

final rule 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**. This rule is not a "major" rule 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 1, 1999. 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, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: August 6, 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)(266) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(266) New and amended regulations for the following APCDs were submitted on September 29, 1998 by the Governor's designee.

(i) Incorporation by reference.

(A) South Coast Air Quality Management District.

(J) Rule 1168, adopted on April 7, 1989, and amended February 13, 1998.

* * * * *

[FR Doc. 99-22179 Filed 8-30-99; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 224-0166a; FRL-6425-5]

Approval and Promulgation of Implementation Plans; California State Implementation Plan Revision, South Coast Air Quality Management District, Ventura County Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action on revisions to the California State Implementation Plan. The revisions concern rules from the following special districts: South Coast Air Quality Management District (SCAQMD); and, Ventura County Air Pollution Control District (VCAPCD). This approval action will incorporate these rules into the federally approved SIP. The intended effect of approving these rules is to regulate emissions of volatile organic compounds (VOCs) according to the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). The revised rules control VOC emissions from pleasure craft coating operations. Thus, EPA is finalizing the approval of these revisions 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 November 1, 1999 without further notice, unless EPA receives adverse comments by September 30, 1999. If EPA receives such comment, 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 revisions and EPA's evaluation report for each rule are available for public inspection at EPA's Region IX office during normal business hours. Copies of the submitted rule revisions are 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;

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;

South Coast Air Quality Management District, 21865 East Copley Drive, Diamond Bar, CA 91765-4182; and, Ventura County Air Pollution Control District, 669 County Square Drive, Ventura, CA 93003

FOR FURTHER INFORMATION CONTACT: Jerald S. Wamsley, Rulemaking Office, AIR-4, Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105, Telephone: (415) 744-1226.

SUPPLEMENTARY INFORMATION:

I. Applicability

The rules being approved into the California SIP are SCAQMD Rule 1106.1—Pleasure Craft Coating Operations and VCAPCD Rule 74.24.1—Pleasure Craft Coating and Commercial Boatyard Operations. These rules were submitted by the California Air Resources Board (CARB) to EPA on June 3, 1999 and February 16, 1999, respectively.

II. Background

On March 3, 1978, EPA promulgated a list of ozone nonattainment areas under the provisions of the Clean Air Act, as amended in 1977 (1977 Act or pre-amended Act), that included the South Coast air basin and Ventura County. See 43 FR 8964, 40 CFR 81.305. On May 26, 1988, EPA notified the Governor of California, pursuant to section 110(a)(2)(H) of the 1977 Act, that the above districts' portions of the California SIP were inadequate to attain and maintain the ozone standard and requested that deficiencies in the existing SIP be corrected (EPA's SIP-Call). 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. In amended section 182(a)(2)(A) of the CAA, Congress statutorily adopted the requirement that nonattainment areas fix their deficient reasonably available control technology (RACT) rules for ozone and established a deadline of May 15, 1991 for states to submit corrections of those deficiencies.

Section 182(a)(2)(A) applies to areas designated as nonattainment prior to

enactment of the amendments and classified as marginal or above as of the date of enactment. It requires such areas to adopt and correct RACT rules pursuant to pre-amended section 172 (b) as interpreted in pre-amendment guidance.¹ EPA's SIP-Call used that guidance to indicate the necessary corrections for specific nonattainment areas. The South Coast air basin is classified as extreme and Ventura County is classified as severe.² Therefore, these areas were subject to the RACT fix-up requirement and the May 15, 1991 deadline.

The State of California submitted many revised RACT rules for incorporation into its SIP on both June 3, 1999 and February 16, 1999, including the rules being acted on in this document. This document addresses EPA's direct-final action for SCAQMD Rule 1106.1—Pleasure Craft Coating Operations and VCAPCD Rule 74.24.1—Pleasure Craft Coating and Commercial Boatyard Operations. SCAQMD adopted Rule 1106.1 on February 12, 1999. VCAPCD adopted Rule 74.24.1 on November 19, 1998. EPA found both of these submitted rules to be complete on June 24, 1999 and April 23, 1999, respectively; pursuant to EPA's completeness criteria that are set forth in 40 CFR part 51, appendix V.³ SCAQMD Rule 1106.1 and VCAPCD Rule 74.24.1 are being finalized for approval into the SIP with today's action.

SCAQMD Rule 1106.1 and VCAPCD Rule 74.24.1 are designed to reduce volatile organic compound (VOC) emissions at industrial sites engaged in manufacturing or repairing vessels which are operated, leased, rented, or chartered to a person or business for recreational purposes. VOCs contribute to the production of ground level ozone and smog. These rules were adopted as part of SCAQMD and VCAPCD efforts to achieve the National Ambient Air Quality Standard (NAAQS) for ozone

¹ 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); and the existing control technique guidelines (CTGs).

² Both the South Coast air basin and Ventura County retained their designation 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).

³ 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).

and in response to EPA's SIP-Call and the section 182(a)(2)(A) CAA requirement. The following is EPA's evaluation and final action for this rule.

III. EPA Evaluation and Action

In determining the approvability of a VOC 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 various EPA policy guidance documents listed in footnote one. Among those provisions is the requirement that a VOC rule must, at a minimum, provide for the implementation of RACT for stationary sources of VOC emissions. This requirement was carried forth from the pre-amended Act.

For the purpose of assisting state and local agencies in developing RACT rules, EPA prepared a series of Control Technique Guideline (CTG) documents. The CTGs are based on the underlying requirements of the Act and specify the presumptive norms for what is RACT for specific source categories. Under the CAA, Congress ratified EPA's use of these documents, as well as other Agency policy, for requiring States to "fix-up" their RACT rules. See section 182(a)(2)(A). Further interpretations of EPA policy are found in the Blue Book, referred to in footnote one. In general, these guidance documents have been set forth to ensure that VOC rules are fully enforceable and strengthen or maintain the SIP.

However, there is no CTG applicable to the pleasure craft coating operations source category. Along with SCAQMD Rule 1106.1 and VCAPCD 74.24.1, one other pleasure craft coating rule, San Diego County Air Pollution Control District Rule 67.18, has been adopted within California. Together, these three rules provide a basis for determining what controls are reasonably available within California. This rulemaking will not establish EPA's national definition of RACT for the pleasure craft coating industry across the United States.

On April 13, 1995, EPA approved into the SIP a version of SCAQMD Rule 1106.1—Pleasure Craft Coating Operations that had been adopted on May 1, 1992. (See 60 FR 18750.) Revisions to this Rule 1106.1 were adopted subsequently on March 8, 1996 and June 13, 1997, and submitted to EPA. While EPA can only act on this most recently submitted version, EPA reviewed relevant materials associated

with these prior and superseded versions of the rule. SCAQMD's submitted Rule 1106.1 includes the following significant changes from the current SIP:

- Increase temporarily the VOC emission limits for Extreme High Gloss Topcoats from 490 gr/l to 650 gr/l and Finish Primers from 420 gr/l to 600 gr/l returning these emission limits to the previously lower limits on January 1, 2001;
- Increase the VOC emissions limit for Antifoulants from 150 gr/l to 400 gr/l and lowering the emissions limit to 300 gr/l on January 1, 2001;
- Remove the requirement that sprayed coatings be applied using high volume low pressure (HVL) or equivalent methods; and,
- Provide related editorial amendments such as removing irrelevant past compliance dates and emission limits and renumbering test method designations.

The modified VOC content limits and compliance dates in the submitted Rule 1106.1 neither interfere with reasonable further progress, nor attainment of the NAAQS. Considering progress requirements, enough surplus emission reductions exist between 1999 and 2005 in the EPA approved ozone attainment plan to allow a delay in emission reductions from Rule 1106.1 while still meeting the CAA's progress requirements. (See 62 FR 1181, January 8, 1997.) Regarding attainment of the NAAQS in 2010, the relaxed emission limits in the submitted rule add less than 0.0063% (40.5 pounds per day) to the EPA approved 2010 VOC emissions budget of 323 tons per day. For these reasons, the changes within submitted Rule 1106.1 are consistent with the requirements of section 110(l) of the CAA.

EPA has evaluated submitted Rule 1106.1 and determined that it is consistent with the CAA, EPA regulations, and EPA policy. Therefore, SCAQMD Rule 1106.1—Pleasure Craft Coating Operations is being approved under section 110(k)(3) of the CAA as meeting the requirements of section 110(a) and part D. Although the VOC emissions increases due to Rule 1106.1 can be considered a de minimus amount by themselves, SCAQMD should account for the cumulative effect of such emission increases in future attainment plan revisions.

There is no version of VCAPCD Rule 74.24.1—Pleasure Craft Coating and Commercial Boatyard Operations in the SIP. The submitted rule includes the following general provisions:

- Applicability;

- Requirements for ROC (reactive organic compounds) content of coatings, surface preparation, and storage of ROC containing materials;
- Exemptions from the rule;
- Record keeping to demonstrate compliance with the rule;
- Test methods for determining compliance with the rule;
- Violations; and
- Definitions of terms used within the rule

EPA has evaluated the submitted rule and has determined that it is consistent with the CAA, EPA regulations, and EPA policy. Therefore, VCAPCD Rule 74.24.1—Pleasure Craft Coating and Boatyard Operations is being approved under section 110(k)(3) of the CAA as meeting the requirements of section 110(a) and part D.

EPA is publishing this rulemaking action 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 adverse comments be filed. This rule will be effective November 1, 1999 without further notice unless the Agency receives adverse comments by September 30, 1999.

If the EPA receives such comments, then EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule did not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period. Any parties interested in commenting on this rule should do so at this time. If no such comments are received, the public is advised that this rule is effective on November 1, 1999, and no further action will be taken on the proposed rule.

IV. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order (E.O.) 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 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, 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. This rule is not subject to E.O. 13045 because it does 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 rule does not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of E.O. 13084 do not apply to this rule.

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. This final rule 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**. This rule is not a "major" rule 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 1, 1999. 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, Hydrocarbons,

Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: August 6, 1999.

Laura Yoshii,

Acting Regional Administrator, Region IX.

Part 52, Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for Part 52 continues to read as follows:

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

Subpart F—California

2. Section 52.220 is amended by adding paragraphs (c)(262)(i)(B)(2) and (c)(264)(i)(A)(2) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *
(262) * * *
(i) * * *
(B) * * *

(2) Rule 74.24.1, adopted on November 10, 1998.

* * * * *

(264) * * *
(i) * * *
(A) * * *

(2) Rule 1106.1, adopted on May 1, 1992, and amended on February 12, 1999.

* * * * *

[FR Doc. 99-22183 Filed 8-30-99; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 60

[ND-001-0006a; FRL-6426-5]

Clean Air Act Approval and Promulgation of Air Quality Implementation Plan Revision for North Dakota; Revisions to the Air Pollution Control Rules; Delegation of Authority for New Source Performance Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule and delegation of authority.

SUMMARY: EPA approves revisions to the State Implementation Plan (SIP) submitted by the Governor of North Dakota with a letter dated September 28, 1998. The revisions affect air pollution control rules regarding general