

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), 42 U.S.C. 7607(b)(2).)

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

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations.

Dated: April 3, 1997.

**Chuck Clarke,**

*Regional Administrator.*

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

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. 7401–7671q.

#### Subpart WW—Washington

2. Section 52.2470 is amended by adding paragraph (c)(72) to read as follows:

##### § 52.2470 Identification of plan.

\* \* \* \* \*

(c) \* \* \*

(72) On November 26, December 3, and December 11, 1996, the Director of the Washington State Department of Ecology (Washington) submitted to the Regional Administrator of EPA revisions to the State Implementation Plan consisting of amendments to Washington regulations which remove the requirement for oxygenated gasoline in the Vancouver and Central Puget Sound areas.

(i) Incorporation by reference.

(A) Chapter 173–492, Washington Administrative Code (WAC), Motor Fuel Specifications for Oxygenated Gasoline, adopted December 5, 1996; Southwest Air Pollution Control Authority (SWAPCA) 492, Oxygenated Fuels, effective November 21, 1996; and Puget Sound Air Pollution Control Agency, Regulation II, Section 2.09, Oxygenated Gasoline Contingency Measure and Fee Schedule, revised July 11, 1996.

[FR Doc. 97–11162 Filed 4–29–97; 8:45 am]

BILLING CODE 6560–50–P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[CA 126–0032a FRL–5815–5]

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

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

**ACTION:** Direct final rule.

**SUMMARY:** EPA is taking direct final action on revisions to the California State Implementation Plan. The revisions concern rules for Placer County Air Pollution Control District (PCAPCD or District). This approval action will incorporate these rules into the federally approved SIP. The intended effect of approving these rules is to regulate emissions of volatile organic compounds (VOCs), oxides of nitrogen (NO<sub>x</sub>) and other pollutants in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA of the Act). These revisions consist of administrative and minor changes to a wide range of rules that have been previously incorporated into the federally approved SIP. Thus, EPA is finalizing the approval of these revisions 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 June 30, 1997 unless adverse or critical comments are received by May 30, 1997. If the effective date is delayed, a timely notice will be published in the **Federal Register**.

**ADDRESSES:** Copies of the rule revisions are available for public inspection at EPA's Region IX office during normal business hours. Copies of the submitted rule revisions are available for inspection at the following locations:

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

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.

Placer County Air Pollution Control District 11464 B Avenue, Auburn, CA 96503

#### FOR FURTHER INFORMATION CONTACT:

Cynthia G. Allen, Rulemaking Office (AIR–4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105, Telephone: (415) 744–1189.

#### SUPPLEMENTARY INFORMATION:

##### Applicability

The rules being approved into the California SIP include: PCAPCD Rule 101, Title; Rule 102, Definitions; Rule 103, Validity; Rule 201, Coverage; Rule 202, Visible Emissions; Rule 203, Exemptions to Rule 202; Rule 204, Wet Plumes; Rule 208, Orchard or Citrus Heaters; Rule 209, Fossil Fuel–Steam Facility; Rule 210, Specific Contaminants; Rule 211, Process Weight; Rule 213, Gasoline Transfer into Stationary Storage Containers; Rule 214, Transfer of Gasoline into Tank Trucks, Trailers and Railroad Cars at Loading Facilities; Rule 217, Cutback and Emulsified Asphalt Paving Materials; Rule 219, Organic Solvents; Rule 220, Abrasive Blasting; Rule 221, Compliance Tests; Rule 222, Reduction of Animal Matter; Rule 225, Wood Fired Appliances; Rule 226, Sulfur Content of Fuels—Lake Tahoe Basin; Rule 228, Fugitive Dust—Lake Tahoe Air Basin; Rule 406, Combination of Emissions; Rule 407, Circumvention; and Rule 408, Source Recordkeeping and Reporting. These rules were submitted by the California Air Resources Board to EPA on November 30, 1994.

##### Background

On March 3, 1978, EPA promulgated a list of ozone nonattainment areas under the provisions of the Clean Air Act, as amended in 1977 (1977 Act or pre-amended Act), that included the Placer County Air Pollution Control District. 43 FR 8964, 40 CFR 81.305. On May 26, 1988, EPA notified the Governor of California, pursuant to section 110(a)(2)(H) of the Act, that the PCAPCD portions of the California SIP were inadequate to attain and maintain the ozone standard and requested that deficiencies in the existing SIP be corrected (EPA's SIP Call). In response to the SIP call and other requirements, the PCAPCD submitted many rules for the Lake Tahoe, Mountain Counties, and Sacramento Valley Air Basins, which EPA approved into the SIP. On October 19, 1993, California consolidated the Lake Tahoe, Mountain Counties and Sacramento Valley Air Basins within the PCAPCD. Also on October 19, 1993, the District adopted many rules that reformatted and consolidated rules from the three subsumed air basins. The

revised rules consolidate the District rules into a single set of regulations applicable throughout the District.

This notice addresses EPA's direct-final action for the following PCAPCD rules: Rule 101, Title; Rule 102, Definitions; Rule 103, Validity; Rule 201, Coverage; Rule 202, Visible Emissions; Rule 203, Exemptions to Rule 202; Rule 204, Wet Plumes; Rule 208, Orchard or Citrus Heaters; Rule 209, Fossil Fuel-Steam Facility; Rule 210, Specific Contaminants; Rule 211, Process Weight; Rule 213, Gasoline Transfer into Stationary Storage Containers; Rule 214, Transfer of Gasoline into Tank Trucks, Trailers and Railroad Cars at Loading Facilities; Rule 217, Cutback and Emulsified Asphalt Paving Materials; Rule 219, Organic Solvents; Rule 220, Abrasive Blasting; Rule 221, Compliance Tests; Rule 222, Reduction of Animal Matter; Rule 225, Wood Fired Appliances; Rule 226, Sulfur Content of Fuels—Lake Tahoe Basin; Rule 228, Fugitive Dust—Lake Tahoe Air Basin; Rule 406, Combination of Emissions; Rule 407, Circumvention; and Rule 408, Source Recordkeeping and Reporting.

These rules were adopted by PCAPCD on October 19, 1993 and submitted by the State of California for incorporation into its SIP on November 30, 1994. These rules were found to be complete on January 30, 1995, pursuant to EPA's completeness criteria that are set forth in 40 CFR part 51 Appendix V<sup>1</sup> and are being finalized for approval into the SIP. These rules were originally adopted as part of PCAPCD's efforts to achieve the National Ambient Air Quality Standards (NAAQS) for ozone and in response to EPA's SIP-Call and the section 182(a)(2)(A) CAA requirement.

The following is EPA's evaluation and final action for these rules.

#### **EPA Evaluation and Action**

In determining the approvability of a 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 appears in various EPA policy guidance documents.<sup>2</sup>

EPA previously reviewed many rules from the Lake Tahoe, Mountain Counties and Sacramento Valley Air Basins and incorporated them into the federally approved SIP pursuant to section 110(k)(3) of the CAA. Those rules that are being superseded and/or deleted<sup>3</sup> by today's action are as follows:

#### **Lake Tahoe Air Basin**

- Rule 101 Title, submitted 08/21/79
- Rule 102, Definitions, submitted 08/21/79
- Rule 103, Validity, submitted 08/21/79
- Rule 104, Effective Date, submitted 08/21/79 (deleted)
- Rule 201, Coverage, submitted 08/21/79
- Rule 202, Visible Emissions, submitted 08/21/79
- Rule 203, Exception to Rule 202, submitted 08/21/79
- Rule 204, Wet Plumes, submitted 08/21/79
- Rule 208, Fugitive Dust, submitted 08/21/79
- Rule 209, Sulfur Content of Fuels, submitted 08/21/79
- Rule 210, Specific Contaminants, submitted 08/21/79
- Rule 211, Process Weight, submitted 08/21/79
- Rule 213, Gasoline Transfer Into Stationary Storage Containers, submitted 08/21/79
- Rule 217, Compliance Tests, submitted 08/21/79
- Rule 406, Combination of Emission, submitted 01/10/75
- Rule 407, Circumvention, submitted 10/13/77
- Rule 408, Source Recordkeeping, submitted 10/13/77

#### **Mountain Counties Air Basin**

- Rule 101 Title, submitted 08/12/86
- Rule 102, Definitions, submitted 02/10/86 and 05/28/81
- Rule 103, Validity, submitted 10/13/77
- Rule 104, Effective Date, submitted 10/15/79 (deleted)
- Rule 201, Coverage, submitted 08/12/86
- Rule 202, Visible Emissions, submitted 01/10/75
- Rule 203, Exception to Rule 202, submitted 05/28/81
- Rule 204, Wet Plumes, submitted 01/10/75

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); and the existing control technique guidelines (CTGs).

<sup>3</sup> Listed rules are superseded unless designated as deleted.

- Rule 208, Fugitive Dust, submitted 10/13/77
- Rule 209, Fossil Fuel-Steam Generator Facility, submitted 01/10/75
- Rule 210, Specific Contaminants, submitted 10/13/77
- Rule 211, Process Weight, submitted 05/28/81
- Rule 213, Gasoline Transfer Into Stationary Storage Container, submitted 04/05/91
- Rule 214, Transfer of Gasoline Into Vehicle Fuel Tanks, submitted 05/28/81
- Rule 217, Cutback and Emulsified Asphalt Paving Materials, submitted 04/05/91
- Rule 219, Organic Solvents, submitted 10/15/79
- Rule 220, Abrasive Blasting, submitted 10/15/79
- Rule 221, Compliance Tests, submitted 10/15/79
- Rule 222, Reduction of Animal Matter, submitted 10/15/79
- Rule 225, Wood Fired Appliances, submitted 11/21/86
- Rule 406, Combination of Emissions, submitted 01/10/75
- Rule 407, Circumvention, submitted 10/13/77
- Rule 408, Source Recordkeeping and Reporting, submitted 10/13/77

#### **Sacramento Valley Air Basin**

- Rule 101 Title, submitted 10/13/77
- Rule 102, Definitions, submitted 10/13/77
- Rule 103, Validity, submitted 10/13/77
- Rule 201, District-Wide Coverage, submitted 01/10/75
- Rule 202, Visible Emissions, submitted 01/10/75
- Rule 203, Exception, submitted 01/10/75
- Rule 204, Wet Plumes, submitted 01/10/75
- Rule 208, Orchard or Citrus Heaters, submitted 10/13/77
- Rule 209, Fossil Fuel-Steam Generator Facility, submitted 01/10/75
- Rule 213, Reduction of Animal Matter, submitted 10/13/77
- Rule 407, Circumvention, submitted 10/13/77
- Rule 408, Source Recordkeeping and Reporting, submitted 10/13/77

EPA has evaluated the consolidated PCAPCD rules submitted in November 1994 and compared them to the rules currently incorporated in the SIP. In all cases the rules have been reformatted and changed editorially. In some cases there have also been minor substantive improvements. For example, where the three subsumed air basins had slightly different requirements for similar sources, the consolidated rule now

<sup>1</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>2</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,

applies the most stringent of the requirements to the entire area. In no case does this action represent a relaxation of any requirement.

The PCAPCD rules being approved by this action to revise the SIP include:

- Rule 101 Title
- Rule 102 Definitions
- Rule 103 Validity
- Rule 201 Coverage
- Rule 202 Visible Emissions
- Rule 203 Exemptions to Rule 202
- Rule 204 Wet Plumes
- Rule 208 Orchard or Citrus Heaters
- Rule 209 Fossil Fuel-Steam Facility
- Rule 210 Specific Contaminants
- Rule 211 Process Weight
- Rule 213 Gasoline Transfer into Stationary Storage Containers
- Rule 214, Transfer of Gasoline into Tank Trucks, Trailers and Railroad Cars at Loading Facilities
- Rule 217, Cutback and Emulsified Asphalt Paving Materials
- Rule 219, Organic Solvents
- Rule 220, Abrasive Blasting
- Rule 221, Compliance Tests
- Rule 222, Reduction of Animal Matter
- Rule 225, Wood Fired Appliances
- Rule 226, Sulfur Content of Fuels—Lake Tahoe Basin
- Rule 228, Fugitive Dust—Lake Tahoe Air Basin
- Rule 406, Combination of Emissions
- Rule 407, Circumvention
- Rule 408, Source Recordkeeping and Reporting

Other PCAPCD rules submitted with these rules on November 30, 1994, will be acted on separately because they involve technical issues and require more detailed review.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future 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.

EPA is publishing this document without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in a separate document in this **Federal Register** publication, the EPA is proposing to approve the SIP revision should adverse or critical comments be filed. This action will be effective June 30, 1997, unless, by May 30, 1997, adverse or critical comments are received.

If the EPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent document that will

withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on this action serving as a 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 June 30, 1997.

#### Regulatory Flexibility

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 population of less than 50,000.

SIP approvals under sections 110 and 301(a) 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 regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co. versus U.S. E.P.A.*, 427 U.S. 246, 256–66 (S. Ct. 1976); 42 U.S.C. 7410 (a)(2).

#### Unfunded Mandates

Under Sections 202, 203, and 205 of the Unfunded Mandates Reform Act of 1995 (“Unfunded Mandates Act”), signed into law on March 22, 1995, EPA must undertake various actions in association with proposed or final rules that include a Federal mandate that may result in estimated costs of \$100 million or more to the private sector or to State, local, or tribal governments in the aggregate.

Through submission of this state implementation plan or plan revision, the State and any affected local or tribal governments have elected to adopt the program provided for under Part D of the Clean Air Act. These rules may bind State, local, and tribal governments to perform certain actions and also require the private sector to perform certain duties. The rules being approved by this

action will impose no new requirements because affected sources are already subject to these regulations under State law. Therefore, no additional costs to State, local, or tribal governments or to the private sector result from this action. EPA has also determined that this [proposed or final] action does not include a mandate that may result in estimated costs of \$100 million or more to State, local, or tribal governments in the aggregate or to the private sector.

#### Small Businesses

Under 5 U.S.C. 801(a)(1)(A) as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of this action in today's **Federal Register**. This action is not a “major action” as defined by 5 U.S.C. 804(2).

This action has been classified as a Table 3 action for signature by the Regional Administrator under the procedures California State Implementation Plan—Page 13 or 14 published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225), as revised by a July 10, 1995 memorandum from Mary Nichols, Assistant Administrator for Air and Radiation. The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866 review.

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

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

**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: April 14, 1997.

**Felicia Marcus,**

*Regional Administrator.*

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. 7401–7671q.

**Subpart F—California**

2. Section 52.220 is amended by adding paragraphs (c)(52)(xiii)(E), (80)(i)(D), and (207)(i)(A)(2) to read as follows:

**§ 52.220 Identification of plan.**

\* \* \* \* \*

(c) \* \* \*

(52) \* \* \*

(xiii) \* \* \*

(E) Previously approved and now deleted, Rule 104.

\* \* \* \* \*

(80) \* \* \*

(i) \* \* \*

(D) Previously approved and now deleted, Rule 104.

\* \* \* \* \*

(207) \* \* \*

(i) \* \* \*

(A) \* \* \*

(2) Rules 101, 102, 103, 201, 202, 203, 204, 208, 209, 210, 211, 213, 214, 217, 219, 220, 221, 222, 225, 226, 228, 406, 407, and 408, adopted on October 19, 1993; deletion of 104 for Lake Tahoe Air Basin and Mountain Counties Air Basin submitted 08/21/79 and 10/15/79, respectively.

\* \* \* \* \*

[FR Doc. 97-11158 Filed 4-29-97; 8:45 am]

BILLING CODE 6560-50-P

**DEPARTMENT OF HEALTH AND HUMAN SERVICES****Health Care Financing Administration****42 CFR Part 417**

[OMC-025-FC]

RIN 0938-AH62

**Medicare Program; Establishment of an Expedited Review Process for Medicare Beneficiaries Enrolled in Health Maintenance Organizations, Competitive Medical Plans, and Health Care Prepayment Plans**

**AGENCY:** Health Care Financing Administration (HCFA), HHS.

**ACTION:** Final rule with comment period.

**SUMMARY:** This final rule with comment period establishes a new administrative review requirement for Medicare beneficiaries enrolled in health maintenance organizations (HMOs), competitive medical plans (CMPs), and health care prepayment plans (HCPPs). This rule implements section 1876(c)(5) of the Social Security Act, which specifies the appeal and grievance rights for Medicare enrollees in HMOs and CMPs. This rule requires that an HMO,

CMP, or HCPP establish and maintain, as part of the health plan's appeals procedures, an expedited process for making organization determinations and reconsidered determinations when an adverse determination could seriously jeopardize the life or health of the enrollee or the enrollee's ability to regain maximum function. This rule also revises the definition of appealable determinations to clarify that it includes a decision to discontinue services.

**DATES:** *Effective date:* These regulations are effective June 30, 1997.

*Compliance date:* HMOs, CMPs, and HCPPs must comply with the requirements of this final rule beginning August 28, 1997.

*Comment date:* Comments will be considered if we receive them at the appropriate address, as provided under **ADDRESSES**, no later than 5 p.m. on June 30, 1997.

**ADDRESSES:** Mail written comments (1 original and 3 copies) to the following address:

Health Care Financing Administration,  
Department of Health and Human  
Services, Attention: OMC-025-FC,  
P.O. Box 26688, Baltimore, MD  
21207-0488.

If you prefer, you may deliver your written comments (1 original and 3 copies) to one of the following addresses:

Room 309/G, Hubert H. Humphrey  
Building, 200 Independence Avenue,  
SW., Washington, DC 20201, or  
Room C5-09-26, 7500 Security  
Boulevard, Baltimore, MD 21244-  
1850.

Comments may also be submitted electronically to the following e-mail address: OMC025FC@hcfa.gov. E-mail comments must include the full name and address of the sender and must be submitted to the referenced address to be considered. All comments must be incorporated in the e-mail message because we may not be able to access attachments. Electronically submitted comments will be available for public inspection at the Independence Avenue address below.

Because of staffing and resource limitations, we cannot accept comments by facsimile (FAX) transmission. In commenting, please refer to file code OMC-025-FC. Comments received timely will be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, in Room 309-G of the Department's offices at 200 Independence Avenue, SW., Washington, DC, on Monday through Friday of each week from 8:30 a.m. to 5 p.m. (phone: (202) 690-7890).

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**FOR FURTHER INFORMATION CONTACT:**  
Maureen Miller, (410) 786-1097.

**SUPPLEMENTARY INFORMATION:****I. General Background****A. Program Background**

Under title XVIII of the Social Security Act (the Act), Medicare beneficiaries have a choice of whether to obtain Medicare-covered services through the traditional fee-for-service program or through a managed care entity or "prepaid health care organization." This final rule with comment period concerns appeal rights for Medicare beneficiaries who choose a prepaid health care organization. Under the prepayment method, health maintenance organizations (HMOs), competitive medical plans (CMPs), and health care prepayment plans (HCPPs) enter into contracts or agreements with us to provide a range of services to Medicare beneficiaries who voluntarily enroll in these health plans.

Section 1876 of the Act provides the authority for us to enter into contracts with HMOs and CMPs to furnish