (CTG) document by November 15, 1992. There were no NO_x CTGs issued before enactment and EPA has not issued a CTG document for any NO_x sources since enactment of the CAA. The RACT rules covering NO_x sources and submitted as SIP revisions are expected to require final installation of the actual NO_x controls as expeditiously as practicable, but no later than May 31, 1995.

SCAQMD Rule 1135 was adopted on July 19, 1991 and submitted by the California Air Resources Board (CARB) to EPA on January 28, 1992. This submitted rule was found to be complete on April 3, 1992, pursuant to EPA's completeness criteria that are set forth in 40 CFR Part 51 Appendix V.³ By today's document, EPA is taking direct final action to approve this rule into the SIP.

SCAQMD Rule 1135 controls emissions from electric power generating systems. NO_x emissions contribute to the production of ground level ozone and smog. The rule was adopted as part of SCAQMD's efforts to achieve the National Ambient Air Quality Standards for ozone and in response to the CAA requirements cited above. The following section contains EPA's evaluation and final action for this rule.

III. EPA Evaluation and Action

In determining the approvability of a NO_x 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). The EPA interpretation of these requirements, which forms the basis for this action, appears in various EPA policy guidance documents.⁴ Among these provisions is the requirement that a NO_x rule must, at a minimum, provide for the implementation of RACT for stationary sources of NO_x emissions.

For the purposes of assisting state and local agencies in developing NO_x RACT

³ 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).

⁴ 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); and "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).

rules, EPA prepared the NO_x Supplement to the General Preamble Supplement, cited above (57 FR 55620). In the NO_x Supplement, EPA provides guidance on how RACT will be determined for stationary sources of NO_x 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_x (see section 4.5 of the NO_x 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_x. 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_x. However, the ACTs will not establish a presumptive norm for what is considered RACT for stationary sources of NO_x. 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_x RACT rules meet Federal RACT requirements and are fully enforceable and strengthen or maintain the SIP.

There is currently no version of SCAQMD Rule 1135, Emissions of Oxides of Nitrogen from Electric Power Generating Systems, in the SIP. The submitted rule regulates utility boilers by specifying NO_x emission limits in pounds of NO_x per net megawatt hour of electricity produced. This rule requires the use of a continuous emissions monitoring system, and requires an approved compliance plan.

A more detailed discussion of the sources controlled,⁵ the controls required, and the justification for why these controls represent RACT can be found in the Technical Support Document (TSD), available from the U.S. EPA Region IX office.

EPA has evaluated the submitted rule and has determined that it is consistent with the CAA, EPA regulations and EPA policy. Therefore, SCAQMD Rule 1135 is being approved under section 110(k)(3) of the CAA as meeting the requirements of section 110(a), section 182(b)(2), section 182(f) and the NO_x Supplement to the General Preamble.

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

⁵ SCAQMD Rule 1135 will apply to sources which are not covered in the SCAQMD NO_x RECLAIM program.

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.

EPA is publishing this document without prior proposal because the Agency views this as a noncontroversial action and anticipates no adverse comments. However, in the Proposed Rules section of this **Federal Register** publication, the EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should relevant adverse comments be filed. This action will be effective October 13, 1998, without further notice unless the Agency receives relevant adverse comments by September 10, 1998.

If EPA receives such comments, then EPA will publish a document withdrawing this direct final rule and informing the public that this rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective on October 13, 1998 and no further action will be taken on the proposed rule.

IV. Administrative Requirements

A. Executive Orders 12866 and 13045

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

This final 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 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 impose any new requirements, the Administrator certifies 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 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).

C. Unfunded Mandates

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States prior to publication of the rule in the **Federal Register**. This rule is not a "major" rule as defined by 5 U.S.C. 804(2).

E. Petitions for Judicial Review

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List of Subjects in 40 CFR Part 52

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Note: Incorporation by reference of the State Implementation Plan for the State of California was approved by the director of the **Federal Register** on July 1, 1982.

Dated: July 28, 1998.

Sally Seymour,

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) (187)(i)(C)(2) to read as follows:

§ 52.220 Identification of plan.

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(c) * * *

(187) * * *

(i) * * *

(C) * * *

(2) Rule 1135, adopted on July 19, 1991.

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