ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 248–0288b; FRL–7028–8]

Revisions to the California State Implementation Plan, El Dorado County Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve revisions to the El Dorado County Air Pollution Control District (EDCAPCD) portion of the California State Implementation Plan (SIP). These revisions concern volatile organic compound (VOC) emissions from Phase I gasoline transfer into stationary storage tanks/Phase II gasoline transfer into vehicle fuel tanks, organic liquid loading, and valves and flanges. We are proposing to approve local rules and proposing to approve the recision of local rules that regulate these emission sources under the Clean Air Act as amended in 1990 (CAA or the Act). We are also proposing to approve a negative declaration that concerns VOC emissions from bulk terminal facilities or external or internal floating roof tank sources.

DATES: Any comments on this proposal must arrive by September 26, 2001.

ADDRESSES: Mail comments to Andy Steckel, Rulemaking Office Chief (AIR–4), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

You can inspect copies of the submitted rule revisions and EPA's technical support document (TSD) at our Region IX office during normal business hours. You may also see copies of the submitted rule revisions and TSD at the following locations:

Environmental Protection Agency, Air Docket (6102), Ariel Rios Building, 1200 Pennsylvania Avenue, N.W., Washington D.C. 20460.

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 1001 ''I'' Street, Sacramento, CA 95814.

El Dorado County Air Pollution Control District, 2850 Fairlane Court, Building C, Placerville, CA 95667.

FOR FURTHER INFORMATION CONTACT: Al Petersen, Rulemaking Office (AIR–4), U.S. Environmental Protection Agency, Region IX; (415) 744–1135.

SUPPLEMENTARY INFORMATION: This proposal addresses the approval of the local EDCAPCD Rules 238, 244, and 245, the recision of local EDCAPCD Rules 900 through 914, and approval of a Negative Declaration concerning Bulk Terminal Facilities or External or Internal Floating Roof Tank Sources. In the Rules and Regulations section of this **Federal Register**, we are approving and rescinding these local rules in a direct final action without prior proposal because we believe these SIP revisions are not controversial. If we receive adverse comments, however, we will publish a timely withdrawal of the direct final rule and address the comments in subsequent action based on this proposed rule. We do not plan to open a second comment period, so anyone interested in commenting should do so at this time. If we do not receive adverse comments, no further activity is planned. For further information, please see the direct final action.

Dated: July 31, 2001.

Jane Diamond,

Acting Regional Administrator, Region IX.

[FR Doc. 01–21439 Filed 8–24–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[FRL–7039–3]

Amendments for Testing and Monitoring Provisions; Removal of a Provision for Opacity Monitoring

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: We, the EPA, are proposing to remove an amendment published as part of a final rule entitled ''Amendments for Testing and Monitoring Provisions'' on October 17, 2000 (65 FR 61744). We are proposing to remove this provision because it inadvertently established substantive new requirements for facilities that are subject to the New Source Performance Standards requiring the installation of continuous opacity monitors on effluent streams, although the amendments were explicitly intended to be minor in nature and not substantive. We do not consider this amendment controversial and expect no adverse comments, so we are also publishing it as a direct final rule without prior proposal in the Final Rules section of this **Federal Register** Publication. We have set forth a detailed rationale for this proposal in the direct final rule. We will take no further action unless, within the time allowed (see **DATES**), we receive adverse comments about the proposal or direct final rule, or we receive a request for a public hearing on the proposal. If we receive no adverse comments, we contemplate no further action on this proposal. We will not institute a second comment period on this action. People interested in commenting on the direct final rule should do so at this time.

DATES: Comments. We will accept comments regarding the proposed amendment on or before September 26, 2001. We will arrange a public hearing concerning the accompanying proposed rule if we receive a request for one by September 11, 2001. If someone requests a hearing it will be held on October 11, 2001 beginning at 10 a.m. For more information about submittal of comments and requesting a public hearing, see the **SUPPLEMENTARY INFORMATION** section in this preamble.

ADDRESSES: Comments. Interested parties having comments on this action may submit these comments in writing (original and two copies, if possible) to Docket No. A–97–12 at the following address: Air and Radiation Docket and Information Center (6102), U.S. Environmental Protection Agency, 401 M Street, SW., Room 1500, Washington, DC 20460.

We request that a separate copy of the comments also be sent to the contact person listed in the following paragraph of this preamble. If someone requests a hearing, the hearing will be held at the EPA Office of Administration Auditorium, Research Triangle Park, NC.

FOR FURTHER INFORMATION CONTACT: Foston Curtis, Environmental Protection Agency, Office Air Quality Planning and Standards, at 919/541–1063, e-mail: *curtis.foston@epa.gov,* facsimile 919/541–1039.

SUPPLEMENTARY INFORMATION:

Docket: A docket containing supporting information used in developing this proposed rule amendment is available for public inspection and copying at our docket office located at the above address in Room M–1500, Waterside Mall (ground floor). You are encouraged to phone in advance to review docket materials or schedule an appointment by phoning the Air Docket Office at (202) 260–7548. Refer to Docket No. A–97–12. The Docket Office may charge a reasonable fee for copying docket materials.

Outline: The information in this preamble is organized as follows:

I. Background

On October 17, 2000 (65 FR 61744), we published a notice of final rulemaking to adopt a number of changes to the test methods listed in 40 CFR parts 60, 61, and 63. As the preamble to the final rule explained, these changes were largely intended to be minor, nonsubstantive revisions and represented, in effect, a ''housekeeping'' effort to correct typographical and technical errors, and eliminate obsolete or no longer applicable material. In addition, we promulgated Performance Specification 15, which contains criteria for certifying continuous emission monitoring systems (CEMS) that use fourier transform infrared spectroscopy, and we changed the outline of the test methods and CEMS performance specifications already listed in parts 60, 61, and 63 to fit a new format recommended by the Environmental Monitoring Management Council. The editorial changes and technical corrections were intended to update the rules and help maintain their original intent.

The amendment made to § 60.13(g) which is affected by today's action applies to facilities that are subject to New Source Performance Standards (NSPS) and are required to install continuous opacity monitors on effluent streams. Specifically, the amendment provides that when the effluents from two or more affected facilities subject to the same opacity standard are combined into a single stack, and if opacity is monitored on each stream, a combiner system comprised of opacity and flow monitoring systems must be installed. In this case, gas flow rates from the individual streams must be known to correct the measured opacity to the exit stack dimensions and therefore must be measured. By contrast, preamended § 60.13(g) only implied, but did not explicitly require, that flow measurements from the individual streams were necessary. The intent of the amendment was to explicitly require such flow measurements and to identify what we perceived to be the most commonly used method of doing that (namely, the use of flow monitors). However, during the public comment period, some members of the utility industry objected to our specifying flow monitors as the only option and suggested that other indicators of flow rate they had traditionally employed (e.g., unit load, fan motor ampere readings, damper settings, etc.) should continue to be allowed. Because we did not anticipate the industry having to make substantive changes from its current practices to implement the amendments, we promulgated the amended § 60.13(g) without fully responding to the industry's comments in the preamble to the final rule. After further consideration, we have concluded that the amendment constitutes a substantive change in the original rule since it requires applicable subject facilities to install flow monitors instead of allowing them to continue to use flow indicator methods. Moreover, we did not raise the question of adequacy of such methods in the previous rulemaking and no commenter has presented information indicating that they do not provide adequate measurements of flow rates for the purposes of the NSPS monitoring requirements. This removal of the amendment will reinstate the old § 60.13(g) provision which allowed subject facilities to use flow measuring techniques besides flow monitors.

II. Authority

The statutory authority for this action is 42 U.S.C. 7401, 7411, 7413, 7414, 7416, 7601, and 7602.

III. Administrative Requirements

A. Executive Order 12866: ''Significant Regulatory Action Determination''

Under Executive Order 12866 (58 FR 51735, October 4, 1993), we must determine whether the regulatory action is ''significant'' and therefore subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Order defines ''significant regulatory action'' as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety in State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlement, grants, user fees, or loan programs of the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Because this rule merely proposes to remove an amendment to, and reinstate the prior provisions of 40 CFR 60.13(g), we have determined that this action is not a ''significant regulatory action'' under the terms of Executive Order 12866 and is therefore not subject to OMB review. Executive Order 12866 also encourages agencies to provide a meaningful public comment period, and suggests that in most cases the comment period should be 60 days. However, in consideration of the very limited and remedial scope of this amendment, we consider 30 days to be sufficient in providing a meaningful public comment period, if requested, for this rulemaking.

B. Regulatory Flexibility

The Regulatory Flexibility Act (RFA) requires us 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. We have determined that removing the 40 CFR 60.13(g) amendment will not have a significant impact on a substantial number of small entities. Therefore, a regulatory flexibility analysis is not necessary in connection with this action.

C. Paperwork Reduction Act

Because this action does not include or create any information collection activities subject to the Paperwork Reduction Act, the Paperwork Reduction Act, 44 U.S.C. 3501, *et seq.*, does not apply.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, we must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before we promulgate a rule for which a written statement is needed, section 205 of the UMRA requires us to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows us to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation of why that alternative was not adopted. Before we establish any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, we must have developed under section 203 of the UMRA a small government agency plan. That plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

This action contains no regulatory requirements that might significantly or uniquely affect small governments. This action does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. Thus, today's action is not subject to the requirements of sections 202 and 205 of the UMRA.

E. Docket

The docket includes an organized and complete file of all the information upon which we relied in taking this direct final action. The docketing system is intended to allow you to identify and locate documents readily so that you can participate effectively in the rulemaking process. Along with the proposed and promulgated standards and their preambles, the contents of the docket, except for certain interagency documents, will serve as the record for judicial review. (See CAA section 307(d)(7)(A).)

F. Executive Order 13132: Federalism

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires us 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 Section 6 of Executive Order 13132, we 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 we consult with State and local officials early in the process of developing the proposed regulation. We also may not issue a regulation that has federalism implications and that preempts State law, unless we consult with State and local officials early in the process of developing the proposed regulation.

This action does not have federalism implications. The 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. Today's action does not create a mandate on State, local or tribal governments. This action does not impose any new or additional enforceable duties on these entities. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

Executive Order 13045 applies to any rule that the EPA determines (1) is economically significant as defined under Executive Order 12866, and (2) that the environmental health or safety risk addressed by the rule has 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 removal action is not subject to Executive Order 13045, entitled Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), because it is not an economically significant regulatory action as defined by Executive Order 12866, and the action does not address an environmental health or safety risk that would have a disproportionate effect on children.

H. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 6, 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.'' ''Policies that have tribal implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes.''

This rule does not have tribal implications. 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, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

I. National Technology Transfer and Advancement Act

Under section 12(d) of the National Technology Transfer and Advancement Act (NTTAA), Public Law 104–113 (March 7, 1996), we are required to use voluntary consensus standards in our regulatory and procurement activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, business practices, etc.) which are adopted by voluntary consensus standard bodies. Where we do not use available and potentially applicable voluntary consensus standards, the NTTAA requires us to provide Congress, through OMB, an explanation of the reasons for not using such standards. This action does not involve technical standards. The purpose of today's action is to remove portions of a rule, reinstating previous provisions, and not to impose new substantive requirements or to adopt new technical standards. Consequently, the requirements of NTTAA do not apply.

J. Executive Order 13211 (Energy Effects)

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.

List of Subjects in 40 CFR Part 60

Environmental protection, Administrative practice and procedure, Air pollution control, Continuous emission monitors.

Dated: August 14, 2001.

Christine Todd Whitman,

Administrator.

[FR Doc. 01–21441 Filed 8–24–01; 8:45 am]

BILLING CODE 6560–50–P