

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)(231)(i)(B)(7) to read as follows:

§ 52.220 Identification of plan.

* * * *

(c) * * *

(231) * * *

(i) * * *

(B) * * *

(7) Rules 413 adopted on April 18, 1972 and Rule 414.1 adopted on January 9, 1979, both amended on March 7, 1996.

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[FR Doc. 00-2171 Filed 2-2-00; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY**40 CFR Part 52**

[CA 234-0187a; FRL-6529-6]

Approval and Promulgation of Implementation Plans; California State Implementation Plan Revision, Kern County, San Diego County, San Joaquin Valley Unified County Air Pollution Control Districts and South Coast Air Quality Management Districts

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 Kern County Air Pollution Control District (KCAPCD), San Diego County Air Pollution Control District (SDCAPCD), San Joaquin Valley Unified Air Pollution Control District (SJVUAPCD), and South Coast Air Quality Management District (SCAQMD). This approval action will incorporate these revisions into the federally approved SIP. The intended effect of approving these revisions is to regulate emissions of volatile organic compounds (VOCs) 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 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 April 3, 2000 without further notice, unless EPA receives adverse comments by March 6, 2000. 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: Comments must be submitted to Andrew Steckel at Region IX office listed below. Copies of the rule, along with 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 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

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

San Diego County Air Pollution Control District, 9150 Chesapeake Dr., San Diego, CA 92123-1096

San Joaquin Valley Unified Air Pollution Control District, 1990 E. Gettysburg, Fresno, CA 93726

South Coast Air Quality Management District, 21865 E. Copley Dr., Diamond Bar, CA 91765-4182

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, Telephone: (415) 744-1189.

SUPPLEMENTARY INFORMATION:**I. Applicability**

The rules being approved into the California SIP include: KCAPCD Rule 102, Definitions; SDCAPCD Rule 2, Definitions; SJVUAPCD Rule 1020, Definitions; and SCAQMD Rule 102, Definitions Terms. In addition, SDCAPCD Rule 3, Standard Conditions is being rescinded. The revisions were adopted by KCAPCD on July 1, 1999; SDCAPCD on June 30, 1999; SJVUAPCD on June 17, 1999; and SCAQMD on April 9, 1999. These rules were submitted by the California Air Resources Board to EPA on September 7, 1999.

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 KCAPCD, SDCAPCD, SJVUAPCD, and SCAQMD. 43 FR 8964, 40 CFR 81.305. In response to section 110 (a) of the Act and other requirements, KCAPCD, SDCAPCD, SJVUAPCD, and SCAQMD submitted many rules which EPA approved into the SIP.

On February 7, 1996 (61 FR 4588) EPA published a final rule excluding perchloroethylene from the definition of VOC. On April 9, 1998 (63 FR 17331) EPA published a final rule excluding methyl acetate from the definition of VOC. These compounds were determined to have negligible photochemical reactivity and, thus, were added to the Agency's list of Exempt Compounds.

This document addresses EPA's direct-final action for KCAPCD Rule 102, Definitions; SDCAPCD Rule 2, Definitions and Rule 3, Standard Conditions; SJVUAPCD Rule 1020, Definitions; and SCAQMD Rule 102. The revised rules were adopted by KCAPCD on July 1, 1999; SDCAPCD on June 30, 1999; SJVUAPCD on December 17, 1992, and SCAQMD on April 9, 1999. These rules were submitted by the California Air Resources Board to EPA on September 7, 1999. These rules were found to be complete on October 20, 1999, 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.

The following are EPA's summary and final action for these rules:

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.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 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**

This action is necessary to make the VOC definition in KCAPCD, SDCAPCD, SJVUAPCD, and SCAQMD rules consistent with federal and state definitions of VOC. This action will result in more accurate assessment of ozone formation potential, will remove unnecessary control requirements and will assist States in avoiding exceedances of the ozone health standard by focusing control efforts on compounds which are actual ozone precursors.

KCAPCD Rule 102, Definitions, has been revised to add methyl acetate and perchloroethylene to the definition of exempt Volatile Organic Compounds. In addition, this revision deletes the following definitions, which are no longer used: Alteration, Dusts, Institutional Facility, Loading Rack, and Section.

SDCAPCD Rule 2, Definitions, has been revised to add methyl acetate to the definition of exempt Volatile Organic Compounds. In addition, this revision adds the following new definitions: 12-Month Period, Facility, Military Tactical Support Equipment, PM-2.5, Permit to Operate, and Registration. This revision deletes the following definitions, which are no longer used: Process Weight and Process Weight Per Hour.

SDCAPCD Rule 3, Standard Conditions, is being rescinded because it contains a definition of Standard Conditions which is now included in Rule 2, Definitions.

SJVUAPCD Rule 1020, Definitions, has been revised to add methyl acetate to the definition of exempt Volatile Organic Compounds and to make clarification changes to the definition of "Clean Produced Water" in section 3.10.

SCAQMD Rule 102, Definition of Terms, has been revised to add methyl acetate to the definition of exempt Volatile Organic Compounds.

EPA has evaluated the submitted rules and has determined that they are consistent with the CAA, EPA regulations, and EPA policy. Therefore, KCAPCD Rule 102, Definitions, SDCAPCD Rule 2, Definitions and revision of Rule 3, Standard Conditions, SJVUAPCD Rule 1020, Definitions, and SCAQMD Rule 102, Definition of Terms, are 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 rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse

document" (Blue Book)(notice of availability was published in the **Federal Register** on May 25, 1988).

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 April 3, 2000 without further notice unless the Agency receives adverse comments by March 6, 2000.

If the EPA receives such comments, then EPA will publish a timely withdrawal in the **Federal Register** 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 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 April 3, 2000 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 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 Executive Order 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 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. This rule is not subject to Executive Order 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 Executive Order 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 April 3, 2000. 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: January 10, 2000.

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 revising paragraph (c)(41)(ii) introductory text, and by adding

paragraph (c)(41)(ii)(E) and (c)(269) to read as follows:

§ 52.220 Identification of plan.

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(c) * * *

(41) * * *

(ii) San Diego County Air Pollution Control District.

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(E) Previously approved on August 31, 1978 and now deleted without replacement Rule 3.

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(269) New and amended regulations for the following APCDs were submitted on September 7, 1999, by the Governor's designee.

(i) Incorporation by reference.

(A) Kern County Air Pollution Control District.

(1) Rule 102, adopted on April 18, 1972 and amended on July 1, 1999.

(B) San Diego County Air Pollution Control District.

(1) Rule 2, adopted on June 30, 1999.

(C) San Joaquin Valley Unified Air Pollution Control District.

(1) Rule 1020, adopted on June 18, 1992 and amended on June 17, 1999.

(D) South Coast Air Quality Management District.

(1) Rule 102, adopted on February 4, 1997 and amended on April 9, 1999.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[SD-001-0007a & SD-001-0008a; FRL-6527-2]

Clean Air Act Approval and Promulgation of State Implementation Plan; South Dakota; Revisions to Performance Testing Regulation

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The EPA approves revisions to the South Dakota State implementation plan (SIP) submitted on May 2, 1997 and May 6, 1999 regarding the testing of new fuels or raw materials. Specifically, the State adopted a new provision in Chapter 74:36:11, Performance Testing, of the Administrative Rules of South Dakota (ARSD) that allows permitted sources to request permission to test a new fuel or raw material, to determine if it is compatible with existing equipment and to determine air emission rates, before