

submittals are used to assess conformity of transportation plans, transportation improvement programs, and transportation projects.

(i) Incorporation by reference.

(A) Colorado Air Quality Control Commission, "Ambient Air Quality Standards" regulation 5CCR 1001-14, Section A.1. Budgets for the Denver Nonattainment Area (Modeling Domain) PM10, Sections A.2. and A.3., and Sections B and C, adopted on February 16, 1995, effective April 30, 1995, as amended by the Colorado General Assembly through enactment of Colorado Senate Bill 95-110, which Bill was enacted on May 5, 1995 and signed by the Governor of Colorado on May 31, 1995. (See paragraph (c)(84)(i)(B) of this section).

(B) Colo. Rev. Stat. section 25-7-105(1)(a)(III), enacted by the Colorado General Assembly on May 5, 1995 as part of Colorado Senate Bill 95-110 and signed by the Governor of Colorado on May 31, 1995.

(C) Colorado Air Quality Control Commission "Ambient Air Quality Standards" regulation 5CCR 1001-14, Section A.1. Budgets for the Denver Nonattainment Area (Modeling Domain) Nitrogen Oxides, as adopted June 15, 1995, effective August 30, 1995.

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[AZ 059-0011; FRL-5988-9]

#### Approval and Promulgation of Implementation Plans; Arizona State Implementation Plan Revision, Maricopa County

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

**ACTION:** Final rule.

**SUMMARY:** EPA is finalizing limited approval and limited disapproval of revisions to the Arizona State Implementation Plan (SIP) proposed in the **Federal Register** on February 9, 1998. This final action will incorporate these rules into the federally approved SIP. The intended effect of finalizing this action is to regulate emissions of particulate matter (PM) in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). The revised rules control PM emissions from residential wood combustion. Thus, EPA is finalizing simultaneous limited approval and limited disapproval under CAA

provisions regarding EPA action on SIP submittals and general rulemaking authority because these revisions, while strengthening the SIP, also do not fully meet the CAA provisions regarding plan submissions and requirements for nonattainment areas. As a result of this limited disapproval EPA will be required to impose highway funding or emission offset sanctions under the CAA unless the State submits and EPA approves corrections to the identified deficiencies within 18 months of the effective date of this disapproval. Moreover, EPA will be required to promulgate a Federal implementation plan (FIP) unless the deficiencies are corrected within 24 months of the effective date of this disapproval.

**EFFECTIVE DATE:** This action is effective on April 30, 1998.

**ADDRESSES:** Copies of the rules and EPA's evaluation report for the rules are available for public inspection at EPA's Region IX office during normal business hours. Copies of the submitted rules are also available for inspection at the following locations:

Environmental Protection Agency, Air Docket (6102), 401 "M" Street, S.W., Washington, D.C. 20460  
Arizona Department of Environmental Quality, Air Quality Division, 3033 North Central Avenue, Phoenix, AZ 85012

Maricopa County Environmental Services Division, Air Quality Division, 1001 North Central Avenue, #201, Phoenix, AZ 85004

**FOR FURTHER INFORMATION CONTACT:** Patricia A. Bowlin, Rulemaking Office, AIR-4, Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105-3901, Telephone: (415) 744-1188.

#### SUPPLEMENTARY INFORMATION:

##### I. Applicability

The rules being approved into the Arizona SIP are Maricopa County (Maricopa) Rule 318, Approval of Residential Woodburning Devices, and the Maricopa Residential Woodburning Restriction Ordinance (Woodburning Ordinance). These rules were submitted by the Arizona Department of Environmental Quality (ADEQ) to EPA on August 31, 1995.

##### II. Background

On February 9, 1998 in 63 FR 6505, EPA proposed granting limited approval and limited disapproval into the Arizona SIP of the following rules: Maricopa Rule 318 and the Woodburning Ordinance. Rule 318 and the Woodburning Ordinance were

adopted by Maricopa Environmental Services Department on October 5, 1994. These rules were adopted as part of Maricopa's efforts to achieve the National Ambient Air Quality Standard (NAAQS) for PM-10 and in response to CAA requirements. A detailed discussion of the background for the rules and the nonattainment area is provided in the proposed rule (PR) cited above.

EPA has evaluated the submitted rules for consistency with the requirements of the CAA and EPA regulations and EPA's interpretation of these requirements as expressed in the various EPA policy guidance documents referenced in the PR. EPA is finalizing the limited approval of these rules in order to strengthen the SIP. EPA is also finalizing the limited disapproval requiring the correction of the following rule deficiencies: inappropriate discretion by the Control Officer (Director's discretion) in the approval of woodburning devices and reference of non-EPA-approved woodburning device certification procedures. A detailed discussion of the rule provisions and evaluations has been provided in the PR and in the technical support document (TSD) available at EPA's Region IX office (TSD dated January 1998).

#### III. Response to Public Comments

A 30-day public comment period was provided in 63 FR 6505. EPA received comment letters on the PR from two parties: ADEQ and the Hearth Products Association (HPA). The comments have been evaluated by EPA and a summary of the comments and EPA's responses are set forth below.

##### Comment

ADEQ comments that the reference in Rule 318 to non-EPA-approved certification procedures for woodburning devices is necessary because EPA's wood heater standards found in 40 CFR Part 60 Subpart AAA do not apply to fireplaces and other woodburning technologies found in Maricopa County. ADEQ believes that EPA cannot disapprove the use of non-EPA procedures when EPA has neither developed federal certification procedures nor approved locally-developed certification procedures for clean woodburning technologies that are not addressed in Subpart AAA. ADEQ states that EPA needs to approve the certification methodology so that air pollution agencies can continue to address woodsmoke emissions from devices not subject to EPA certification.

### Comment

HPA comments that EPA's wood heater certification standards in Subpart AAA do not address all woodburning devices and that the non-EPA-approved testing and certification protocols referenced in submitted Rule 318 are "technically and legally appropriate" for evaluating woodburning devices not addressed by Subpart AAA. HPA notes that EPA has approved Colorado's Regulation No. 4 which provides for the approval of woodburning devices that are not addressed by EPA's certification procedures. HPA states that certification protocols for woodburning devices that are not subject to Subpart AAA provide incentives for the development of clean woodburning technologies and are necessary to avoid denial of access to key markets.

### Response

EPA acknowledges that its certification standards in Subpart AAA do not cover all woodburning technologies and that Maricopa's residential wood combustion control program addresses woodburning devices that are not covered by Subpart AAA. Certification standards for woodburning devices can be approved into SIPs if they are submitted for approval to EPA and are found by EPA to meet federal standards and criteria. For example, the pellet stove certification procedure in Colorado Regulation No. 4 adopted on June 24, 1993 was submitted to and approved by EPA. 40 CFR 52.320(c)(82)(i)(A). Rule 318, however, references a certification protocol that has never been submitted to EPA for review and approval. For this reason and the director's discretion deficiency discussed elsewhere in the PR, EPA cannot fully approve Maricopa Rule 318 and the associated Woodburning Ordinance.

### IV. EPA Action

EPA is finalizing limited approval and limited disapproval of the above-referenced rules. The limited approval of these rules is being finalized under section 110(k)(3) in light of EPA's authority pursuant to section 301(a) to adopt regulations necessary to further air quality by strengthening the SIP. The approval is limited because EPA's action also contains a simultaneous limited disapproval. In order to strengthen the SIP, EPA is granting limited approval of these rules under sections 110(k)(3) and 301(a) of the CAA. This action approves the rules into the SIP as federally enforceable rules.

At the same time, EPA is finalizing limited disapproval of these rules because they contain deficiencies, and, as such, the rules do not fully meet the requirements of Part D of the Act. As stated in the PR, upon the effective date of this FR, the 18-month clock for sanctions and the 24-month FIP clock will begin. Sections 179(a) and 110(c). If the State does not submit the required corrections and EPA does not approve the submittal within 18 months of the FR, either the highway sanction or the offset sanction will be imposed at the 18-month mark. It should be noted that the rules covered by this FR have been adopted by the Maricopa and are currently in effect in Maricopa County. EPA's limited disapproval action will not prevent a Maricopa or EPA from enforcing these rules.

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 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.

### V. Administrative Requirements

#### A. Executive Order 12866

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

#### 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 sections 110 and 301, 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 flexibility analysis would constitute Federal inquiry into the economic reasonableness of State action. The

Clean Air Act forbids EPA to base its action 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

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 June 1, 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, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements, Particulate matter.

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

Dated: March 20, 1998.

**Felicia Marcus,**

*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 D—Arizona

2. Section 52.120 is amended by adding paragraph (c)(82)(i)(D) to read as follows:

#### § 52.120 Identification of plan.

\* \* \* \* \*

(c) \* \* \*  
(82) \* \* \*  
(i) \* \* \*

(D) Rule 318 and Residential Woodburning Restriction Ordinance, adopted on October 5, 1994.

\* \* \* \* \*

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#### ENVIRONMENTAL PROTECTION AGENCY

#### 40 CFR Parts 52 and 81

[CA 041-0067b; FRL-5983-9]

#### Approval and Promulgation of State Implementation Plans and Redesignation of California's Ten Federal Carbon Monoxide Planning Areas to Attainment

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

**ACTION:** Direct final rule.

**SUMMARY:** EPA is taking direct final action on maintenance plans and redesignation requests submitted by the California Air Resources Board (CARB) to redesignate ten of California's federal carbon monoxide planning areas from nonattainment to attainment for the National Ambient Air Quality Standards (NAAQS) for carbon monoxide (CO). They are: Bakersfield Metropolitan Area, Fresno Urbanized Area, Lake Tahoe South Shore Area, Sacramento Area, San Francisco-Oakland-San Jose Area, Chico Urbanized Area, Lake Tahoe North Shore Area, Modesto Urbanized Area, San Diego Area, and Stockton Urbanized Area. Under the Clean Air Act as amended in 1990 (CAA), designations can be revised if sufficient data is available to warrant such revisions. In this action, EPA is approving California's maintenance plans and redesignation requests because they meet the requirements set forth in the CAA. In addition, EPA is approving a related State Implementation Plan (SIP) submission by CARB, an Air Quality Attainment Plan for CO for Fresno.

EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should relevant adverse comments be filed.

**DATES:** This rule is effective June 1, 1998 without further notice unless the Agency receives relevant adverse comments by April 30, 1998. If the effective date is delayed timely notice will be published in the **Federal Register**.

**ADDRESSES:** As indicated in the parallel proposed rule, comments should be addressed to the EPA contact below. The rulemaking docket for this notice, Docket No. 98-XX, may be inspected and copied at the following location during normal business hours. A reasonable fee may be charged for copying parts of the docket.

Environmental Protection Agency, Region 9, Air Division, Air Planning Office (AIR-2), 75 Hawthorne Street, San Francisco, CA 94105-3901.  
Environmental Protection Agency, Air Docket (6102), 401 "M" Street SW., Washington, DC 20460.

Copies of the SIP materials are also available for inspection at the addresses listed below:

California Air Resources Board, 2020 L Street, Sacramento, CA 92123-1095.

San Joaquin Valley Unified APCD, 1999 Tuolumne St., Suite 200, Fresno, CA 93721.

Placer County, DeWitt Center, 11464 B Avenue, Auburn, CA 95603.

Sacramento Metropolitan APCD, 8411 Jackson Road, Sacramento, CA 95826.

Bay Area Air, Quality Management District, 939 Ellis Street, San Francisco, CA 94109.

Butte County, 2525 Dominic Drive, Suite J, Chico, CA 95928-7184.

El Dorado County, 2850 Fairlane Ct., Bldg. C, Placerville, CA 95667-4100.

Yolo-Solano County, 1947 Galileo Ct., Suite 103, Davis, CA 95616-4882.

San Diego County, Air Pollution Control District, 9150 Chesapeake Drive, San Diego, CA 92123-1095.

#### FOR FURTHER INFORMATION CONTACT:

Larry A. Biland, Air Planning Office (AIR-2), Air Division, U.S. EPA, Region 9, 75 Hawthorne Street, San Francisco, CA, 94105-3901. Telephone: (415) 744-1227.

#### SUPPLEMENTARY INFORMATION:

#### I. Background

##### A. Areas Requesting Redesignation

The ten areas requesting redesignation were determined to be nonattainment for CO in the November 6, 1991, **Federal Register** (Vol. 56, No. 215, pp. 56723-56725). CARB's emission control programs, including strict motor vehicle emission standards and the clean fuels program, have reduced CO emissions. The decrease in emissions has improved CO air quality so that they now attain the National Ambient Air Quality Standard (NAAQS) and are therefore eligible for redesignation to attainment for the national CO standard. The ten areas are:

Bakersfield Metropolitan Area  
Chico Urbanized Area  
Fresno Urbanized Area  
Lake Tahoe No. Shore Area<sup>1</sup>  
Lake Tahoe So. Shore Area<sup>2</sup>  
Modesto Urbanized Area  
Sacramento Area<sup>3</sup>  
San Diego Area<sup>4</sup>  
San Francisco-Oakland-San Jose Area<sup>5</sup>  
Stockton Urbanized Area

Eight of the areas were classified as moderate nonattainment, while two areas (Lake Tahoe No. Shore Area and Bakersfield Metropolitan Area) were unclassified. Moderate areas are those with an eight-hour average CO design

<sup>1</sup> Placer County part of Lake Tahoe Air Basin.

<sup>2</sup> El Dorado County part of Lake Tahoe Air Basin.

<sup>3</sup> Urbanized parts of Sacramento, Placer, and Yolo Counties.

<sup>4</sup> Western part of County only.

<sup>5</sup> Urbanized parts of Alameda, Contra Costa, Marin, Napa, San Francisco, San Mateo, Santa Clara, Solano, and Sonoma Counties.