

**ENVIRONMENTAL PROTECTION
AGENCY**

40 CFR Part 52

[CA 071-0069; FRL-6129-5]

**Approval and Promulgation of
Implementation Plans; California State
Implementation Plan Revision;
Mendocino County Air Quality
Management 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). This action is an administrative change which revises the definitions in Mendocino County Air Quality Management District (MCAQMD or District) Rule 130, Definitions. The intended effect of approving this action is to incorporate changes to the definitions for clarity and consistency with revised federal and state definitions. This approval action will incorporate these definitions into the Federally approved SIP. 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 will become effective on September 29, 1998, without further notice, unless EPA receives relevant adverse comments by August 31, 1998. If EPA receives such comment, then it will publish a document in the **Federal Register** informing the public that this rule will not take effect.

ADDRESSES: Copies of the rule revision 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 rule revisions 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.

Environmental Protection Agency, Air Docket (6102), 401 "M" Street, S.W., Washington, D.C. 20460.

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

Mendocino County Air Quality Management District, 306 East Gobbi Street, Ukiah, California 95482.

FOR FURTHER INFORMATION CONTACT: Cynthia G. Allen, Rulemaking Office (AIR-4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105-3901, Telephone: (415) 744-1189.

SUPPLEMENTARY INFORMATION:

I. Applicability

The rule being approved into the California SIP is: Mendocino County Air Quality Management District Rule 130, Definitions. This rule was submitted by the California Air Resources Board to EPA on November 18, 1993.

II. Background

On March 3, 1978, EPA promulgated a list of nonattainment areas under the provisions of the Clean Air Act, as amended in 1977 (1977 Act or pre-amended Act), that listed Mendocino County as attainment or unclassifiable for all pollutants, see 43 FR 8964, 40 CFR 81.305. In response to the section 110(a) of the Act and other requirements, the MCAQMD submitted many rules which EPA approved into the SIP.

This document addresses EPA's direct-final action for the following MCAQMD rule: Rule 130, Definitions. This rule was adopted by MCAQMD on April 6, 1993, and submitted by the State of California for incorporation into its SIP on November 18, 1993. This rule was found to be complete on December 27, 1993, pursuant to EPA's completeness criteria that are set forth in 40 CFR part 51, Appendix V¹ and is being finalized for approval into the SIP. This rule was originally adopted as part of MCAQMD's efforts to achieve and maintain the National Ambient Air Quality Standards (NAAQS).

The following is EPA's evaluation and final action for this rule.

III. EPA Evaluation and Action

In determining the approvability of a 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 this action, appears in various EPA policy guidance documents.²

¹ 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).

² Among other things, the pre-amendment guidance consists of those portions of the proposed post-1987 ozone and carbon monoxide policy that

EPA previously reviewed many rules from the MCAQMD and incorporated them into the federally approved SIP pursuant to section 110(k)(3) of the CAA. Those definitions that are being superseded by today's action are as follows:

- Rule 130, Definitions:
 - (p5) Prevention of Significant Deterioration (PSD) Increment (submitted 08/08/82)
 - (t2) Trade Secrets (submitted 04/17/80)

The following revisions were made in MCAQMD Rule 130, Definitions:

- (p6) "Prevention of Significant Deterioration Increment" is being amended to bring it into conformity with federal regulations; (t2) "Toxic Air Contaminant" is being renumbered and amended for clarity; and (t3) "Trade Secrets" is being renumbered.

EPA has evaluated the submitted rule and has determined that it allows proper implementation of rules previously approved into the SIP, and does not relax the requirements of those rules. Therefore, MCAQMD Rule 130, Definitions, is being approved under section 110(k)(3) of the CAA as meeting the requirements of section 110(a) and part D. Future action by EPA on prohibitory, new source review, or other MCAQMD rules may require changes to these definitions.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any State implementation plan. Each request for revision to the State implementation plan shall be considered separately in light of specific technical, economic and environmental factors and in relation to relevant statutory and regulatory requirements.

EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should relevant adverse comments be filed. This rule will be effective September 29, 1998, without further notice unless the Agency receives relevant adverse comments by August 31, 1998.

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).

If the EPA received such comments, then EPA will publish a document withdrawing the final rule and informing the public that the rule will 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 should do so at this time. If no such comments are received, the public is advised that this rule will be effective on September 29, 1998, 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 E.O. 12866 review.

The final rule is not subject to E.O. 13045, entitled "Protection of Children from Environmental Health Risks and Safety Risks," because it is not an "economically significant" action under E.O. 12866.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under 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 impose any new requirements, the Administrator certifies that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the CAA, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of State action. The Clean Air Act forbids EPA to base its 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).

C. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must

prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to private sector, of \$100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated costs of \$100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new Federal requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

D. Submission to Congress and the General Accounting Office

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major" rule as defined by 5 U.S.C. 804(2).

E. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 29, 1998. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to

enforce its requirements (see section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compound.

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

Dated: July 8, 1998.

Felicia Marcus,

Regional Administrator, Region IX.

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

PART 52—[AMENDED]

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

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

Subpart F—California

2. Section 52.220 is amended by adding paragraph (c)(194)(i)(G) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(194) * * *

(i) * * *

(G) Mendocino County Air Quality Management District.

(I) Rule 130 (p6), (t2), and (t3) adopted April 6, 1993.

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[FR Doc. 98-20508 Filed 7-30-98; 8:45 am]

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 15

[ET Docket No. 96-102, FCC 98-121]

Unlicensed NII Devices in the 5 GHz Frequency Range

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: By this *Memorandum Opinion and Order* ("MO&O"), the Commission amends the rules to permit fixed, point-to-point Unlicensed National Information Infrastructure ("U-NII") devices in the 5.725-5.825 GHz band to operate with one watt maximum transmitter output power and