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 E.O. 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 proposed 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 proposed rule will not have a significant impact on a substantial number of small entities because SIP actions 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 action 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 proposed action 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 proposed 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 proposed action because it 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, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

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

Dated: October 20, 2000.

Felicia Marcus,

Regional Administrator, Region IX.

[FR Doc. 00–29064 Filed 11–13–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 210–0173; FRL–6897–1]

Approval and Promulgation of Implementation Plans; California State Implementation Plan Revision, Lake County Air Quality Management District, Monterey Bay Unified Air Pollution Control District, Bay Area Air Quality Management District, Sacramento Metropolitan Air Quality Management District, 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 revisions to the California State Implementation Plan (SIP) which concern the control of volatile organic compound (VOC) emissions from the transfer of gasoline to storage tanks or to vehicle tanks. EPA is proposing a limited approval and limited disapproval without potential sanctions of Lake County Air Quality Management District (LCAQMD) Section (Rule) 439.5 and Monterey Bay Unified Air Pollution Control District (MBUAPCD) Rule 1002. EPA is also proposing a limited approval and limited disapproval with potential sanctions of Bay Area Air Quality Management District (BAAQMD) Rule 8–7, Sacramento Metropolitan Air Quality Management District (SMAQMD) Rule 449, and San Joaquin Valley Unified Air Pollution Control District (SJVUAPCD) Rule 4622. The intended effect of the limited approvals and limited disapprovals is to regulate emissions of VOCs in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). EPA's final action on this proposed rule will incorporate these rules into the federally approved SIP.

DATES: Comments must be received in writing on or before December 14, 2000.

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

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

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

Bay Area Air Quality Management District, 939 Ellis Street, San Francisco, CA 94105.

Lake County Air Quality Management District, 883 Lakeport Boulevard, Lakeport, CA 95453.

Monterey Bay Unified Air Pollution Control District, 24580 Silver Cloud Court, Monterey, CA 93940.

Sacramento Metropolitan Air Quality Management District, 8411 Jackson Road, Sacramento, CA 95826.

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

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, (415) 744–1135.

SUPPLEMENTARY INFORMATION:

I. Applicability

The rules being proposed for limited approval and limited disapproval into the California SIP are LCAQMD Section (Rule) 439.5, Retail Gasoline Service Stations, MBUAPCD Rule 1002, Transfer of Gasoline into Vehicle Fuel Tanks, BAAQMD Rule 8–7, Gasoline Dispensing Facilities; SMAQMD Rule 449, Transfer of Gasoline into Vehicle Fuel Tanks; and SJVUAPCD Rule 4622, Gasoline Transfer into Vehicle Fuel Tanks. These rules were submitted by the California Air Resources Board (CARB) to EPA on May 18, 1998, June 3, 1999, March 23, 2000, May 18, 1998, and August 21, 1998, respectively.

II. Background

On March 3, 1978, EPA promulgated a list of ozone nonattainment areas under the provisions of the 1977 Clean Air Act (1977 CAA or pre-amended Act), that included the San Francisco Bay Area, Monterey Bay Area, Sacramento Metro Area, and the San Joaquin Valley Area. 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 pre-amended Act, that the above district's portions of the 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, amendments to the 1977 CAA were enacted. Pub. L. 101–549, 104 Stat. 2399, codified at 42 U.S.C. 7401–7671*q*.

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]

In section 182(b)(3) of the CAA, Congress required the states to submit a SIP revision to require all owners or operators of gasoline dispensing systems in moderate or higher ozone nonattainment areas to install a gasoline vapor recovery system. The EPA Administrator would issue gasoline vapor recovery guidance as appropriate as to the effectiveness of such a system.

The Monterey Bay Area, San Francisco Bay Area, Sacramento Metro Area, and San Joaquin Valley Area were designated nonattainment; therefore, these areas were subject to the RACT fix-up requirement and the May 15, 1991 deadline. The San Francisco Bay Area[2] was later designated attainment and then redesignated nonattainment under subpart 1, part D, of the CAA. Subpart 1 nonattainment areas must meet the requirements of RACT according to section 172(c)(1) of the CAA and must meet the requirements of the gasoline vapor recovery guidance according to section 182(b)(3) of the CAA. The Sacramento Metro Area and the San Joaquin Valley Area[3] subpart 2 nonattainment areas classified as moderate or higher must meet the requirements of RACT according to section 182(a)(2)(A) and the gasoline vapor recovery guidance according to section 182(b)(3) of the CAA. The Monterey Bay Area[4] has since been redesignated as a maintenance attainment area. This area must implement all measures in the SIP before redesignation as attainment, according to section 175A(d) of the CAA. Control of emissions from gasoline dispensing facilities is not a measure that is relied on to achieve or maintain attainment; therefore, the Monterey Bay Area is not subject to the requirements of RACT, including gasoline vapor recovery guidance. Lake County Air Basin was designated attainment and is not subject to the requirements of RACT, including gasoline vapor recovery guidance.

This document addresses EPA's proposed action for LCAQMD Section (Rule) 439.5, Retail Gasoline Service Stations, adopted on July 15, 1997; MBUAPCD 1002, Transfer of Gasoline into Vehicle Fuel Tanks, adopted on April 21, 1999; BAAQMD Rule 8–7, Gasoline Dispensing Facilities, adopted on November 17, 1999; SMAQMD Rule 449, Transfer of Gasoline into Vehicle Fuel Tanks, adopted on April 3, 1997; and SJVUAPCD Rule 4622, Gasoline Transfer into Vehicle Fuel Tanks, adopted on June 18, 1998. These rules were submitted on May 18, 1998, June 3, 1999, March 28, 2000, May 18, 1998, and August 21, 1998, respectively. These rules were found to be complete on July 17, 1998, June 24, 1999, May 19, 2000, July 17, 1998, and October 2, 1998, respectively, pursuant to EPA's completeness criteria that are set forth in 40 CFR Part 51, Appendix V.[5] LCAQMD Section (Rule) 439.5 and MBUAPCD Rule 1002, are being proposed for limited approval and limited disapproval without sanctions. BAAQMD Rule 8–7, SMAQMD Rule 449, and SJVUAPCD Rule 4622 are being proposed for limited approval and limited disapproval with sanctions.

The BAAQMD and LCAQMD rules control the emission of volatile organic compounds (VOCs) from the transfer of gasoline into fuel storage tanks and into vehicle fuel tanks. The MBUAPCD, SMAQMD, and SJVUAPCD rules control the emission of VOCs from the transfer of gasoline into vehicle fuel tanks. VOCs

[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] On July 10, 1998(63 FR 37258), EPA published the final rule redesignating the San Francisco Bay Area to nonattainment with the federal 1-hour ozone NAAQS. The redesignation was authorized under the general nonattainment provisions of subpart 1, part D, title I, of the CAA. The Bay Area, therefore, does not have a subpart 2 classification. When comparing air quality in the Bay Area to the traditional subpart 2 classification system, the Bay Area's design value is equivalent to that of a moderate nonattainment area.

[3] The Sacramento Metro Area and the San Joaquin Valley Area retained their designation 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). The San Joaquin Valley Area is classified as serious. On April 25, 1995, EPA published a final rule granting the State's request to reclassify the Sacramento Metro Area to severe from serious (60 FR 20237).

[4] On January 17, 1997 (62 FR 2597), EPA published a direct final rule redesignating Monterey Bay Area as maintenance attainment for ozone.

[5] EPA adopted 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).

contribute to the production of ground level ozone and smog. These rules were originally adopted as part of these Districts' effort to achieve the National Ambient Air Quality Standard (NAAQS) for ozone and in response to EPA's SIP-Call and the section 182(a)(2)(A) and 182(b)(3) CAA requirements.

The following is EPA's evaluation and proposed action for these rules.

III. EPA Evaluation and Proposed 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 various EPA policy guidance documents including those listed below:

• *Model Volatile Organic Compound Rule for Reasonably Available Control Technology (RACT),''* Office of Air Quality Planning and Standards (June 1992).

• *Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations, Clarification to Appendix D of November 24, 1987* ***Federal Register*** (52 FR 45044) (The Blue Book).

Among the requirements for a VOC rule for the nonattainment areas of BAAQMD, SMAQMD, and SJVUAPCD is that it must be enforceable and meet the requirements of RACT. A VOC rule for LCAQMD attainment area must be enforceable but need not meet the requirements of RACT. A rule for a maintenance attainment area must be enforceable and must implement all measures in the SIP before redesignation as attainment, according to section 175A(d). Control of emissions from gasoline dispensing facilities is not a measure that is relied on to achieve attainment in MBUAPCD; therefore, the MBUAPCD is not subject to the requirements of RACT.

For the purpose of assisting state and local agencies in developing RACT rules for nonattainment areas, EPA prepared a series of Control Technique Guideline (CTG) documents which specify the minimum requirements that a rule must contain in order to be approved into the SIP. 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). There is no applicable CTG for transfer of gasoline into vehicle fuel tanks. However, EPA issued the following for gasoline vapor recovery guidance:

• Draft *Model Rule, Gasoline Dispensing facility—Stage II Vapor Recovery,* (August 17, 1992).

• Draft *Gasoline Vapor Recovery Guidelines,* (April 24, 2000).

In evaluating RACT, EPA also considered information published since the 1992 Draft *Model Rule,* including documents associated with development of CARB's *Enhanced Vapor Recovery Guidelines* (March 23, 2000) and South coast air Quality Management District's Draft Rule 461, Gasoline Transfer and Dispensing (December 15, 1999). EPA, Region IX, has summarized RACT requirements in the Draft *Gasoline Vapor Recovery Guidelines* (April 24, 2000). In general, these guidance documents have been set forth to ensure that VOC rules are fully enforceable, meet the requirements of RACT, and maintain or strengthen the SIP.

There is currently no version of LCAQMD Section (Rule) 439.5 in the SIP. There are no versions on which EPA has not acted. The submitted rule includes the following provisions:

• The transfer of gasoline to a storage tank (Phase I) and the transfer of gasoline to a vehicle fuel tank shall have a submerged fill pipe and CARB-certified vapor recovery equipment.

• The transfer of gasoline to a vehicle fuel tank (Phase II) shall have CARB-certified vapor recovery equipment.

• The dispensing equipment shall have appropriate warning signs and a hold open latch.

• The rule contains various exemptions for gasoline stations less than certain minimum sizes.

On February 9, 1996, 61 FR 4892, EPA approved into the SIP a version of MBUAPCD Rule 1002. There are no versions on which EPA has not acted. The submitted rule includes the following significant changes from the current SIP:

• Section 3.1 continues to require that vapor recovery equipment be CARB-certified, but removes the requirement that the vapor recovery equipment prevents 95% of the gasoline vapors from entering the atmosphere.

• Subsection 3.2.2 adds the requirement that equipment be tested in accordance with California Code of Regulations (CCR), Title 17, sections 94000 *et seq.*

• Section 3.4 is added to describe the 7-day period allowed to correct equipment not in good working order because of defects not specified by CARB pursuant to California Health and Safety Code section 41960.2(c).

• Part 4 separates the permitting requirements for new, modified, and existing gasoline dispensing systems.

On March 22, 1995, 60 FR 15062, EPA approved into the SIP a version of BAAQMD Rule 8–7. There are no versions on which EPA has not acted. The submitted rule includes the following significant changes from the current SIP:

• Numerous new standards were added for Phase I and II vapor recovery equipment.

• Numerous definitions were added for clarity.

• Performance tests of newly installed or modified equipment are required according to the required Authority to Construct.

• New performance test methods were added.

• Recordkeeping requirements were added.

On January 23, 1996, 61 FR 1716, EPA approved into the SIP a version of SMAQMD Rule 449. There are no versions on which EPA has not acted. SMAQMD submitted Rule 449 includes the following significant changes from the current SIP:

• Section 113 deletes the obsolete exemption for fueling fork lifts.

• Section 305 adds a modification to prohibit hold open latches, if prohibited by the local Fire Marshal.

• Section 306 requires that the Dynamic Back Pressure Test for gasoline dispensing nozzles must be passed. Testing could be more frequent than five years, if required by the CARB.

On May 2, 1996, 61 FR 19555, EPA approved into the SIP a version of SJVUAPCD Rule 4622 that had been adopted by SJVUAPCD on February 17, 1994. There are no versions on which EPA has not acted. The submitted includes the following significant changes from the current SIP:

• Section 5.11, which requires that all liquid removal devices be maintained to remove at least five milliliters per gallon, is added.

• Section 6.2.2, which required that certified vapor recovery systems be tested with 60 days of installation or major modification, is deleted.

• Section 6.3.1 has added the requirement that the APCO, CARB, and EPA all approve test methods on vapor recovery systems on which referenced test methods are precluded.

• Sections 6.3.1, 6.3.2, and 6.3.3 have three test methods added.

EPA has evaluated LCAQMD submitted Rule 439.5 for an ozone attainment area for consistency with the CAA, EPA regulations, and EPA policy

and has found that the revisions strengthen the SIP by adding a rule to reduce gasoline vapor emissions during the transfer of gasoline in Phases I and II by the use of CARB-certified vapor recovery equipment. Although LCAQMD Section (Rule) 439.5 will strengthen the SIP, this rule still contains the following enforceability-related deficiencies that must be corrected pursuant to the section 182(a)(2)(A) and 182(a)(3) requirements of the CAA before the rule will qualify for full approval:

• The rule should reference the specific EPA-approved test methods to be used for performance tests or reverification of performance tests for, at a minimum, a static leak test, a dynamic back pressure test, an air-to-liquid volume ratio test, and a liquid removal rate test.

• Performance test records, reverification of performance test records, maintenance records and throughput records (if an exemption is claimed) should be maintained for at least two years.

EPA has evaluated MBUAPCD Rule 1002 for a maintenance attainment area for consistency with the CAA, EPA regulations, and EPA policy and has found that the revisions strengthen the SIP with clarifications, by requiring the testing of vapor recovery equipment, and by requiring that defects be repaired in seven days. Although the rule will strengthen the SIP, this rule still contains the following enforceability-related deficiencies that must be corrected pursuant to the section 182(a)(2)(A) and 182(a)(3) requirements of the CAA before the rule will qualify for full approval:

• Paragraph 3.2.2 contains obsolete references, repealed on July 11, 1996, for the vapor recovery equipment to be operated, tested, and maintained.

• The rule should reference specific EPA-approved test methods for performance tests and reverification of performance tests to be used for, at a minimum, a static leak test, a dynamic back pressure test, an air-to-liquid volume ratio test, and a liquid removal rate test.

• Paragraph 3.3 references ''pursuant to California Health and Safety Code, section 41960.2(c),'' but this reference does not list any vapor recovery equipment defects. The listing of vapor recovery equipment defects in CCR, title 17, section 94006, could be referenced or the defects could be listed specifically in the rule.

• Performance test records, reverification of performance test records, maintenance records and throughput records (if an exemption is claimed) should be maintained for at least two years.

EPA has evaluated BAAQMD Rule 8–7 for section 1 ozone nonattainment area for consistency with the CAA, EPA regulations, and EPA policy and has found that the revisions strengthen the SIP by adding new standards, adding test methods, adding recordkeeping requirements, and adding performance tests on new or modified equipment. Although the rule will strengthen the SIP, this rule still contains the following enforceability-related deficiencies that must be corrected pursuant to the section 182(a)(2)(A) and 182(a)(3) requirements of the CAA before the rule will qualify for full approval:

• Paragraphs 302.3 and 306 require maintaining equipment free of defects as defined in California Health and Safety Code 41960.2(c). California Code of Regulations (CCR), title 17, section 94006 should be referenced instead, because it contains a list of the specific defects.

• Reverification of the performance tests of the vapor recovery system originally required by the CARB Executive Order should be performed more frequently, because studies have shown poor compliance with performance standards. EPA recommends once every six months or, if In-Station Diagnostics are used, once every two years.

EPA has evaluated SMAQMD Rule 449 for a severe ozone nonattainment area for consistency with the CAA, EPA regulations, and EPA policy and has found that the revisions strengthen the SIP by removing an obsolete exemption for fueling forklifts, by requiring the passing of the Dynamic Back Pressure Test, and by improving clarity. Although the rule will strengthen the SIP, this rule still contains the following enforceability-related deficiencies that must be corrected pursuant to the section 182(a)(2)(A) and 182(a)(3) requirements of the CAA before the rule will qualify for full approval:

• Section 306 should reference the specific EPA-approved test method to be used for performance tests and reverification of performance tests for an air-to-liquid volume ratio test and a liquid removal rate test.

• Performance testing of vapor recovery equipment should start within 30 days of completion of construction of vapor recovery equipment.

• Reverification of the performance tests of the vapor recovery system originally required by the CARB Executive Order should be performed more frequently, because studies have shown poor compliance with performance standards. EPA recommends once every six months or, if In-Station Diagnostics are used, once every two years.

• Section 502 contains no recordkeeping period. We recommend that maintenance records, performance test records, reverification of performance test records, and gasoline throughput records (if an exemption is claimed) be kept for at least two years.

EPA has evaluated SJVUAPCD Rule 4622 for an ozone nonattainment area for consistency with the CAA, EPA regulations, and EPA policy and has found that the revisions strengthen the SIP by adding three test procedures to the rule and by requiring a five milliliter per gallon limit for liquid removal devices. Although the rule will strengthen the SIP, this rule still contains the following enforceability-related deficiencies that must be corrected pursuant to the section 182(a)(2)(A) and 182(a)(3) requirements of the CAA before the rule will qualify for full approval:

• Section 5.4.11 contains a reference to CCR, title 17, section 94001 for the certification procedure that CARB uses for vapor recovery equipment. The correct reference is CCR, title 17, section 94011.

• Section 6.1 contains no recordkeeping period. We recommend that maintenance records and reverification of performance test records be kept for at least two years.

• Section 6.2.2 in the SIP rule, which required that certified vapor recovery systems be tested within 60 days of installation or major modification, was deleted from the submitted rule. This is less stringent than the SIP-approved rule. Performance testing of vapor recovery equipment should start within a defined period of completion of construction of vapor recovery equipment.

• Section 6.3.1 should reference the specific EPA-approved test method to be used for performance tests and reverification of performance tests for an air-to-liquid volume ratio test.

• Reverification of the performance tests of the vapor recovery system originally required by the CARB Executive Order should be performed more frequently, because studies have shown poor compliance with performance standards. EPA recommends once every six months or, if In-Station Diagnostics are used, once every two years.

A detailed discussion of rule deficiencies can be found in the Technical Support Documents for LCAQMD Section (Rule) 439.5, MBUAPCD Rule 1002, BAAQMD Rule 8–7, SMAQMD Rule 449, and

SJVUAPCD Rule 4622, which are available from the U.S. EPA, Region IX office.

Because of the enforceability-related deficiencies in LCAQMD Section (Rule) 439.5 and MBUAPCD Rule 1002, EPA cannot grant full approval of these rules under section 110(k)(3) of the CAA. However, sanctions pursuant to section 179(b) will not be applied, because these areas are an attainment area and a maintenance attainment area, respectively.

Because of the deficiencies in BAAQMD Rule 8–7, SMAQMD Rule 449, and SJVUAPCD Rule 4622, EPA cannot grant full approval of these rules under section 110(k)(3) and part D. Also, because the submitted rules are not composed of separable parts which meet all the applicable requirements of the CAA, EPA cannot grant partial approval of the rules under section 110(k)(3). However, EPA may grant a limited approval of the submitted rules under section 110(k)(3) in light of EPA's authority pursuant to section 301(a) to adopt regulations necessary to further air quality by strengthening the SIP. The approval is limited because EPA's action also contains a simultaneous limited disapproval. In order to strengthen the SIP, EPA is proposing a limited approval of BAAQMD Rule 8–7, SMAQMD Rule 449, and SJVUAPCD Rule 4622, under sections 110(k)(3) and 301(a) of the CAA.

At the same time, EPA is also proposing a limited disapproval of BAAQMD Rule 8–7, SMAQMD Rule 449, and SJVUAPCD Rule 4622, because they contain deficiencies that have not been corrected as required by section 182(a)(2)(A) and 182(a)(3)(A) of the CAA, and, as such, the rules do not fully meet the requirements of part D of the CAA. Under section 179(a)(2), if the Administrator disapproves a submission under section 110(k) for an area designated nonattainment, based on the submission's failure to meet one or more of the elements required by the Act, the Administrator must apply one of the sanctions set forth in section 179(b) unless the deficiency has been corrected within 18 months of such disapproval. These sanctions would be imposed according to 40 CFR 52.31. Moreover, the final disapproval triggers the Federal Implementation Plan (FIP) requirement under section 110(c). It should be noted that the rules covered by this NPR have been adopted by the LCAQMD, MBUAPCD, BAAQMD, SMAQMD, and SJVUAPCD and are currently in effect in the Districts. EPA's final limited disapproval action will not prevent these Districts from enforcing these rules.

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

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 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 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.

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, E.O. 13084 requires EPA to provide to the 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, E.O. 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 proposed 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 proposed 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. E.O. 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 E.O. 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 E.O. 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 proposed 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 proposed 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 proposed 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 proposed action 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 proposed 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 proposed action because it 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, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

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

Dated: October 20, 2000.

Felicia Marcus,

Regional Administrator, Region IX.

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