

obtained from the International Branch, ANM-116.

#### Special Flight Permits

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

#### Incorporation by Reference

(d) The actions shall be done in accordance with Airbus Industrie Service Bulletin A320-29-1086, dated October 19, 1998, or Airbus Industrie Service Bulletin A320-29-1086, Revision 01, dated March 9, 1999; and Sundstrand Service Bulletin ERPS13GCM-29-3, dated June 24, 1998. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of the Airbus Industrie service bulletin may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. Copies of the Sundstrand service bulletin may be obtained from Sundstrand Aerospace, 4747 Harrison Avenue, P.O. Box 7002, Rockford, Illinois 61125-7002. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

**Note 3:** The subject of this AD is addressed in French airworthiness directive 98-537-124(B), dated December 30, 1998.

(e) This amendment becomes effective on October 29, 1999.

Issued in Renton, Washington, on September 17, 1999.

**D.L. Riggins,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[CA201-169a; FRL-6436-2]

#### Approval and Promulgation of Implementation Plans; California State Implementation Plan Revision; Santa Barbara County Air Pollution Control District; Kern County Air Pollution Control District; and Ventura County Air Pollution Control District

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

**ACTION:** Direct final rule.

**SUMMARY:** EPA is taking direct final action to approve revisions to the California State Implementation Plan (SIP). The revisions concern, Santa Barbara County Air Pollution Control District (SBCAPCD), Rule 342; Kern

County Air Pollution Control District (KCAPCD), Rule 425.2; and Ventura County Air Pollution District (VCAPCD), Rule 74.11. The rules control emissions of oxides of nitrogen (NO<sub>x</sub>) from boilers, steam generators, process heaters and natural gas-fired residential water heaters.

This approval action will incorporate the rules into the Federally approved SIP. The intended effect of approving of the rules is to regulate NO<sub>x</sub> emissions in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). Thus, EPA is finalizing the approval of this revision into the California SIP under provisions of the CAA regarding EPA actions on SIP submittals, SIPs for national primary and secondary ambient air quality standards (NAAQS), and plan requirements for nonattainment areas.

**DATES:** The rule is effective on November 23, 1999 without further notice, unless EPA receives adverse comments by October 25, 1999. If EPA receives such comments, then it will publish a timely withdrawal in the **Federal Register** informing the public that this rule will not take effect.

**ADDRESSES:** Written comments must be submitted to Andrew Steckel at the Region IX office listed below. Copies of the rule and EPA's evaluation report of each rule are available for public inspection at EPA's Region IX office during normal business hours. Copies of the submitted respective rules are also available for inspection at the following locations:

Rulemaking Office, AIR-4, Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105-3901.

Environmental Protection Agency, Air Docket (6102) 401 "M" Street, SW, Washington, DC 20460

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 "L" Street, Sacramento, CA 95812

Santa Barbara County Air Pollution Control District 26 Castilian Drive, Suite B-23, Goleta, CA 93117-3027

Kern County Air Pollution Control District 2700 "M" Street, Suite 302, Bakersfield, CA 93301-2370

Ventura County Air Pollution Control District 669 County Square Drive, 2nd Floor, Ventura, CA 93003-5417

**FOR FURTHER INFORMATION CONTACT:** Sam Agpawa, Air Planning Office, AIR-2, Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105-3901, Telephone: (415) 744-1228.

## SUPPLEMENTARY INFORMATION:

### I. Applicability

The rules being approved into the California SIP are: (1) SBCAPCD Rule 342; (2) KCAPCD Rule 425.2 and (3) VCAPCD Rule 74.11. Rule 342 and 425.2 apply to boilers, steam generators, process heaters, and, Rule 74.11 applies to natural gas-fired residential water heaters. The rules were submitted by the State of California to EPA on: (1) SBCAPCD Rule 342—March 10, 1998; (2) KCAPCD Rule 425.2—September 8, 1997; and (3) VCAPCD Rule 74.11—October 16, 1985.

### II. Background

On November 15, 1990, the Clean Air Act Amendments of 1990 were enacted. Public Law 101-549, 104 Stat. 2399, codified at 42 U.S.C. 7401-7671q. The air quality planning requirements for the reduction of NO<sub>x</sub> emissions through reasonably available control technology (RACT) are set out in section 182(f) of the CAA.

On November 25, 1992, EPA published a proposed rule entitled, "State Implementation Plans; Nitrogen Oxides Supplement to the General Preamble; Clean Air Act Amendments of 1990 Implementation of Title I; Proposed Rule," (the NO<sub>x</sub> Supplement) which describes and provides preliminary guidance on the requirements of section 182(f). The November 25, 1992, action should be referred to for further information on the NO<sub>x</sub> requirements and is incorporated into this document by reference.

Section 182(f) of the Clean Air Act requires States to apply the same requirements to major stationary sources of NO<sub>x</sub> ("major" as defined in section 302 and sections 182(c), (d), and (e)) as are applied to major stationary sources of volatile organic compounds (VOCs), in moderate or above ozone nonattainment areas. SBCAPCD and KCAPCD are designated and classified as non-attainment-serious for ozone; VCAPCD is designated and classified as nonattainment-severe;<sup>1</sup> therefore, the jurisdictional areas of SBCAPCD; KCAPCD and VCAPCD are subject to the RACT requirements of section 182(b)(2) cited below and the November 15, 1992 deadline.

Section 182(b)(2) requires submittal of RACT rules for major stationary sources of VOC (and NO<sub>x</sub>) emissions (not covered by a pre-enactment control

<sup>1</sup> Santa Barbara, Kern and Ventura Counties retained their designation(s) of nonattainment and were classified by operation of law pursuant to sections 107(d) and 181(a) upon the date of enactment of the CAA. See 56 FR 56694 (November 6, 1991).

technologies guidelines (CTG) document or a post-enactment CTG document) by November 15, 1992. There are no major stationary sources covered by VCAPCD's rule and RACT requirements do not apply; however, this rule is expected to achieve substantial reductions of NO<sub>x</sub> because it applies to a large number of small sources.

This document addresses EPA's direct final action for SBCAPCD Rule 342; KCAPCD Rule 425.2; and VCAPCD Rule 74.11 applying to boilers, steam generators and process heaters and natural gas-fired residential water heaters. The rules were adopted on: (1) SBCAPCD Rule 342—April 17, 1997; (2) KCAPCD Rule 425.2—July 10, 1997 and (3) VCAPCD Rule 74.11—April 9, 1985.

The State of California submitted the rules to EPA for incorporation into its SIP on: (1) SBCAPCD Rule 342—March 10, 1998; (2) KCAPCD Rule 425.2—September 8, 1997; and (3) VCAPCD Rule 74.11—October 16, 1985. SBCAPCD Rule 342 was found complete on May 21, 1998; KCAPCD Rule 425.2 was found complete on October 20, 1997 pursuant to EPA's completeness criteria that are set forth in 40 CFR part 51, appendix V<sup>2</sup> and are being finalized for approval into the SIP. VCAPCD Rule 74.11 was submitted prior to the implementation of the completeness criteria and its requirements. Therefore, the criteria as set forth in 40 CFR part 51 does not apply to VCAPCD Rule 74.11. This rule is also being finalized for approval into the SIP.

NO<sub>x</sub> emissions contribute to the production of ground level ozone and smog. All the rules specify exhaust emission standards for NO<sub>x</sub> from various combustion devices. The rules were originally adopted as part of each applicable district's efforts to achieve the National Ambient Air Quality Standard (NAAQS) for ozone, and in response to the CAA requirements cited above. The following is EPA's evaluation and final action for these rules.

### III. EPA Evaluation and Proposed Action

In determining the approvability of a NO<sub>x</sub> rule, EPA must evaluate the rule for consistency with the requirements of the CAA and EPA regulations, as found in section 110 and Part D of the CAA and 40 CFR part 51 (Requirements for Preparation, Adoption, and Submittal of Implementation Plans). The EPA

interpretation of these requirements, which forms the basis for today's action, appears in the NO<sub>x</sub> Supplement (57 FR 55620) and various other EPA policy guidance documents.<sup>3</sup> Among these provisions is the requirement that a NO<sub>x</sub> rule must, at a minimum, provide for the implementation of RACT for stationary sources of NO<sub>x</sub> emissions.

For the purposes of assisting State and local agencies in developing NO<sub>x</sub> RACT rules, EPA prepared the NO<sub>x</sub> Supplement to the General Preamble, cited above (57 FR 55620). In the NO<sub>x</sub> Supplement, EPA provides guidance on how RACT will be determined for stationary sources of NO<sub>x</sub> emissions. While most of the guidance issued by EPA on what constitutes RACT for stationary sources has been directed towards application for VOC sources, much of the guidance is also applicable to RACT for stationary sources of NO<sub>x</sub> (see section 4.5 of the NO<sub>x</sub> Supplement). In addition, pursuant to section 183(c), EPA is issuing alternative control technique documents (ACTs), that identify alternative controls for categories of stationary sources of NO<sub>x</sub>. The ACT documents will provide information on control technology for stationary sources that emit or have the potential to emit 25 tons per year or more of NO<sub>x</sub>. However, the ACTs will not establish a presumptive norm for what is considered RACT for stationary sources of NO<sub>x</sub>. In general, the guidance documents cited above, as well as other relevant and applicable guidance documents, have been set forth to ensure that submitted NO<sub>x</sub> RACT rules meet Federal RACT requirements and are fully enforceable and strengthen or maintain the SIP.

The submitted SBCAPCD Rule 342 corrects a minor discrepancy in the version of the rule approved into the SIP by EPA on December 13, 1994. The submitted KCAPCD Rule 425.2 deleted superfluous language (e.g., "the") from various sections of the version of the rule approved into the SIP by EPA on July 24, 1995. Both of these rules establish emission limits and monitoring, reporting and record keeping requirements for boilers, steam generators and process heaters. VCAPCD Rule 74.11 prohibits the sale and installation of residential water heaters within Ventura County that

exceed the Rules's specified emission rates. There is currently no version in the SIP of VCAPCD Rule 74.11. Similar rules, however, from South Coast and other areas have been approved into the SIP and are being successfully implemented locally.

EPA has evaluated the submitted rules and has determined that they are consistent with the CAA, EPA regulations and EPA policy. Therefore, SBCAPCD Rule 342 and KCAPCD Rule 425.2, Control of Oxides of Nitrogen (NO<sub>x</sub>) From Boilers, Steam Generators and Process Heater; and VCAPCD Rule 74.11, Natural Gas-fired Residential Water Heaters; are being approved under section 110(k)(3) of the CAA as meeting the requirements of section 110(a), section 182(b)(2), section 182(f) and the NO<sub>x</sub> Supplement to the General Preamble.

### IV. Administrative Requirements

#### A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866, Regulatory Planning and Review.

#### B. Executive Order 12875

Under Executive Order 12875, Enhancing the Intergovernmental Partnership, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 12875 requires EPA to provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected State, local and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates." Today's rules do not create a mandate on State, local or tribal governments. The rules do not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to these rules.

<sup>2</sup> EPA adopted the completeness criteria on February 16, 1990 (55 FR 5830) and, pursuant to section 110(k)(1)(A) of the CAA, revised the criteria on August 26, 1991 (56 FR 42216).

<sup>3</sup> Among other things, the pre-amendment guidance consists of those portions of the proposed post-1987 ozone and carbon monoxide policy that concern RACT, 52 FR 45044 (November 24, 1987); "Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations, Clarification to Appendix D of November 24, 1987 **Federal Register Notice**" (Blue Book) (notice of availability was published in the **Federal Register** on May 25, 1988).

### C. Executive Order 13045

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency. These rules are not subject to Executive Order 13045 because they do not involve decisions intended to mitigate environmental health or safety risks.

### D. Executive Order 13084

Under Executive Order 13084, Consultation and Coordination with Indian Tribal Governments, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities." Today's rules do not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to these rules.

### E. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct

a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. These final rules will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions 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).

### F. 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 annual 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 annual 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 requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

### G. Submission to Congress and the Comptroller General

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**. These rules are not "major" rules as defined by 5 U.S.C. 804(2).

### H. 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 November 23, 1999. Filing a petition for reconsideration by the Administrator of these final rules does not affect the finality of these rules 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 rules 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, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Oxides of nitrogen, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: September 1, 1999.

**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 F—California

2. Section 52.220 is amended by adding paragraphs (c)(164)(i)(C)(4), (c)(249)(i)(B), and (c)(254)(i)(C)(4) to read as follows:

**§ 52.220 Identification of plan.**

\* \* \* \* \*

(c) \* \* \*

(164) \* \* \*

(i) \* \* \*

(C) \* \* \*

(4) Rule 74.11 adopted on April 9, 1985.

\* \* \* \* \*

(249) \* \* \*

(i) \* \* \*

(B) Kern County Air Pollution Control District.

(J) Rule 425.2 adopted on October 13, 1994 and amended on July 10, 1997.

\* \* \* \* \*

(254) \* \* \*

(i) \* \* \*

(C) \* \* \*

(4) Rule 342 amended on April 17, 1997.

\* \* \* \* \*

[FR Doc. 99-24449 Filed 9-23-99; 8:45 am]

BILLING CODE 6560-50-P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[NM-35-1-7428; FRL-6441-3]

#### Approval and Promulgation of Air Quality Implementation Plans; New Mexico Update to Materials Incorporated by Reference

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

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

**SUMMARY:** The EPA is updating the materials submitted by New Mexico that are incorporated by reference (IBR) into the State Implementation Plan (SIP). The regulations affected by this update have been previously submitted by the State agency and approved by EPA. This update affects the SIP materials that are available for public inspection at the Office of the Federal Register (OFR), the Air and Radiation Docket and Information Center located in Waterside Mall, Washington, D.C., and the Regional Office.

**EFFECTIVE DATE:** This action is effective September 24, 1999.

**ADDRESSES:** The SIP materials, which are incorporated by reference into 40 CFR part 52, are available for inspection at the following locations:

Environmental Protection Agency,  
Region 6, 1445 Ross Avenue, Suite  
700, Dallas, Texas 75202-2733;  
Office of Air and Radiation, Docket and  
Information Center (Air Docket), EPA,  
401 M Street, SW, Room M1500,  
Washington, DC 20460; and

Office of the Federal Register, 800 North  
Capitol Street, NW, Suite 700,  
Washington, D.C.

**FOR FURTHER INFORMATION CONTACT:** Mr. Paul Scoggins at the above Region 6 address or at (214)-665-7354.

**SUPPLEMENTARY INFORMATION:** The SIP is a living document which the state can revise as necessary to address the unique air pollution problems in the state. Therefore, EPA from time to time must take action on SIP revisions containing new and/or revised regulations as being part of the SIP. On May 22, 1997 (62 FR 27968) EPA revised the procedures for incorporating by reference Federally-approved SIPs, as a result of consultations between EPA and OFR. The description of the revised SIP document, IBR procedures and "Identification of plan" format are discussed in further detail in the May 22, 1997, **Federal Register** document.

On July 13, 1998, EPA published a document in the **Federal Register** (63 FR 37493) beginning the new IBR procedure for New Mexico. In this document EPA is doing the first update to the material being IBRed. On September 9, 1998, (63 FR 48106), EPA published a final rule conditionally approving a revision to the New Mexico SIP that contained regulations for implementing and enforcing the general conformity rules which the EPA promulgated on November 30, 1993 (58 FR 63214). On June 1, 1999 (64 FR 29235), EPA published a direct final approval document approving revisions to the New Mexico SIP of Board composition and conflict of interest disclosure requirements for the State of New Mexico and for Albuquerque/Bernalillo County, NM. The rule became effective August 2, 1999. In both documents EPA also updated the Identification of plan section for the Code of Federal Regulations.

In this document EPA is updating the SIP compilation that is incorporated by reference. Table (d) is being added to identify permitted sources in the SIP and table (e) is being revised to include more identification of plan information that was not included in the original July 13, 1998, **Federal Register** document.

The EPA has determined that today's rule falls under the "good cause" exemption in section 553(b)(3)(B) of the Administrative Procedures Act (APA) which, upon finding "good cause," authorizes agencies to dispense with public participation and section 553(d)(3) which allows an agency to make a rule effective immediately (thereby avoiding the 30-day delayed effective date otherwise provided for in

the APA). Today's rule simply codifies provisions which are already in effect as a matter of law in Federal and approved State programs.

Under section 553 of the APA, an agency may find good cause where procedures are "impractical, unnecessary, or contrary to the public interest." Public comment is unnecessary and contrary to the public interest since the codification only reflects existing law. Immediate notice in the CFR benefits the public by updating citations.

#### Administrative Requirements

##### A. Executive Order (E.O.) 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866, entitled "Regulatory Planning and Review."

##### B. Executive Order 12875

Under E.O. 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a state, local, or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If the mandate is unfunded, EPA must provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected state, local, and tribal governments, the nature of their concerns, copies of written communications from the governments, and a statement supporting the need to issue the regulation. In addition, E.O. 12875 requires EPA to develop an effective process permitting elected officials and other representatives of state, local, and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates." Today's rule does not create a mandate on state, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of E.O. 12875 do not apply to this rule.

##### C. Executive Order 13045

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be "economically significant" as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria,