

action is necessary to prevent possible loss of life, injury, or damage to property or the environment.

Although this rule is being published as a temporary final rule without prior notice, an opportunity for public comment is nevertheless desirable to ensure the rule is both reasonable and workable. Accordingly, persons wishing to comment may do so by submitting comments to the office listed in **ADDRESSES** in the preamble. Persons submitting comments should include their names and addresses, identify this rulemaking (CGD09-00-013), the specific sections of this document to which each comment applies, and give the reason for each comment. The Coast Guard will consider all comments received.

Background and Purpose

A temporary safety zone is required to ensure safety of vessels and spectators from hazards associated with fireworks. Entry into, transit through or anchoring within this safety zone is prohibited unless authorized by the Captain of the Port, Chicago or the designated Patrol Commander. The designated Patrol Commander on scene may be contacted on VHF Channel 16.

Regulatory Evaluation

This temporary rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has not been reviewed by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) the Coast Guard considered whether this rule will have a significant impact on a substantial number of small businesses and not-for-profit organizations that are not dominant in their respective fields, and government jurisdictions with populations less than 50,000. For the same reasons set forth in the above regulatory evaluations, the Coast Guard certifies under section 605 (b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that this temporary final rule will not have a significant economic

impact on a substantial number of small entities.

Assistance for Small Entities

In accordance with section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub.L. 104-121), the Coast Guard wants to assist small entities in understanding this rule so that they can better evaluate its effectiveness and participate in the rulemaking process. If your small business or organization is affected by this rule, and you have questions concerning its provisions or options for compliance, please contact the office listed in **ADDRESSES** in this preamble.

Collection of Information

This rule contains no information collection requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism

The Coast Guard has analyzed this rule under the principles and criteria contained in Executive Order 13132 and has determined that this rule does not have federalism implications under that order.

Environment

The Coast Guard considered the environmental impact of this regulation and concluded that, under figure 2-1, paragraph (34)(g) of Commandant Instruction M16475.1C, it is categorically excluded from further environmental documentation. A "Categorical Exclusion Determination" is available in the docket for inspection or copying where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Vessels, Waterways.

For the reasons set out in the preamble, the Coast Guard amends 33 CFR Part 165 as follows:

PART 165—[AMENDED]

1. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; and 33 CFR 1.05-1(g), 6.04-1, 6.04-6, and 160.5; and 49 CFR 1.46. Section 165.100 is also issued under authority of Sec. 311, Pub. L. 105-383.

2. A new temporary § 165.T09-013 is added to read as follows:

§ 165.T09-013 Safety Zone: Chicago Harbor, Chicago, Illinois.

(a) *Location.* The following area is a temporary safety zone: The waters of

Lake Michigan 700 feet in diameter from Longitude 41-53'18" N and Latitude 087-36'08" W. An alternate position that may be used is Longitude 41-53'24" N and Latitude 087-35'44" W. When alternate position is used the water within a 700 ft diameter is also affected. Position will be determined by the Patrol Commander.

(b) *Applicable date.* This temporary final rule is applicable from 9:15 p.m. to 9:45 p.m., on May 28, 2000 and on every Wednesday from 9:15 to 9:45 and every Saturday from 10:00 to 10:30 through August 23, 2000.

(c) *Regulations.* In accordance with the general regulations in 165.23 of this part, entry into this zone is prohibited unless authorized by the Coast Guard Captain of the Port, Chicago, or the designated Patrol Commander.

(d) *Effective Date.* This rule is effective from May 28, 2000 until August 23, 2000.

Dated: July 6, 2000.

A. M. Heggers,

Captain, U.S. Coast Guard, Captain of the Port Chicago.

[FR Doc. 00-18939 Filed 7-25-00; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 013-0139; FRL-6729-8]

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

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is finalizing a limited approval and limited disapproval of revisions to the California State Implementation Plan (SIP) proposed in the **Federal Register** on April 12, 1999. This final action will incorporate these rules into the federally approved SIP. The intended effect of finalizing this action is to regulate particulate matter (PM) emissions in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). The revised rules regulate PM-10 emissions from open burning. Thus, EPA is finalizing simultaneous limited approvals and limited disapprovals under CAA provisions regarding EPA action on SIP submittals and general rulemaking authority because these

revisions, while strengthening the SIP, do not fully meet the CAA provisions regarding plan submissions and requirements for nonattainment areas. As a result of these limited disapprovals EPA will be required to impose highway funding or emission offset sanctions under the CAA unless the State submits and EPA approves corrections to the identified deficiencies within 18 months of the effective date of these disapprovals. Moreover, EPA will be required to promulgate a Federal implementation plan (FIP) unless the deficiencies are corrected within 24 months of the effective date of these disapprovals.

EFFECTIVE DATE: This action is effective on August 25, 2000.

ADDRESSES: 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 sites:

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), Ariel Rios Building, 1200 Pennsylvania Avenue, NW., Washington, DC 20460.

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 East Gettysburg Street, Fresno, CA 93726.

South Coast Air Quality Management District, 21865 East Copley Drive, Diamond Bar, CA 91765.

FOR FURTHER INFORMATION CONTACT: Al Petersen, Rulemaking Office, (AIR-4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105, Telephone: (415) 744-1135.

SUPPLEMENTARY INFORMATION:

I. Applicability

The rules being approved into the California SIP include San Joaquin Valley Unified Air Pollution Control District (SJVUAPCD) Rule 4103, Open Burning (adopted on December 16, 1993), and South Coast Air Quality Management District (SCAQMD) Rule 444, Open Fires (adopted on October 2, 1987). These rules were submitted by the California Air Resources Board (CARB) to EPA on May 24, 1994 and March 23, 1988, respectively.

II. Background

On April 12, 1999 in 64 FR 17589, EPA proposed granting limited approval and limited disapproval of the following rules into the California SIP: SJVUAPCD Rule 4103, Open Burning, and SCAQMD Rule 444, Open Fires. SJVUAPCD Rule 4103 was amended on December 16, 1993, and submitted by the CARB to EPA on May 24, 1994. SCAQMD Rule 444, was amended on October 2, 1987, and submitted by the CARB to EPA on March 23, 1988. These PM-10 rules were submitted by the State of California in response to section 110(a) and Part D of the CAA for incorporation into the California SIP. A detailed discussion of the background for the above rules and the nonattainment areas are provided in the proposed rule cited above.

EPA has evaluated the above rules 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) and EPA's interpretation of these requirements as expressed in various EPA policy guidance documents referenced in the proposed rule. EPA is finalizing the limited approval of SJVUAPCD Rule 4103 and SCAQMD Rule 444 in order to strengthen the SIP and finalizing the limited disapproval requiring the correction of the remaining deficiencies.

Submitted SJVUAPCD Rule 4103 replaces twenty-five rules in the Applicable SIP for the eight counties that now comprise the SJVUAPCD. SJVUAPCD Rule 4103 regulates open burning and reduces PM-10 emissions. Although SJVUAPCD Rule 4103 strengthens the SIP by combining and unifying the rules of eight counties and by eliminating the exemption for one- and two-family dwellings to burn residential rubbish, EPA has determined that SJVUAPCD Rule 4103 does not meet the requirements of RACM and BACM by allowing exemptions for eight burning activities that could be limited to Permissive-Burn Days. Rule 4103 also does not meet the requirements of BACM for Prescribed Burning (including Agricultural Burning, Forest Management Burning, Range Improvement Burning, and Wildland Vegetation Management Burning) to require burner training, to require emission reduction techniques, to require a smoke management plan, and to require the second level of smoke dispersion evaluation during the day (the first level is the initial evaluation at the beginning of the day).

Submitted SCAQMD Rule 444 regulates open burning and reduces PM-10 emissions. On July 6, 1982, EPA approved into the SIP a version SCAQMD Rule 444, Open Fires, that had been adopted by the District on October 2, 1981. Although the submitted SCAQMD Rule 444 will strengthen the SIP by requiring an approved implementation plan for Wildland Vegetation Management Burning, EPA has determined that SCAQMD Rule 444 does not meet the requirements of RACM for Prescribed Burning, because the rule does not base approval of a burn on an evaluation of an airshed's capacity to disperse PM-10 emissions from all types of Open Burning, including Prescribed Burning, and other PM-10 sources, to encourage burner training by offering incentives, and to encourage the use of emission reduction techniques by offering incentives.

A detailed list of rules to be replaced and a discussion of rule provisions and deficiencies can be found in the Technical Support Documents for SJVUAPCD Rule 4103 and SCAQMD Rules 444 and 208, which are available from the U.S. EPA's Region IX office.

III. Response to Public Comments

A 30-day public comment period was provided in 64 FR 17589. EPA received one comment letter on the proposed rule from David L. Jones, SJVUAPCD. The comment has been evaluated by EPA and a summary of the comment and EPA's response is set forth below.

Comment: Mr. Jones commented that the California Air Resources Board (CARB) is planning to take action to revise the *Agricultural Burning Guidelines*, California Code of Regulations, Title 17, in late 1999. Changes currently being proposed to Title 17 would require that SJVUAPCD Rule 4103 be amended, which would also eliminate many of the deficiencies cited by EPA. The SJVUAPCD requests that EPA delay final rulemaking on Rule 4103 until after the CARB takes action on the proposed changes to Title 17. This would allow the SJVUAPCD time to complete the amendment of Rule 4103 in an orderly and cost saving manner.

Response: EPA delayed final rulemaking until after the California Air Resources board adopted the *Smoke Management Guidelines for Agricultural and Prescribed Burning* (SMGAPB) on March 23, 2000. EPA notes that the exemption for agricultural burning on a No-burn day, "if denial would threaten imminent and substantial economic loss," is retained in the revised SMGAPB. The exemption in the revised

SMGAPB is now mitigated by limiting the amount to be burned and by allowing burning only when not likely to cause or contribute to exceedences of the NAAQS or smoke impact to smoke sensitive areas. However, EPA has determined that this exemption as now written is implemented by Director's discretion and is not enforceable nor approvable by EPA. A District planning to submit a rule containing this exemption should define clearly "an imminent and substantial economic loss" and should state clearly the guidelines for determining the amount of material to be burned, geographical location, and meteorological conditions that would allow such an exemption.

IV. EPA Action

EPA is finalizing a limited approval and a limited disapproval of SJVUAPCD Rule 4103 and SCAQMD Rule 444. The limited approval of these rules is being finalized under section 110(k)(3) of the CAA in light of EPA's authority pursuant to section 301(a) of the CAA to adopt regulations necessary to further air quality by strengthening the SIP. The approval is limited in the sense that the rules strengthen the SIP. However, the rules do not meet the requirements of section 110(a)(2)(A) of the CAA because of the rule deficiencies which were discussed in the proposed rule. Thus, in order to strengthen the SIP, EPA is granting limited approval of these rules under sections 110(k)(3) and 301(a) of the CAA. This action approves SJVUAPCD Rule 4103, Open Burning, and SCAQMD Rule 444, Open Fires, into the SIP as federally enforceable rules.

At the same time, EPA is finalizing a limited disapproval of SJVUAPCD Rule 4103 and SCAQMD Rule 444, because they contain deficiencies that have not been corrected by section 110(a)(2)(A) of the CAA, and, as such, the rules do not fully meet the requirements of part D of the Act. As stated in the proposed rule, upon the effective date of this final rule, the 18 month clock for sanctions and the 24 month FIP clock will begin per sections 179(a) and 110(c) of the CAA. If the State does not submit the required corrections and EPA does not approve the submittal within 18 months of the effective date of the final rule, either the highway sanction or the offset sanction will be imposed at the 18 month mark. It should be noted that the rules covered by this final rule have been adopted by SJVUAPCD and SCAQMD and are currently in effect in SJVUAPCD and SCAQMD, respectively. EPA's limited disapproval action will not prevent SJVUAPCD, SCAQMD, or EPA from enforcing these rules.

V. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866, entitled "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 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 affects 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. If the mandate is unfunded, EPA must provide to OMB, 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 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 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, because it merely acts on 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 act on 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.

EPA's disapproval of the state request under section 110 and subchapter I, part D of the Clean Air Act does not affect any existing requirements applicable to small entities. Any pre-existing federal requirements remain in place after this disapproval. Federal disapproval of the state submittal does not affect state enforceability. Moreover, EPA's disapproval of the submittal does not impose any new Federal requirements. Therefore, 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 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 acts on 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.

EPA believes that VCS are inapplicable to today's action because it does not require the public to perform activities conducive to the use of VCS.

H. 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**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This rule is not a "major" rule as defined by 5 U.S.C. 804(2).

I. 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 25, 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, Particulate matter, Reporting and recordkeeping requirements.

Dated: June 14, 2000.

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)(176)(i)(E) and (197)(i)(C)(4) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(176) * * *

(i) * * *

(E) South Coast Air Quality Management District.

(1) Rule 444, adopted on October 2, 1987.

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(197) * * *

(i) * * *

(C) * * *

(4) Rule 4103, adopted on December 16, 1993.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[TX–125–1–7463a; FRL–6840–3]

Approval and Promulgation of Implementation Plans; Texas; Revisions to Emergency Episode Plan Regulations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The EPA is taking direct final action approving revisions to the Texas Natural Resource Conservation Commission (TNRCC) emergency episode plan regulations in the Texas State Implementation Plan (SIP). These revisions update statutory citations,