

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 217-0231; FRL-6579-2]

Revisions to the California State Implementation Plan, San Joaquin Valley Unified Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing a limited approval and limited disapproval of a revision to the San Joaquin Valley Unified Air Pollution Control District (SJVUAPCD) portion of the California State Implementation Plan (SIP). This revision concerns volatile organic compound (VOC) emissions from adhesives. We are proposing action on a local rule that regulates this emission source under the Clean Air Act as amended in 1990 (CAA or the Act). We are taking comments on this proposal and plan to follow with a final action.

DATES: Comments are due on or before May 17, 2000.

ADDRESSES: Mail comments to Andy Steckel, Rulemaking Office Chief (AIR-4), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105-3901.

You can inspect copies of the submitted rule and EPA's technical support document (TSD) at our Region IX office during normal business hours. You may also see copies of the submitted rule at the following locations:

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

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

FOR FURTHER INFORMATION CONTACT: Yvonne Fong, Rulemaking Office (AIR-4), U.S. Environmental Protection Agency, Region IX, (415) 744-1199.

SUPPLEMENTARY INFORMATION: Throughout this document, "we," "us" and "our" refer to EPA.

Table of Contents

- I. The State's Submittal
 - A. What rule did the State submit?
 - B. Are there other versions of this rule?
 - C. What is the purpose of the submitted rule?
- II. EPA's Evaluation and Action
 - A. How is EPA evaluating the rule?
 - B. Does the rule meet the evaluation criteria?
 - C. What are the rule deficiencies?
 - D. EPA recommendations to further improve the rule.
 - E. Proposed action and public comment.
- III. Background information
 - A. Why was this rule submitted?
- IV. Administrative Requirements

I. The State's Submittal

A. What Rule Did the State Submit?

Table 1 lists the rule addressed by this proposal with the date that it was adopted by the local air agency and submitted by the California Air Resources Board (CARB).

TABLE 1.—SUBMITTED RULE

Local agency	Rule No.	Rule title	Adopted	Submitted
SJVUAPCD	4653	Adhesives	03/19/98	09/29/98

On January 26, 1999, this rule submittal was found to meet the completeness criteria in 40 CFR part 51, appendix V, which must be met before formal EPA review.

B. Are There Other Versions of This Rule?

There are no previous versions of Rule 4653 in the SIP, although the SJVUAPCD adopted earlier versions of this rule on March 17, 1994 and April 13, 1995, and CARB submitted them to us on May 24, 1994 and August 10, 1995, respectively. While we can act on only the most recently submitted version, we have reviewed materials provided with previous submittals.

C. What is the Purpose of the Submitted Rule?

Rule 4653 limits the VOC emissions resulting from the application of adhesives and adhesive primers. The TSD has more information about this rule.

II. EPA's Evaluation and Action

A. How Is EPA Evaluating the Rule?

Generally, SIP rules must be enforceable (see section 110(a) of the Act), must require Reasonably Available

Control Technology (RACT) for major sources in nonattainment areas (see section 182(a)(2)(A)), and must not relax existing requirements (see sections 110(l) and 193). The SJVUAPCD regulates an ozone nonattainment area (see 40 CFR part 81), so Rule 4653 must fulfill RACT.

Guidance and policy documents that we used to define specific enforceability and RACT requirements include the following:

1. Portions of the proposed post-1987 ozone and carbon monoxide policy that concern RACT, 52 FR 45044, November 24, 1987.

2. "Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations; Clarification to Appendix D of November 24, 1987 **Federal Register** Document," (Blue Book), notice of availability published in the May 25, 1988 **Federal Register**.

3. The State of California Air Resources Board's "Determination of Reasonably Available Control Technology (RACT) and Best Available Retrofit Control Technology (BARCT) for Adhesives and Sealants," December 1998.

B. Does the Rule Meet the Evaluation Criteria?

This rule improves the SIP by establishing emission limits for adhesives, by specifying application methods and housekeeping practices, by designating appropriate solvents, and by requiring recordkeeping. This rule is largely consistent with the relevant policy and guidance regarding enforceability, RACT and SIP relaxations. Rule provisions which do not meet the evaluation criteria are summarized below and discussed further in the TSD.

C. What Are the Rule Deficiencies?

These provisions conflict with sections 110 and 182 and part D of the Act and prevent full approval of the SIP revision.

1. Rule 4653 establishes VOC limits which do not meet RACT for specialty contact adhesives which are labeled exclusively for the bonding of single-ply roof material or immersible products, for adhesives used to bond porous materials, and for surface preparation solvents.

2. Under section 4.1.1, certain exempt operations are only required to maintain monthly records documenting the type

and quantity of adhesive products used. These operations, however, may potentially use noncompliant materials which necessitates that daily records be kept.

3. SJVUAPCD included an exemption in section 4.1.9 for contact adhesives subject to 16 CFR part 1302. EPA is unable to approve the inclusion of this exemption without further justification because compliant formulations of these products that perform adequately already exist in the market place.

D. EPA recommendations to further improve the rules.

The TSD describes additional rule revisions that do not affect EPA's current action but are recommended for the next time the local agency modifies the rules.

E. Proposed action and public comment.

As authorized in sections 110(k)(3) and 301(a) of the Act, EPA is proposing a limited approval of the submitted rule to improve the SIP. If finalized, this action would incorporate the submitted rule into the SIP, including those provisions identified as deficient. This approval is limited because EPA is simultaneously proposing a limited disapproval of the rule under section 110(k)(3). If this disapproval is finalized, sanctions will be imposed under section 179 of the Act unless EPA approves a subsequent SIP revision that corrects the rule deficiencies within 18 months. These sanctions would be imposed as described in 59 FR 39832 (August 4, 1994). A final disapproval would also trigger the federal implementation plan (FIP) requirement under section 110(c). Note that the submitted rule has been adopted by the SJVUAPCD, and EPA's final limited disapproval would not prevent the local agency from enforcing it.

We will accept comments from the public on the proposed limited approval and limited disapproval for the next 30 days.

III. Background Information

A. Why Was This Rule Submitted?

VOCs help produce ground-level ozone and smog, which harm human health and the environment. Section 110(a) of the CAA requires states to submit regulations that control VOC emissions. Table 2 lists some of the national milestones leading to the submittal of this local agency VOC rule.

TABLE 2—OZONE NONATTAINMENT MILESTONES

Date	Event
March 3, 1978.	EPA promulgated a list of ozone nonattainment areas under the Clean Air Act as amended in 1977. 43 FR 8964; 40 CFR 81.305.
May 26, 1988.	EPA notified Governors that parts of their SIPs were inadequate to attain and maintain the ozone standard and requested that they correct the deficiencies (EPA's SIP-Call). See section 110(a)(2)(H) of the pre-amended Act.
November 15, 1990.	Clean Air Act Amendments of 1990 were enacted. Pub. L. 101-549, 104 Stat. 2399, codified at 42 U.S.C. 7401-7671q.
May 15, 1991.	Section 182(a)(2)(A) requires that ozone nonattainment areas correct deficient RACT rules by this date.

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 13045

Executive Order 13045, entitled 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 is does not involve decisions intended to mitigate environmental health or safety risks.

C. 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.

D. Executive Order 13132

Executive Order 13132, entitled Federalism (64 FR 43255, August 10, 1999) revokes and replaces Executive Orders 12612, Federalism and 12875, Enhancing the Intergovernmental Partnership. Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that 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." Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This proposed rule will 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), because it merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. Thus, the requirements of section 6 of the Executive Order 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 the 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. National Technology Transfer and Advancement Act

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires Federal agencies to evaluate existing technical standards when developing a new regulation. To comply with NTTAA, EPA must consider and use “voluntary consensus standards” (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical.

The EPA believes that VCS are inapplicable to this action. Today’s proposed action does not require the public to perform activities conducive to the use of VCS.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compound.

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

Dated: March 30, 2000.

Laura Yoshii,

Acting Regional Administrator, Region IX.

[FR Doc. 00–9392 Filed 4–14–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 226–0235; FRL–6578–5]

Approval and Promulgation of Implementation Plans; California State Implementation Plan Revision; Tehama County Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing a limited approval and a simultaneous limited disapproval of revisions to the California State Implementation Plan (SIP) for the Tehama County Air Pollution Control District (TCAPCD). The revisions concern Rule 4.31—Industrial, Institutional, and Commercial Boilers, Steam Generators, and Process Heaters, Rule 4.34—Stationary Piston Engines, and Rule 4.37—Determination of Reasonably Available Control Technology for the Control of Oxides of Nitrogen from Stationary Gas Turbines.

The intended effect of proposing limited approval and a simultaneous limited disapproval of the rules is to regulate emissions of NO_x in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). EPA’s final action on the proposed rules will incorporate the rules into the federally approved SIP. EPA has evaluated the rules and is proposing a limited approval and a simultaneous limited disapproval under provisions of the CAA regarding EPA action on SIP submittals and general rulemaking authority because these revisions do not fully meet the CAA provisions regarding unapprovable executive officer discretion.

DATES: Comments must be received on or before May 17, 2000.

ADDRESSES: Comments may be mailed to: Andrew Steckel, Rulemaking Office, AIR–4, Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Copies of the rules and EPA’s evaluation report of the rules are available for public inspection at EPA’s Region IX office during normal business hours. Copies of the submitted rules are also available for inspection at the following locations:

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

Tehama County APCD, P.O. Box 38 (1750 Walnut Street) Red Bluff, CA 96080

FOR FURTHER INFORMATION CONTACT: Ed Addison, Rulemaking Office, AIR–4, Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901, Telephone: (415) 744–1160.

SUPPLEMENTARY INFORMATION: