(Authority: 38 U.S.C. 3703, 3704)

[FR Doc. 02–4866 Filed 2–28–02; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA248–0293a; FRL–7149–6]

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

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve a revision to the El Dorado County Air Pollution Control District's (EDCAPCD) portion of the California State Implementation Plan (SIP). The action consists of incorporating a revised version of Rule 523, New Source Review, into the SIP. The intended effect of approving Rule 523 is to regulate air pollution in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). Rule 523 consists of definitions of all terms relating to new sources and modifications to existing sources of air pollution, source permitting requirements, including applicability, major source definitions, offsets, increment analysis, and Lowest Achievable Emission Rate (LAER)/Best Available Control Technology (BACT). EPA is finalizing the approval of Rule 523 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 rule is effective on April 30, 2002 without further notice, unless EPA receives adverse comments by April 1, 2002. If we receive such comment, we will publish a timely withdrawal in the **Federal Register** to notify the public that this rule will not take effect.

ADDRESSES: Mail comments to Roger Kohn, Permits Office (AIR–3), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

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

Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco, CA 94105

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 1001 ''I'' Street, Sacramento, CA 95812.

El Dorado County Air Pollution Control District, 2850 Fairlane Ct., Bldg. C, Placerville, CA 95667–4100.

FOR FURTHER INFORMATION CONTACT: Roger Kohn, Permits Office (AIR–3), U.S. Environmental Protection Agency, Region IX, (415) 972–3973, e-mail: *kohn.roger@epa.gov*

SUPPLEMENTARY INFORMATION: Throughout this document, ''we,'' ''us'' and ''our'' refer to EPA.

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I. The State's Submittal

A. What Rule Did the State Submit?

Table 1 lists the rule we are approving with the date that it was adopted by EDCAPCD and submitted by the California Air Resources Board (CARB).

TABLE 1.—SUBMITTED RULE

Local Agency	Rule #	Rule title	Adopted	Submitted
EDCAPCD	523	New Source Review	11/20/01	12/18/01

On January 4, 2002, this rule submittal was found 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 This Rule?

We finalized a limited approval and limited disapproval of Rule 523 on February 2, 2000 (65 FR 4887). The limited approval portion of that rulemaking incorporated Rule 523 into the federally enforceable SIP and the limited disapproval portion of triggered sanctions and FIP clocks under sections 179(a) and 110(c) of the CAA. The EDCAPCD adopted a revision to the SIP-approved version and CARB submitted it to us on May 23, 2001. This revision was submitted to correct the deficiencies noted in EPA's February 2, 2000 rulemaking. Rule 523 was subsequently revised and submitted again on the dates indicated in Table 1 above. While we can act on only the most recently submitted version of the rule, we have reviewed materials provided with the May 23, 2001 submittal.

C. What is the Purpose of the Submitted Rule Revision?

The rule revision contains new or revised provisions on offsets and interprecursor trading that correct the four rule deficiencies noted in our February 2, 2000 rulemaking. A detailed discussion of the rule deficiencies and the EDCAPCD rule revisions that corrected them is included in the Technical Support Document (TSD) for this rulemaking.

II. EPA's Evaluation and Action

A. How is EPA Evaluating the Rule?

Generally, SIP rules must be enforceable (see section 110(a) of the Act) and must not relax existing requirements (see sections 110(l) and 193).

Guidance and policy documents that we used to define specific requirements include the following:

The air quality planning requirements for nonattainment new source review (NSR) are set out in part D of title I of the Clean Air Act. EPA has issued a ''General Preamble'' describing EPA's preliminary views on how EPA intends to review SIPs and SIP revisions submitted under part D, including those State submittals containing nonattainment NSR SIP requirements (see 57 FR 13498 (April 16, 1992) and 57 FR 18070 (April 28, 1992)).

B. Does the Rule Meet the Evaluation Criteria?

We believe this rule is consistent with the relevant policy and guidance regarding enforceability, SIP relaxations, and nonattainment NSR requirements.

C. Public Comment and Final Action

As authorized in section 110(k)(3) of the Act, EPA is fully approving the submitted rule because we believe it fulfills all relevant requirements. We do not think anyone will object to this, so we are finalizing the approval without proposing it in advance. However, in the Proposed Rules section of this **Federal Register**, we are also proposing approval of the same submitted rule. If we receive adverse comments by April 1, 2002, 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 April 30, 2002. This will incorporate the rule into the federally enforceable SIP and permanently terminate any sanctions or FIP clocks associated with our January 15, 1999 action.

III. Background Information

Why Was This Rule Submitted?

Part D of the CAA (sections 171, 172, 173, 182, 187, and 189) requires that States incorporate into the applicable SIP an acceptable permitting program for the preconstruction review of new or modified major stationary sources in nonattainment areas. In addition, section 110(a)(2)(C) of the CAA requires that States regulate the modification and construction of all sources, including non-major sources, as necessary to assure that national ambient air quality standards are achieved. The 1990 Amendments created certain new requirements for States, especially relating to ozone and PM–10 nonattainment areas. EPA's requirements are contained in 40 CFR 51.160 through 51.165 and the Emissions Trading Policy Statement (51 FR 43814). The primary intent of the submitted District rules is to update the applicable SIP to reflect changes in nonattainment area requirements that were mandated by the 1990 Amendments.

IV. Administrative Requirements

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 32111, ''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 is not economically significant.

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 April 30, 2002. 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, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: February 8, 2002.

Wayne Nastri,

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)(291) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(291) Amended regulation for the following APCD was submitted on December 18, 2001, by the Governor's designee.

(i) Incorporation by reference.

(A) El Dorado County Air Pollution Control District.

(*1*) Rule 523, adopted on November 20, 2001.

[FR Doc. 02–4784 Filed 2–28–02; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA248–0293c; FRL–7149–7]

Approval and Promulgation of Implementation Plans; California State Implementation Plan Revision; Interim Final Determination that State has Corrected the Deficiencies

AGENCY: Environmental Protection Agency (EPA).

ACTION: Interim final determination.

SUMMARY: Elsewhere in today's **Federal Register**, EPA published a direct final rulemaking fully approving revisions to the California State Implementation Plan. The revisions concern rules from El Dorado County Air Pollution Control District (EDCAPCD), Rule 523, New Source Review. Also in today's **Federal Register**, EPA published a proposed rulemaking document to provide the public with an opportunity to comment on EPA's action. If a person submits adverse comments on EPA's action within 30 days of publication of the direct final action, EPA will withdraw its direct final action and will consider any comments received before taking final action on the State's submittal. Based on the full approval, EPA is making an interim final determination by this action that EDCAPCD has corrected the deficiencies for which a sanctions clock began on March 3, 2000. This action will stay application of the offset sanction and will defer the application of the highway sanction. Although this action is effective upon publication, EPA will take comment. If no comments are received on EPA's approval of the State's submittal, the direct final action published elsewhere in today's **Federal Register** will also finalize EPA's determination that the State has corrected the deficiencies that started the sanctions clock. If comments are received on EPA's approval and this interim final action, EPA will publish a final document taking into consideration any comments received.

DATES: This interim final determination is effective March 1, 2002. Comments must be received by April 1,2002.

ADDRESSES: Comments should be sent to: Roger Kohn, Permits Office (AIR–3), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105

The state submittal and EPA's analysis for that submittal, which are the basis for this action, are available for public review at the above address and at the following locations:

Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco, CA 94105.

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 Ct., Bldg. C, Placerville, CA 95667–4100.

FOR FURTHER INFORMATION CONTACT: Roger Kohn, Permits Office (AIR–3), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105, Telephone: (415) 972–3973, e-mail: kohn.roger@epa.gov

SUPPLEMENTARY INFORMATION:

I. Background

On May 24, 1994, the State submitted EDCAPCD Rule 523, New Source Review, for which EPA published a limited disapproval in the **Federal Register** on February 2, 2000 (65 FR 4887). EPA's disapproval action started an 18-month clock for the application of one sanction (followed by a second sanction 6 months later) under section 179 of the Clean Air Act (Act) and a 24-month clock for promulgation of a Federal Implementation Plan (FIP) under section 110(c) of the Act. The State subsequently submitted a revised rule on May 23, 2001. EPA has taken direct final action on this submittal pursuant to its modified direct final policy set forth at 59 FR 24054 (May 10, 1994). In the Rules section of this **Federal Register**, EPA is issuing a direct final full approval of the State of California's submittal of EDCAPCD Rule 523, New Source Review. In addition, in the Proposed Rules section of this **Federal Register**, EPA is proposing full approval of the State's submittal.

Based on the proposed and direct final approval, EPA believes that it is more likely than not that the State has corrected the original disapproval deficiencies. Therefore, EPA is taking this final rulemaking action, effective on publication, finding that the State has corrected the deficiencies. However, EPA is also providing the public with an opportunity to comment on this final action. If, based on any comments on this action and any comments on EPA's proposed full approval of the State's submittal, EPA determines that the State's submittal is not fully approvable and this final action was inappropriate, EPA will either propose or take final action finding that the State has not corrected the original disapproval deficiencies. As appropriate, EPA will also issue an interim final determination or a final determination that the deficiencies have not been corrected. Until EPA takes such an action, the application of sanctions will continue to be deferred and or stayed.

This action does not stop the sanctions clock that started for this area on March 3, 2000. However, this action will stay application of the offset sanction and will defer application of the highway sanction. See 59 FR 39832 (August 4, 1994). If EPA's direct final action fully approving the State's submittal becomes effective, such action will permanently stop the sanctions clock and will permanently lift any applied, stayed or deferred sanctions. If EPA must withdraw the direct final action based on adverse comments and EPA subsequently determines that the State, in fact, did not correct the disapproval deficiencies, EPA will also determine that the State did not correct the deficiencies and the sanctions consequences described in the sanctions rule will apply. See 59 FR 39832, to be codified at 40 CFR 52.31.

II. EPA Action

EPA is taking interim final action finding that the State has corrected the disapproval deficiencies that started the sanctions clock. Based on this action, application of the offset sanction will be stayed and application of the highway sanction will be deferred until EPA's direct final action fully approving the State's submittal becomes effective or until EPA takes action proposing or finally disapproving in whole or part the State submittal. If EPA's direct final action fully approving the State submittal becomes effective, at that time any sanctions clocks will be permanently stopped and any applied, stayed or deferred sanctions will be permanently lifted.

Because EPA has preliminarily determined that the State has an approvable plan, relief from sanctions should be provided as quickly as possible. Therefore, EPA is invoking the good cause exception under the Administrative Procedure Act (APA) in not providing an opportunity for