

individual's overall vocational impairment. This means that the disability(ies) must have an identifiable, measurable, or observable causative effect on the overall vocational impairment, but need not be the sole or primary cause of the employment handicap.

(2) When determining the individual's overall vocational impairment, the CP or VRC will consider the factors identified in § 21.50(c).

(3) For determinations made on applications for vocational rehabilitation filed on or after March 30, 1995, but before October 9, 1996, the individual's service-connected disability(ies) need not contribute to the individual's overall vocational impairment.

(Authority: 38 U.S.C. 3101, 3102)

4. Revise § 21.52 to read as follows:

**§ 21.52 Determining serious employment handicap.**

(a) *Requirements for determining serious employment handicap.* For each individual who is found to have an employment handicap, a CP or VRC must make a separate determination of whether the individual has a serious employment handicap. For the purposes of an initial evaluation under § 21.50, a serious employment handicap will be found to exist only if a CP or VRC determines that the individual meets each of the following conditions:

(1) *Significant vocational impairment.* The individual has a significant vocational impairment; that is, a significant impairment of the ability to prepare for, obtain, or keep employment in an occupation consistent with his or her abilities, aptitudes, and interests, considering the factors described in § 21.50 and paragraph (b) of this section.

(2) *Effects of significant impairment not overcome.* The individual has not overcome the effects of the significant vocational impairment through employment in, or qualifying for employment in, an occupation consistent with his or her abilities, aptitudes, and interests. This includes an individual who qualifies for a suitable job, but who does not obtain or keep the job for reasons beyond his or her control.

(Authority: 38 U.S.C. 3102)

(3) *Contribution of the service-connected disability(ies) to the individual's overall significant vocational impairment.* (i) Except as provided in paragraph (a)(3)(ii) of this section, the service-connected disability(ies) must contribute in substantial part to the individual's overall significant vocational

impairment. This means that the disability(ies) must have an identifiable, measurable, or observable causative effect on the overall significant vocational impairment, but need not be the sole or primary cause of the serious employment handicap.

(Authority: 38 U.S.C. 3101)

(ii) For determinations made on applications for vocational rehabilitation filed on or after March 30, 1995, but before October 9, 1996, the individual's service-connected disability(ies) need not contribute to the individual's overall significant vocational impairment.

(b) *Factors for assessment during the initial evaluation, when determining whether a significant vocational impairment exists.* The combination of all restrictions and their effects on the individual define the extent of the vocational impairment and its significance. When determining whether the individual has a significant vocational impairment, VA will develop and assess the following factors and their effects:

- (1) Number of disabling conditions;
- (2) Severity of disabling condition(s);
- (3) Existence of neuropsychiatric condition(s);
- (4) Adequacy of education or training for suitable employment;
- (5) Number, length, and frequency of periods of unemployment or underemployment;
- (6) A pattern of reliance on government support programs, such as welfare, service-connected disability compensation, nonservice-connected disability pension, worker's compensation, or Social Security disability;

(7) Extent and complexity of services and assistance the individual needs to achieve rehabilitation;

(8) Negative attitudes toward individuals with disabilities and other evidence of restrictions on suitable employment, such as labor market conditions; discrimination based on age, race, gender, disability or other factors; alcoholism or other substance abuse; and

(9) Other factors that relate to preparing for, obtaining, or keeping employment consistent with the individual's abilities, aptitudes, and interests.

(Authority: 38 U.S.C. 3102, 3106)

**Subpart M—Vocational Training and Rehabilitation for Certain Children of Vietnam Veterans—Spina Bifida and Covered Birth Defects**

5. Revise the authority citation for part 21, subpart M to read as follows:

**Authority:** 38 U.S.C. 101, 501, 512, 1151 note, ch. 18, 5112, and as noted in specific sections.

**§ 21.8032 [Amended]**

6. In § 21.8032, amend paragraph (a) by removing “§§ 21.50(b)(5)” and adding, in its place, “§§ 21.50(b)(3)”.

[FR Doc. E6-14079 Filed 8-25-06; 8:45 am]

BILLING CODE 8320-01-P

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

[EPA-R09-OAR-2006-0590; FRL-8213-4]

**Approval and Promulgation of Implementation Plans; Revisions to the Nevada State Implementation Plan; Requests for Rescission**

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

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing, under the Clean Air Act, approval of revisions to the applicable state implementation plan for the State of Nevada and disapproval of other revisions. These revisions involve certain regulations and statutes for which the State of Nevada is requesting rescission. EPA is also proposing approval of certain updated statutes submitted by the State of Nevada as replacements for outdated statutes in the applicable plan. The approval proposed herein is contingent upon receipt of certain public notice and hearing documentation from the State of Nevada. EPA is proposing this action under the Clean Air Act obligation to take action on State submittals of revisions to state implementation plans. The intended effect is to rescind unnecessary provisions from the applicable plan, retain necessary provisions, and approve replacement provisions for certain statutes for which rescissions are proposed for disapproval. EPA is taking comments on this proposal and plans to follow with a final action.

**DATES:** Any comments must arrive by *September 27, 2006*.

**ADDRESSES:** Submit comments, identified by docket number EPA-R09-OAR-2006-0590, by one of the following methods:

1. Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the on-line instructions.

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

3. Mail or deliver: Andrew Steckel (Air-4), U.S. Environmental Protection Agency Region IX, 75 Hawthorne Street, San Francisco, CA 94105-3901.

*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 [www.regulations.gov](http://www.regulations.gov) or e-mail. [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 [www.regulations.gov](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:** Julie Rose, EPA Region IX, (415) 947-4126, [rose.julie@epa.gov](mailto:rose.julie@epa.gov).

**SUPPLEMENTARY INFORMATION:**

Throughout this document, the terms “we,” “us” and “our” refer to EPA.

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**I. The State’s Submittal**

*A. Which rules and statutes did the state submit for rescission?*

The State of Nevada’s Department of Conservation and Natural Resources, Division of Environmental Protection

(NDEP) submitted a large revision to the applicable SIP on January 12, 2006. This 2006 SIP revision submittal supersedes the regulatory portion of the earlier SIP revision submittal dated February 16, 2005.<sup>1</sup> On March 26, 2006, we found that the Nevada SIP submittal dated January 12, 2006 satisfied the completeness criteria in 40 CFR part 51, appendix V, which must be met before formal EPA review.

The primary purpose of this SIP revision is to clarify and harmonize the provisions approved by EPA into the applicable SIP with the current provisions adopted by the State. Because this revision incorporates so many changes from the 1970s and 1980s vintage SIP regulations, EPA has decided to review and act on the submittal in a series of separate actions. The first such action was proposed in the **Federal Register** on September 13, 2005 (70 FR 53975) and finalized on March 27, 2006 (71 FR 15040). The second such action was proposed in the **Federal Register** on June 9, 2006 (71 FR 33413).

In today’s action, we are taking another step in the process of acting on the State’s January 12, 2006 SIP revision submittal by proposing action on the State’s request for rescission of nearly 200 rules and statutes currently approved in the applicable SIP.<sup>2</sup> The remaining portions of the submittal will be acted on in future **Federal Register** actions.

*B. What is the regulatory history of the Nevada SIP?*

Pursuant to the Clean Air Amendments of 1970, the Governor of

<sup>1</sup> The February 16, 2005 SIP submittal also includes documentation of public notice and hearing for new or amended rules. The January 12, 2006 SIP submittal was not a complete re-submittal of the earlier submittal in that it did not include this documentation.

<sup>2</sup> Of the nearly 200 rules and statutes for which NDEP requests rescission, we are proposing action today on all but 15, including 12 that we are deferring to separate rulemakings and 3 that we plan to take no action on. The rules and statutes that we are deferring include rule 25 of general order number 3 of the Nevada Public Service Commission; article 1.60—Effective date; article 1.72—Existing facility; NAC 445.535—Kilogram-calorie; NAC 445.655 Abbreviations; article 13.1.3(3) [related to minor source BACT]; article 16.3.3.1—Opacity from kilns; NAC 445.667—Excess emissions: scheduled maintenance, testing, malfunctions; NAC 445.694—Emission discharge information; NAC 445.706(2)—Application date; payment of fees; NAC 445.715—Operation permits: revocation; and NRS 704.820 to 704.900—Construction of utility facilities: utility environmental protection act. We do not plan to take action on article 1.207—vehicle trip, article 14 (14.1 to 14.5.1.4)—supplementary control system (submitted June 14, 1974), and article 14.1—supplementary control system (submitted November 17, 1981) because they are not in the applicable SIP.

Nevada submitted the original Nevada SIP to EPA in January 1972. EPA approved certain portions of the original SIP and disapproved other portions under CAA section 110(a). See 37 FR 10842 (May 31, 1972). For some of the disapproved portions of the original SIP, EPA promulgated substitute provisions under CAA section 110(c).<sup>3</sup> This original SIP included various rules, codified as articles within the Nevada Air Quality Regulations (NAQR), and various statutory provisions codified in chapter 445 of the Nevada Revised Statutes (NRS). In the early 1980’s, Nevada reorganized and re-codified its air quality rules into sections within chapter 445 of the Nevada Administrative Code (NAC). Today, Nevada codifies its air quality regulations in chapter 445B of the NAC and codifies air quality statutes in chapter 445B (“Air Pollution”) of title 40 (“Public Health and Safety”) of the NRS.

Nevada adopted and submitted many revisions to the original set of regulations and statutes in the SIP, some of which EPA approved on February 6, 1975 at 40 FR 5508; on March 26, 1975 at 40 FR 13306; on January 9, 1978 at 43 FR 1341; on January 24, 1978 at 43 FR 3278; on August 21, 1978 at 43 FR 36932; on July 10, 1980 at 45 FR 46384; on April 14, 1981 at 46 FR 21758; on August 27, 1981 at 46 FR 43141; on March 8, 1982 at 47 FR 9833; on April 13, 1982 at 47 FR 15790; on June 18, 1982 at 47 FR 26386; on June 23, 1982 at 47 FR 27070; on March 27, 1984 at 49 FR 11626. Since 1984, EPA has approved very few revisions to Nevada’s applicable SIP despite numerous changes that have been adopted by the State Environmental Commission. As a result, the version of the rules enforceable by NDEP is often quite different from the SIP version enforceable by EPA.

*C. What is the purpose of this proposed rule?*

The purpose of this proposal is to present EPA’s conclusions with respect to the State’s request contained in NDEP’s January 12, 2006 SIP revision submittal for rescission of nearly 200 rules and statutes in the applicable SIP. We provide our reasoning in general terms below but provide a more detailed analysis for each of the relevant rules and statutes in the technical support document (TSD) that has been prepared for this proposed rulemaking.

<sup>3</sup> Provisions that EPA promulgates under CAA section 110(c) in substitution of disapproved State provisions are referred to as Federal Implementation Plans (FIPs).

**II. EPA's Evaluation and Action**

*A. How is EPA evaluating the rules and statutes requested for rescission?*

Under CAA section 110(k)(2), EPA is obligated to take action on submittals by States of SIPs and SIP revisions. CAA section 110(k)(3) authorizes EPA to approve or disapprove, in whole or in severable part, such submittals. EPA has reviewed the regulations and statutes submitted on January 12, 2006 by NDEP for rescission for compliance with the CAA requirements for SIPs in general set forth in CAA section 110(a)(2) and 40 CFR part 51 and also for compliance with CAA requirements for SIP revisions in CAA sections 110(l) and 193.<sup>4</sup> We have also applied the principles set forth in a policy memorandum from Johnnie L. Pearson, Chief Regional Activities Section, U.S. EPA Office of Air Quality Planning and Standards, dated February 12, 1990, and entitled, "Review of State Regulation Recodifications." As described below, EPA is proposing approval and

disapproval of portions of the State's rescission request and approval of certain replacement provisions.

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

We are proposing to approve most of the rules for which NDEP has requested rescission (see Table 1), but are proposing disapproval for rescission requests related to certain rules and statutes (see Table 2), and are proposing to approve submitted replacement provisions (see Table 3) for certain provisions for which we believe the State's rescission request should be disapproved.

Table 1 lists all of the SIP (or FIP) provisions for which the State's rescission request is proposed for approval along with the related submittal and approval dates. The vast majority of the provisions in table 1 represent defined terms that, although approved by EPA and therefore made part of the applicable SIP, are not relied upon by any rule or statute in the

existing applicable SIP nor in any rule or statute in the submitted SIP revision and thus are unnecessary and appropriate for rescission. We are also proposing approval of the rescission request with respect to certain other rules and statutes (and one FIP) that we have found to be unnecessary because they are not needed generally in a SIP under CAA section 110(a)(2) or under 40 CFR part 51 or because there are other federally enforceable provisions that would provide equivalent or greater control. Neither NDEP's February 16, 2005 nor January 12, 2006 SIP submittal contained documentation of notice and public hearing for repeal or rescission of these provisions as required under CAA section 110(l) for all SIP revisions. Thus, we are making our proposed approval of these rescissions contingent upon receipt of this documentation from NDEP.

The TSD provides more details concerning our proposal and rationale with respect to each of the items listed in table 1.

**TABLE 1.—SIP PROVISIONS FOR WHICH THE STATE'S RESCISSION REQUEST IS PROPOSED FOR APPROVAL**

SIP (or FIP) provision	Title	Submittal date	Approval date
NAC 445.440	Aluminum equivalent	10/26/82	03/27/84
NAC 445.442	Anode bake plant	10/26/82	03/27/84
NAC 445.443	Asphalt concrete plant	10/26/82	03/27/84
NAC 445.446	Barite dryer	10/26/82	03/27/84
NAC 445.451	Basic oxygen process furnace	10/26/82	03/27/84
NAC 445.453	Bituminous coal	10/26/82	03/27/84
NAC 445.454	Blast furnace	10/26/82	03/27/84
NAC 445.455	Blowing tap	10/26/82	03/27/84
NAC 445.456	Brass or bronze	10/26/82	03/27/84
NAC 445.459	Calcium carbide	10/26/82	03/27/84
NAC 445.460	Calcium silicon	10/26/82	03/27/84
NAC 445.461	Capture system	10/26/82	03/27/84
NAC 445.462	Charge chrome	10/26/82	03/27/84
NAC 445.463	Charge period	10/26/82	03/27/84
NAC 445.465	Coal preparation plant	10/26/82	03/27/84
NAC 445.466	Coal processing and conveying equipment	10/26/82	03/27/84
NAC 445.467	Coal refuse	10/26/82	03/27/84
NAC 445.468	Coal storage system	10/26/82	03/27/84
NAC 445.469	Coke burn-off	10/26/82	03/27/84
NAC 445.474	Commercial fuel oil	10/26/82	03/27/84
NAC 445.475	Complex source	10/26/82	03/27/84
NAC 445.476	Condensate	10/26/82	03/27/84
NAC 445.477	Confidential information	10/26/82	03/27/84
NAC 445.481	Control device	10/26/82	03/27/84
NAC 445.483	Copper converter	10/26/82	03/27/84
NAC 445.484	Custody transfer	10/26/82	03/27/84
NAC 445.485	Cyclonic flow	10/26/82	03/27/84
NAC 445.487	Diesel fuel	10/26/82	03/27/84
NAC 445.489	Direct shell evacuation system	10/26/82	03/27/84
NAC 445.490	Drilling and production facility	10/26/82	03/27/84
NAC 445.491	Dross reverberatory furnace	10/26/82	03/27/84
NAC 445.493	Dust handling equipment	10/26/82	03/27/84
NAC 445.494	Dusts	10/26/82	03/27/84
NAC 445.495	Electric arc furnace	10/26/82	03/27/84
NAC 445.496	Electric furnace	10/26/82	03/27/84
NAC 445.497	Electric smelting furnace	10/26/82	03/27/84

<sup>4</sup> CAA section 110(l) prohibits EPA from approving any SIP revision that would interfere with any applicable requirement concerning attainment and reasonable further progress, or any

other applicable requirement of the CAA. CAA section 193 prohibits modifications in control requirements that were in effect before the CAA of 1990 in any nonattainment area unless the

modification ensures equivalent or greater emission reductions of the nonattainment pollutant.

TABLE 1.—SIP PROVISIONS FOR WHICH THE STATE'S RESCISSION REQUEST IS PROPOSED FOR APPROVAL—Continued

SIP (or FIP) provision	Title	Submittal date	Approval date
NAC 445.498	Electric submerged arc furnace	10/26/82	03/27/84
NAC 445.502	Equivalent P <sub>2</sub> O <sub>5</sub> feed	10/26/82	03/27/84
NAC 445.503	Equivalent P <sub>2</sub> O <sub>5</sub> stored	10/26/82	03/27/84
NAC 445.509	Ferrochrome silicon	10/26/82	03/27/84
NAC 445.510	Ferromanganese silicon	10/26/82	03/27/84
NAC 445.511	Ferrosilicon	10/26/82	03/27/84
NAC 445.514	Fossil fuel-fired steam generating unit	10/26/82	03/27/84
NAC 445.515	Fresh granular triple superphosphate	10/26/82	03/27/84
NAC 445.518	Fuel gas	10/26/82	03/27/84
NAC 445.519	Fuel gas combustion device	10/26/82	03/27/84
NAC 445.522	Furnace charge	10/26/82	03/27/84
NAC 445.523	Furnace cycle	10/26/82	03/27/84
NAC 445.524	Furnace power input	10/26/82	03/27/84
NAC 445.526	Granular diammonium phosphate plant	10/26/82	03/27/84
NAC 445.527	Granular triple super-phosphate storage facility	10/26/82	03/27/84
NAC 445.528	Heat time	10/26/82	03/27/84
NAC 445.529	High-carbon ferrochrome	10/26/82	03/27/84
NAC 445.530	High level of volatile impurities	10/26/82	03/27/84
NAC 445.531	High terrain	10/26/82	03/27/84
NAC 445.532	Hydrocarbon	10/26/82	03/27/84
NAC 445.534	Isokinetic sampling	10/26/82	03/27/84
NAC 445.539	Low terrain	10/26/82	03/27/84
NAC 445.543	Meltdown and refining	10/26/82	03/27/84
NAC 445.544	Meltdown and refining period	10/26/82	03/27/84
NAC 445.546	Molybdenum	10/26/82	03/27/84
NAC 445.547	Molybdenum processing plant	10/26/82	03/27/84
NAC 445.551	Nitric acid production unit	10/26/82	03/27/84
NAC 445.554	Nuisance	10/26/82	03/27/84
NAC 445.566	Petroleum liquids	10/26/82	03/27/84
NAC 445.567	Petroleum refinery	10/26/82	03/27/84
NAC 445.568	Pneumatic coal-cleaning equipment	10/26/82	03/27/84
NAC 445.572	Potroom	10/26/82	03/27/84
NAC 445.573	Potroom group	10/26/82	03/27/84
NAC 445.576	Primary aluminum reduction plant	10/26/82	03/27/84
NAC 445.577	Primary control system	10/26/82	03/27/84
NAC 445.578	Primary copper smelter	10/26/82	03/27/84
NAC 445.579	Primary lead smelter	10/26/82	03/27/84
NAC 445.580	Primary zinc smelter	10/26/82	03/27/84
NAC 445.582	Process gas	10/26/82	03/27/84
NAC 445.583	Process upset gas	10/26/82	03/27/84
NAC 445.586	Product change	10/26/82	03/27/84
NAC 445.587	Proportional sampling	10/26/82	03/27/84
NAC 445.591	Refinery process unit	10/26/82	03/27/84
NAC 445.593	Reid vapor pressure	10/26/82	03/27/84
NAC 445.594	Reverberatory furnace	10/26/82	03/27/84
NAC 445.595	Reverberatory smelting furnace	10/26/82	03/27/84
NAC 445.596	Ringelmann chart	10/26/82	03/27/84
NAC 445.598	Roof monitor	10/26/82	03/27/84
NAC 445.600	Run-of-pile triple superphosphate	10/26/82	03/27/84
NAC 445.602	Secondary control system	10/26/82	03/27/84
NAC 445.603	Secondary lead smelter	10/26/82	03/27/84
NAC 445.604	Shop	10/26/82	03/27/84
NAC 445.605	Shop opacity	10/26/82	03/27/84
NAC 445.608	Silicomanganese	10/26/82	03/27/84
NAC 445.609	Silicomanganese zirconium	10/26/82	03/27/84
NAC 445.610	Silicon metal	10/26/82	03/27/84
NAC 445.611	Silvery iron	10/26/82	03/27/84
NAC 445.614	Sinter bed	10/26/82	03/27/84
NAC 445.615	Sintering machine	10/26/82	03/27/84
NAC 445.616	Sintering machine discharge end	10/26/82	03/27/84
NAC 445.617	Six-minute period	10/26/82	03/27/84
NAC 445.619	Smelting	10/26/82	03/27/84
NAC 445.620	Smelting furnace	10/26/82	03/27/84
NAC 445.626	Standard ferromanganese	10/26/82	03/27/84
NAC 445.629	Steel production cycle	10/26/82	03/27/84
NAC 445.631	Storage vessel	10/26/82	03/27/84
NAC 445.632	Structure, building, facility or installation	10/26/82	03/27/84
NAC 445.634	Sulfuric acid plant	10/26/82	03/27/84
NAC 445.635	Sulfuric acid production unit	10/26/82	03/27/84
NAC 445.636	Superphosphoric acid plant	10/26/82	03/27/84
NAC 445.637	Tapping	10/26/82	03/27/84
NAC 445.638	Tapping period	10/26/82	03/27/84

TABLE 1.—SIP PROVISIONS FOR WHICH THE STATE'S RESCISSION REQUEST IS PROPOSED FOR APPROVAL—Continued

SIP (or FIP) provision	Title	Submittal date	Approval date
NAC 445.639	Tapping station	10/26/82	03/27/84
NAC 445.640	Thermal dryer	10/26/82	03/27/84
NAC 445.641	Thermit process	10/26/82	03/27/84
NAC 445.642	Total fluorides	10/26/82	03/27/84
NAC 445.643	Total smelter charge	10/26/82	03/27/84
NAC 445.644	Transfer and loading system	10/26/82	03/27/84
NAC 445.645	Triple superphosphate plant	10/26/82	03/27/84
NAC 445.646	True vapor pressure	10/26/82	03/27/84
NAC 445.648	Vapor recovery system	10/26/82	03/27/84
NAC 445.652	Weak nitric acid	10/26/82	03/27/84
NAC 445.654	Wet-process phosphoric acid plant	10/26/82	03/27/84
Article 2.7.4	Confidential Information	12/10/76	08/21/78
Articles 2.10.1 and 2.10.1.1	Appeal procedures	01/28/72	05/31/72
Articles 2.10.1.2, 2.10.2 and 2.10.3	Appeal procedures	10/31/75	01/09/78
Article 3.3.4	Stop orders	01/28/72	05/31/72
Article 4.3.4	Emissions from any mobile equipment	01/28/72	05/31/72
Article 7.2.5	Basic Refractory	11/05/80	06/18/82
Article 7.2.9	Sierra Chemical Co	11/05/80	06/18/82
Article 8.1	Primary Non-Ferrous Smelters	06/14/74	02/06/75
Articles 8.1.1, 8.1.2, & 8.1.4	Primary Non-Ferrous Smelters	10/31/75	01/09/78
Article 8.3.4	Basic	11/05/80	06/18/82
Article 16.3.1.2	Regulations controlling cement (Applying to Portland cement plants)	12/29/78	06/18/82
Articles 16.3.2, 16.3.2.1, & 16.3.2.2	Standard of particulate matter for clinker cooler (Applying to Portland cement plants).	12/29/78	06/18/82
Article 16.15	Primary lead smelters	12/29/78	06/18/82
Articles 16.15.1 to 16.15.1.2	Standard for Particulate Matter (Applying to primary lead smelters)	12/29/78	06/18/82
Articles 16.15.2 to 16.15.2.2	Standard for Opacity (Applying to primary lead smelters)	12/29/78	06/18/82
Articles 16.15.3 to 16.15.3.2	Standard for Sulfur (Applying to primary lead smelters)	12/29/78	06/18/82
Article 16.15.4	Monitoring Operations (Applying to primary lead smelters)	12/29/78	06/18/82
NAC 445.662	Confidential Information	10/26/82	03/27/84
NAC 445.695	Schedules for compliance	10/26/82	03/27/84
NAC 445.698	Appeal of director's decision: Application forms	10/26/82	03/27/84
NAC 445.700	Violations: Manner of paying fines	10/26/82	03/27/84
NAC 445.723	Existing copper smelters	10/26/82	03/27/84
NAC 445.815	Molybdenum processing plants	09/14/83	03/27/84
NAC 445.816(2) (a), (b), (c), (e), (f), (g), (h), and (i).	Processing Plants for Precious Metals	09/14/83	03/27/84
NAC 445.844	Odors	10/26/82	03/27/84
NRS 445.401	Declaration of public policy	12/29/78	07/10/80
Section 13(15) and (19) of Senate Bill No. 275.	[State commission of environmental protection—review recommendations of hearing board and delegation].	01/28/72	05/31/72
NRS 445.466	Commission regulations: Notice and hearing	12/29/78	07/10/80
NRS 445.497	Notice of regulatory action: Requirement; method; contents of notice	12/29/78	07/10/80
40 CFR 52.1475(c), (d), and (e)	Control strategy and regulations: Sulfur oxides	N.A.	02/06/75

Table 2 lists the rules and statutes for which the State's rescission request is proposed for disapproval along with the related submittal and approval dates. Generally, we believe that retention of these provisions is appropriate to satisfy

certain specific requirements for SIPs under CAA section 110(a)(2) or that retention is appropriate because the State has not provided sufficient documentation to show that rescission would not interfere with continued

attainment of the national ambient air quality standards (NAAQS) as required under CAA section 110(l). The TSD provides more details concerning our proposal and rationale with respect to each of the items listed in table 2.

TABLE 2.—SIP PROVISIONS FOR WHICH THE STATE'S RESCISSION REQUEST IS PROPOSED FOR DISAPPROVAL

SIP provision	Title	Submittal date	Approval date
NAC 445.436	Air contaminant	10/26/82	03/27/84
NAC 445.570	Portland cement plant	10/26/82	03/27/84
Article 1.171	Single source	12/10/76	08/21/78
NAC 445.630	Stop order	10/26/82	03/27/84
NAC 445.660	Severability	10/26/82	03/27/84
NAC 445.663	Concealment of emissions prohibited	10/26/82	03/27/84
NAC 445.665	Hazardous emissions: Order for reduction or discontinuance	10/26/82	03/27/84
NAC 445.696	Notice of violations; appearance before commission	10/26/82	03/27/84
NAC 445.697	Stop Orders	10/26/82	03/27/84
NAC 445.764	Reduction of employees' pay because of use of system prohibited	10/26/82	03/27/84
NAC 445.816(3), (4) & (5)	Processing Plants for Precious Metals	09/14/83	03/27/84

TABLE 2.—SIP PROVISIONS FOR WHICH THE STATE’S RESCISSION REQUEST IS PROPOSED FOR DISAPPROVAL—  
Continued

SIP provision	Title	Submittal date	Approval date
NRS 445.451*	State environmental commission: Creation; composition; chairman; quorum; salary, expenses of members; disqualification of members; technical support.	12/29/78	07/10/80
NRS 445.456*	Department designated as state air pollution control agency	12/29/78	07/10/80
NRS 445.473*	Department powers and duties	12/29/78	07/10/80
NRS 445.476*	Power of department representatives to enter and inspect premises	12/29/78	07/10/80
NRS 445.498*	Appeals to commission; Notice of appeal	12/29/78	07/10/80
NRS 445.499*	Appeals to commission; Hearings	12/29/78	07/10/80
NRS 445.501*	Appeals to commission: Appealable matters; commission action; rules for appeals.	12/29/78	07/10/80
NRS 445.526*	Violations: Notice and order by director; hearing; alternative procedures	09/10/75	01/24/78
NRS 445.529*	Violations: Injunctive relief	12/29/78	07/10/80
NRS 445.576*	Confidential information: Definitions; limitations on use; penalty for unlawful disclosure or use.	09/10/75	01/24/78
NRS 445.581*	Power of department officers to inspect, search premises; search warrants.	12/29/78	07/10/80
NRS 445.596*	Private rights and remedies not affected	12/29/78	07/10/80
NRS 445.598*	Provisions for transition in administration	12/29/78	07/10/80
NRS 445.601*	Civil penalties; fines not bar to injunctive relief, other remedies; disposition of fines.	12/29/78	07/10/80

Note: Asterisk (\*) indicates applicable SIP provisions for which replacement provisions are being proposed for approval herein (see table 3, below).

Table 3 lists the submitted provisions for which EPA is proposing approval and that, upon final approval, will supersede corresponding outdated provisions in the applicable SIP. In its January 12, 2006 SIP revision submittal, NDEP requests EPA to approve new statutory provisions to replace any outdated State statutory provisions for which EPA determines that the rescission request should not be

approved. As noted above, we are proposing to disapprove requests for rescission of certain statutory provisions, and thus, consistent with the State’s request, we are proposing approval of 14 specific statutory provisions, submitted by NDEP in appendix III-E of the January 12, 2006 SIP revision submittal, to replace the corresponding statutory provisions in the applicable SIP (see table 3, below).

In general, we find that the current statutory provisions listed in table 3 essentially mirror the corresponding outdated provisions in the applicable SIP and thus would not relax any existing requirement.<sup>5</sup>

The TSD provides more details concerning our proposal and rationale with respect to each of the items listed in table 3.

TABLE 3.—SUBMITTED PROVISIONS WHICH ARE PROPOSED FOR APPROVAL AS REPLACEMENTS FOR OUTDATED PROVISIONS IN THE APPLICABLE SIP

Submitted provisions	Title	Submittal date
NRS 445B.200	Creation and composition; chairman; quorum; compensation of members and employees; disqualification; technical support.	01/12/06
NRS 445B.205	Department designated as state air pollution control agency	01/12/06
NRS 445B.230	Powers and duties of department	01/12/06
NRS 445B.240	Power of representatives of department to enter and inspect premises	01/12/06
NRS 445B.340	Appeals to commission: notice of appeal	01/12/06
NRS 445B.350	Appeals to commission: hearings	01/12/06
NRS 445B.360	Appeals to commission: appealable matters; action by commission; regulations	01/12/06
NRS 445B.450	Notice and order by director; hearing; alternative procedures	01/12/06
NRS 445B.460	Injunctive relief	01/12/06
NRS 445B.570	Confidentiality and use of information obtained by department; penalty	01/12/06
NRS 445B.580	Officer of department may inspect or search premises; search warrant	01/12/06
NRS 445B.600	Private rights and remedies not affected	01/12/06
NRS 445B.610	Provisions for transition in administration	01/12/06
NRS 445B.640	Levy and disposition of administrative fines; additional remedies available; penalty	01/12/06

<sup>5</sup> Because the current statutory provisions essentially mirror the outdated provisions, we view our proposed approval of the current statutory provisions as a re-codification and, as such, we are not taking action to remedy pre-existing

deficiencies in the applicable SIP. We note, however, that one of the provisions, NRS 445B.200 (“Creation and composition; chairman; quorum; compensation of members and employees; disqualification; technical support”), does not meet

the related SIP requirements (CAA section 110(a)(2)(E)(ii) and CAA section 128) and could be the subject of some future EPA rulemaking, such as one under CAA section 110(k)(5).

### C. Public Comment and Proposed Action

Under CAA section 110(k)(3), EPA is proposing approval of most of the State of Nevada's requests to rescind nearly 200 rules and statutes from the applicable SIP but is proposing disapproval of some of those requests. EPA is also proposing approval of certain statutory provisions submitted by the State of Nevada as replacements for outdated provisions in the applicable SIP. The approval proposed herein is contingent upon receipt of certain public notice and hearing documentation from the State of Nevada. We will accept comments from the public on this proposal for the next 30 days.

Unless we receive convincing new information during the comment period, we intend to publish a final approval action that will rescind the rules and statutes shown in table 1, above, from the applicable SIP (contingent upon receipt of public notice and hearing documentation), retain certain rules and statutes in the applicable SIP (shown in table 2, above), and approve certain replacement provisions (shown in table 3, above).

### III. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this proposed 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 proposes

to approve or disapprove a State request for rescission and to approve certain replacement provisions as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this proposed 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 proposes to approve 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 proposed 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 proposes to approve or disapprove a State request for rescission and to approve certain replacement provisions implementing a Federal standard, and does not alter the relationship or the

distribution of power and responsibilities established in the Clean Air Act. This proposed 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 proposed 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.*).

### List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Lead, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides.

**Authority:** 42 U.S.C. 7401 *et seq.*

Dated: August 16, 2006.

**Jane Diamond,**

*Acting Regional Administrator, Region IX.*

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