

of today's **Federal Register**, rather than file an immediate petition for judicial review of this direct final rule, so that EPA can withdraw this direct final rule and address the comment in the proposed rulemaking. 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, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: April 3, 2009.

**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)(354)(i)(D) and (359)(i)(C) to read as follows:

**§ 52.220 Identification of plan.**

\* \* \* \* \*

(c) \* \* \*

(354) \* \* \*

(i) \* \* \*

(D) Monterey Bay Unified Air Pollution Control District.

(1) Rule 427, “Steam Drive Crude Oil Production Wells,” adopted on January 16, 1980 and amended on October 17, 2007.

\* \* \* \* \*

(359) \* \* \*

(i) \* \* \*

(C) Placer County Air Pollution Control District.

(1) Rule 212, “Storage of Organic Liquids,” adopted on May 24, 1977 and amended on June 19, 1997.

\* \* \* \* \*

[FR Doc. E9–13481 Filed 6–10–09; 8:45 am]

**BILLING CODE 6560–50–P**

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

[EPA–R09–OAR–2009–0142; FRL–8902–1]

**Revisions to the California State Implementation Plan, Antelope Valley Air Quality Management District and South Coast Air Quality Management District**

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

**ACTION:** Direct final rule.

**SUMMARY:** EPA is taking direct final action to approve revisions to the Antelope Valley Air Quality Management District (AVAQMD) and South Coast Air Quality Management District (SCAQMD) portions of the California State Implementation Plan (SIP). These revisions concern particulate matter (PM–10) emissions from open outdoor fires and from wood burning devices. We are approving local rules under the Clean Air Act as amended in 1990 (CAA or the Act).

**DATES:** This rule is effective on August 10, 2009 without further notice, unless EPA receives adverse comments by July 13, 2009. If we receive such comments, we will publish a timely withdrawal in the **Federal Register** to notify the public that this direct final rule will not take effect.

**ADDRESSES:** Submit comments, identified by docket number EPA–R09–OAR–2009–0142, by one of the following methods:  
 • *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the online instructions.

• *E-mail:* [steckel.andrew@epa.gov](mailto:steckel.andrew@epa.gov).

• *Mail or deliver:* Andrew Steckel (Air–4), U.S. Environmental Protection Agency Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

**Instructions:** All comments will be included in the public docket without change and may be made available online at <http://www.regulations.gov>, including any personal information provided, unless the comment includes Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Information that you consider CBI or otherwise protected

should be clearly identified as such and should not be submitted through <http://www.regulations.gov> or e-mail. [Http://www.regulations.gov](http://www.regulations.gov) is an “anonymous access” system, and EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send e-mail directly to EPA, your e-mail address will be automatically captured and included as part of the public comment. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

**Docket:** The index to the docket for this action is available electronically at <http://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:** Alfred Petersen, EPA Region IX, (415) 947–4118, [petersen.alfred@epa.gov](mailto:petersen.alfred@epa.gov).

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

**Table of Contents**

- I. The State’s Submittal
  - A. What rules did the State submit?
  - B. Are there other versions of these rules?
  - C. What are the purposes of the submitted new rule and rule revisions?
- II. EPA’s Evaluation and Action
  - A. How is EPA evaluating the rules?
  - B. Do the rules meet the evaluation criteria?
  - C. EPA recommendation to further improve a rule
  - D. Public comment and final action
- III. Statutory and Executive Order Reviews

**I. The State’s Submittal**

*A. What rules did the State submit?*

Table 1 lists the rules we are approving with the dates that the rules were amended by the local air agencies and submitted by the California Air Resources Board (CARB).

TABLE 1—SUBMITTED RULES

Local agency	Rule No.	Rule title	Amended or adopted	Submitted
AVAQMD .....	444	Open Outdoor Fires .....	02/19/08 Amended .....	07/18/08
SCAQMD .....	445	Wood Burning Devices .....	03/07/08 Adopted .....	07/18/08

On August 22, 2008, the submittal of AVAQMD Rule 444 and SCAQMD Rule 445 were determined to meet the completeness criteria in 40 CFR part 51, appendix V, which must be met before formal EPA review.

*B. Are there other versions of these rules?*

A version of AVAQMD Rule 444 was approved into the SIP on July 6, 1982 (47 FR 29231).

There is no version of SCAQMD Rule 445 in the SIP.

*C. What are the purposes of the submitted new rule and rule revisions?*

Section 110(a) of the Clean Air Act (CAA) requires States to submit regulations that control volatile organic compounds, nitrogen oxides, particulate matter, and other air pollutants which harm human health and the environment. These rules were developed as part of local air districts' programs to control these pollutants.

The purposes of the submitted AVAQMD Rule 444 revisions relative to the SIP rule are as follows:

- *444(A)*: The rule is revised to apply the District Smoke Management Program to open burning while minimizing smoke impacts to the public.
- *444(B)(13)*: An "Approved Burn Plan" is replaced with a "Smoke Management Plan."
- *444(C)(1)*: The requirement is added for all burn projects that are greater than 10 acres or that are estimated to produce more than one ton of particulate matter shall be conducted in accordance with the Smoke Management Program.
- *444(C)(2)*: A list added of materials prohibited from open burning.
- *444(C)(3)*: The permission is added to burn during adverse meteorological conditions in a case where there would be an imminent and substantial economic loss, providing a special permit is obtained from the District and not from a local fire agency.
- *444(C)(4)*: The provision is added for a prescribed burn permittee to obtain from CARB up to 48 hours in advance of the burn day a permissive-burn, marginal-burn, or no-burn forecast.
- *444(C)(6)*: The requirements are added for ignition, stacking, drying, and time of day for open burning with the exception of prescribed burning.
- *444(C)(7)*: The list is added for burning applications that require a permit, such as (a) empty containers used for explosives, (b) right-of-way clearance for a public entity or utility, or (c) wood waste.
- *444(C)(9)*: The requirement is added for a Smoke Management Plan for

prescribed burning in (a) forest management, (b) range improvement, and (c) wildland vegetation management.

- *444(D)(1)*: Exemptions are deleted for (a) open fires in agricultural operations at over 3,000 feet elevation and (b) open fires in agricultural burning at over 6,000 feet elevation.

The primary purpose of SCAQMD Rule 445 is to reduce the emission of particulate matter from wood burning devices. The rule contains the following requirements:

- *445(d)(1)*: No person shall install a woodburning device in a new development unless it is (A) an EPA Phase II-certified woodburning heater, (B) a pellet-fueled heater, (C) a masonry heater, (D) a woodburning device that meets emission standards in 40 CFR part 60, subpart AAA, or (E) a dedicated gaseous-fueled fireplace.
- *445(d)(3)*: No person shall burn fuel not intended for a woodburning device.
- *445(d)(4)*: A commercial firewood facility shall sell seasoned wood only from July 1 through the end of February but may sell both seasoned and unseasoned wood the balance of the year.
- *445(e)*: No person shall burn wood indoors or outdoors when a mandatory woodburning curtailment day is forecast.
- *445(f)*: Devices exempt from requirements of the rule are (1) cookstoves, (2) devices with no gas infrastructure near new developments, (3) permanently-installed devices upon property sale, (4) properties registered as a historic site, and (5) manufactured firelogs.
- *445(f)(6)*: Circumstances exempt from requirements of the rule are (A) sole source of heat, (B) low income household, (C) no gas infrastructure available, (D) elevation over 3,000 ft, and (E) ceremonial fires.

EPA's technical support document (TSD) has more information about these rules.

## II. EPA's Evaluation and Action

### A. How is EPA evaluating the rules?

Generally, SIP rules must be enforceable (see section 110(a) of the CAA) and must not relax existing requirements (see sections 110(l) and 193). SIP rules in serious PM-10 nonattainment areas must require for significant sources best available control measures (BACM), including best available control technology (BACT) (see section 189(b)). AVAQMD and SCAQMD regulate serious PM-10 nonattainment areas (see 40 CFR part 81), so AVAQMD Rule 444 and

SCAQMD Rule 445 must fulfill the requirements of BACM/BACT.

Guidance and policy documents that we used to help evaluate rules consistently include the following:

- *Requirements for Preparation, Adoption, and Submittal of Implementation Plans*, U.S. EPA, 40 CFR part 51.
- *PM-10 Guideline Document* (EPA-452/R-93-008).
- *Technical Information Document for Residential Wood Combustion Best Available Control Measures*, (EPA-450/2-92-002).
- *Minimum BACM/RACM Control Measures for Residential Wood Combustion Rules*, EPA Region IX (September 16, 2008).

*B. Do the rules meet the evaluation criteria?*

We believe that AVAQMD Rule 444 and SCAQMD Rule 445 are consistent with the relevant policy and guidance regarding enforceability, BACM/BACT, and SIP relaxations and should be given full approval. The TSD has more information on our evaluation.

*C. EPA recommendation to further improve a rule*

The TSD describes an additional rule revision that does not affect EPA's current action but is recommended for the next time the local agency modifies SCAQMD Rule 445.

*D. Public comment and final action*

As authorized in section 110(k)(3) of the CAA, EPA is fully approving the submitted rules because we believe they fulfill all relevant requirements. We do not think anyone will object to this approval, so we are finalizing it without proposing it in advance. However, in the Proposed Rules section of this **Federal Register**, we are simultaneously proposing approval of the same submitted rule. If we receive adverse comments by July 13, 2009, we will publish a timely withdrawal in the **Federal Register** to notify the public that the direct final approval will not take effect and we will address the comments in a subsequent final action based on the proposal. If we do not receive timely adverse comments, the direct final approval will be effective without further notice on August 10, 2009. This will incorporate the rule into the Federally enforceable SIP.

Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that

are not the subject of an adverse comment.

### III. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a “significant regulatory action” and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, “Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use” (66 FR 28355, May 22, 2001). This action merely approves State law as meeting Federal requirements and imposes no additional requirements beyond those imposed by State law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under State law and does not impose any additional enforceable duty beyond that required by State law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, 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 by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does 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 (64 FR 43255, August 10, 1999). This action 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. This rule also is not subject to Executive Order 13045 “Protection of Children from Environmental Health Risks and Safety Risks” (62 FR 19885, April 23, 1997), because it approves a State rule implementing a Federal standard.

In reviewing SIP submissions, EPA’s role is to approve State choices, provided that they meet the criteria of the Clean Air Act. In this context, in the

absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. 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.*).

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**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

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 *August 10, 2009*. 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, Incorporation by reference, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements.

Dated: April 3, 2009.

**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 paragraph (c)(359)(i)(B)(2) and (D) to read as follows:

#### § 52.220 Identification of plan.

\* \* \* \* \*

(c) \* \* \*

(359) \* \* \*

(i) \* \* \*

(B) \* \* \*

(2) Rule 445, “Wood Burning Devices,” adopted on March 7, 2008.

\* \* \* \* \*

(D) Antelope Valley Air Quality Management District.

(1) Rule 444, “Open Outdoor Fires,” adopted on October 8, 1976 and revised on February 19, 2008.

\* \* \* \* \*

[FR Doc. E9–13483 Filed 6–10–09; 8:45 am]

**BILLING CODE 6560–50–P**

### ENVIRONMENTAL PROTECTION AGENCY

#### 40 CFR Part 62

[EPA–RO4–OAR–2008–0160; FRL–8912–4]

#### Approval and Promulgation of State Plans for Designated Facilities and Pollutants; State of Tennessee and Commonwealth of Kentucky

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

**ACTION:** Final rule, notice of administrative change.

**SUMMARY:** EPA is notifying the public that it has received negative declarations for Hospital/Medical/ Infectious Waste Incinerator (HMIWI) units from the State of Tennessee and the Commonwealth of Kentucky. These negative declarations certify that HMIWI units subject to the requirements of sections 111(d) and 129 of the Clean Air Act (CAA) do not exist in areas covered by the air pollution control programs of Tennessee Division of Air Pollution Control and Kentucky Division for Air Quality.

**DATES:** This final action is effective July 13, 2009 without further notice.

**ADDRESSES:** *Docket:* All documents in the electronic docket are listed in the [www.regulations.gov](http://www.regulations.gov) index. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is