

Dated: April 19, 2002.

Karen Durham-Aguilera,

Acting Chief, Operations Division, Directorate of Civil Works.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 242-0327; FRL-7201-5]

Revisions to the California State Implementation Plan, Imperial County Air Pollution Control District, Ventura County Air Pollution Control District, and Santa Barbara County Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing a limited approval and limited disapproval to revisions to the Imperial County Air Pollution Control District (ICAPCD) and Ventura County Air Pollution Control District (VCAPCD) portions of the California State Implementation Plan (SIP) concerning VOC emissions from the storage and transfer of gasoline. We are also proposing full approval of a revision to the Santa Barbara County Air Pollution Control District (SBCAPCD)

portion of the California State SIP concerning VOC emissions from loading organic liquid cargo vessels. We are proposing to approve local rules to regulate these emission sources 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: Any comments must arrive by May 28, 2002.

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.

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 and TSDs at the following locations:

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, 1001 "I" Street, Sacramento, CA 95814.

Imperial County Air Pollution Control District, 150 South 9th Street, El Centro, CA 92243.

Ventura County Air Pollution Control District, 669 County Square Drive, Ventura, CA 93003.

Santa Barbara County Air Pollution Control District, 26 Castilian Drive, Suite B-23, Goleta, CA 93117.

FOR FURTHER INFORMATION CONTACT: Al Petersen, Rulemaking Office (AIR-4), U.S. Environmental Protection Agency, Region IX; (415) 947-4118.

SUPPLEMENTARY INFORMATION:

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

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 - A. What Rules Did the State Submit?
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TABLE 1.—SUBMITTED RULES

Local agency	Rule #	Rule title	Adopted	Submitted
ICAPCD	415	Transfer and Storage of Gasoline	09/14/99	05/26/00
VCAPCD	70	Storage and Transfer of Gasoline	11/14/00	05/08/01
SBCAPCD	346	Loading of Organic Liquid Cargo Vessels	01/18/01	05/08/01

On October 6, 2000, July 20, 2001, and July 20, 2001, respectively, these submittals were 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 These Rules?

We approved into the SIP ICAPCD Rule 415 on August 11, 1978 (43 FR 35694) and ICAPCD Rule 415.1 on November 10, 1980 (45 FR 74480). These rules were combined into submitted ICAPCD Rule 415.

We approved into the SIP a version of VCAPCD Rule 70 on May 13, 1997 (64 FR 66393).

We approved into the SIP a version of SBCAPCD Rule 346 on January 24, 1995 (60 FR 4562).

C. What Is the Purpose of the Submitted Rule Revisions?

A purpose of revisions to ICAPCD Rule 415 is to combine Rule 415 and 415.1 into a single rule to which the gasoline storage provisions from Rule 414 were also added. Another purpose is to add or make more stringent gasoline vapor emission requirements and to add test methods and recordkeeping requirements. ICAPCD Rule 415 regulates gasoline storage and transfer at bulk terminals, bulk plants, and gasoline dispensing stations.

One purpose of revisions to VCAPCD Rule 70 is to exempt gasoline dispensing facilities on Anacapa Island and San Nicolas Island from testing requirements. A second purpose is to delete the preemption of test methods and test frequencies by those specified

by the California Air Resources Board (CARB) Executive Order for vapor recovery equipment, unless the CARB requirement is more frequent. A third purpose is to increase the frequency of reverification testing for the air-to-liquid volume ratio to once per year.

The purposes of revisions to SBCAPCD Rule 346 are to add a limit of 20,000 gallons per day of organic liquid transfer into cargo vessels from a loading facility, to add a compliance schedule, and to revise which test methods are specified.

II. EPA's Evaluation and Action

A. How Is EPA Evaluating the Rules?

Generally, SIP rules must be enforceable (see section 110(a) of the CAA), 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 VCAPCD and SBCAPCD regulate severe ozone nonattainment areas (see 40 CFR 81), therefore Rules 70 and 346 must fulfill RACT requirements for VOCs.

However, the ICAPCD regulates a section 185A transitional area for ozone. 40 CFR 81. We originally designated Imperial County as nonattainment for oxidant (now ozone) under the provisions of the CAA Amendments of 1977 (1977 Act). 43 FR 8962 (March 3, 1978). On April 1, 1980, we published a notice of proposed rulemaking (NPRM) on revisions to the Imperial County portion of the California SIP that were submitted to us to address planning requirements for nonattainment areas under Part D of the 1977 Act. 45 FR 21297 (April 1, 1980). Our 1980 NPRM indicated that Imperial County sought to comply with the Part D requirement for application of RACT through two local regulations: ICAPCD rule 415.1, Gasoline Loading into Tank Trucks and Trailers, and ICAPCD rule 413, Storage of Petroleum Products, but we concluded that an additional RACT rule, one controlling emissions from cutback asphalt, would also be required. On November 10, 1980, we published our final rule conditionally approving the *Imperial County Plan to Attain National Ambient Air Quality Standards for Oxidants* (October 31, 1978) (Plan). 45 FR 74480 (November 10, 1980).

ICAPCD Rule 415 contains enforcement-related deficiencies that preclude full approval. According to the *General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990*, 57 FR 13525 (April 16, 1992) and our conditional approval of the Plan, we may impose CAA section 179 sanctions for enforcement-related deficiencies only on three pre-1990 VOC RACT rules: Rule 415.1, Gasoline Loading into Tank Trucks and Trailers (Phase I), Rule 413, Storage of Petroleum Products, and Rule 418.1, Cutback Asphalt. The enforcement related deficiencies cited above for Rule 415 do not originate from the Rule 415.1 (Phase I) portion of Rule 415. Therefore, we can not impose sanctions if the deficiencies are not corrected.

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

- Requirements for Preparation, Adoption, and Submittal of

Implementation Plans, U.S. EPA, 40 CFR Part 51

- 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 published in the May 25, 1988 Federal Register.

- *Draft Model Rule, Gasoline Dispensing Facility-Stage II Vapor Recovery*, EPA (August 17, 1992).

- *Gasoline Vapor Recovery Guidelines*, EPA Region IX (April 24, 2000).

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

- *Control of Hydrocarbons from Tank Truck Gasoline Loading Terminals*, EPA-450/2-77-026.

- *Control of Volatile Organic Emissions from Bulk Gasoline Plants*, EPA-450/2-77-035.

B. Do the Rules Meet the Evaluation Criteria?

ICAPCD Rule 415 improves the SIP by establishing new or more stringent emission limits and by adding monitoring and recordkeeping provisions. VCAPCD Rule 70 improves the SIP by increasing the frequency of some testing. These rules are 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.

SBCAPCD Rule 346 improves the SIP by limiting the quantity of daily gasoline transfer into cargo vessels and by adding a compliance schedule.

C. What Are the Rule Deficiencies?

This deficiency in VCAPCD Rule 70 conflicts with section 110 and part D of the CAA and prevents full approval:

- Sections H.1.c, H.2.b, H.3, and H.7.a: Reverification of the performance tests of the vapor recovery system originally required by the CARB Executive Order should be performed more frequently. EPA recommends reverification of performance tests once every 6–12 months in order to fulfill RACT.

These deficiencies in ICAPCD Rule 415 conflict with section 110 and part D of the CAA and prevent full approval:

- Section B.5: Performance tests on Phase II vapor recovery systems should

be performed within 30 days of modification or installation.

- Section B.5: Reverification of performance tests on Phase II vapor recovery systems should be performed periodically to verify continued proper operation.

- Section C: Specific test methods on Phase II vapor recovery systems should be provided, at a minimum, for the following initial performance tests typically used at various types of gasoline dispensing stations: Static Pressure Test, Dynamic Back Pressure Test, Air-to-Liquid Volume Ratio Test, and Liquid Removal Rate Test.

D. EPA Recommendations To Further Improve the Rules

The TSDs describe 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. Public Comment and Final Action

As authorized in sections 110(k)(3) and 301(a) of the CAA, EPA is proposing a limited approval of ICAPCD Rule 415 and VCAPCD Rule 70 to improve the SIP. If finalized, this action would incorporate the submitted rules into the SIP, including those provisions identified as deficient. This approval is limited because EPA is simultaneously proposing a limited disapproval of the rules under section 110(k)(3). If the disapproval of ICAPCD Rule 415 is finalized, sanctions will not be imposed. If the disapproval of VCAPCD Rule 70 is finalized, sanctions will be imposed under section 179 of the CAA unless EPA approves subsequent SIP revisions that correct the rule deficiency 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 rules have been adopted by the ICAPCD and VCAPCD, and EPA's final limited disapproval would not prevent the local agencies from enforcing them.

EPA is also proposing a full approval of SBCAPCD Rule 346 to improve the SIP.

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

III. Background Information

A. Why Were These Rules 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 these local agency VOC rules.

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. 7401-76761q.
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 has exempted this regulatory action from Executive Order 12866, Regulatory Planning and Review.

B. Executive Order 13211

This proposed rule is not subject to Executive Order 13211, “Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use” (66 FR 28355, May 22, 2001), because it is not a significant regulatory action under Executive Order 12866.

C. 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.

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, 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 CAA. Thus, the requirements of section 6 of the Executive Order do not apply to this proposed rule.

E. Executive Order 13175

Executive Order 13175, entitled “Consultation and Coordination with Indian Tribal Governments” (65 FR 67249, November 6, 2000), requires EPA to develop an accountable process to

ensure “meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.” “Policies that have tribal implications” is defined in the Executive Order to include regulations that have “substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes.”

This proposed rule does not have tribal implications. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule. In the spirit of Executive Order 13175, and consistent with EPA policy to promote communications between EPA and tribal governments, EPA specifically solicits additional comment on this proposed rule from tribal officials.

F. 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 CAA 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 CAA 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 CAA, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The CAA 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).

G. 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.

H. 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.

Dated: April 11, 2002.

Nora L. McGee,

Acting Regional Administrator, Region IX.

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FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

[Docket No. FEMA-B-7427]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Proposed rule.

SUMMARY: Technical information or comments are requested on the proposed Base (1% annual chance) Flood Elevations (BFEs) and proposed BFE modifications for the communities listed below. The BFEs and modified BFEs are the basis for the floodplain management measures that the community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The comment period is ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in each community.

ADDRESSES: The proposed BFEs for each community are available for inspection at the office of the Chief Executive Officer of each community. The

respective addresses are listed in the following table.

FOR FURTHER INFORMATION CONTACT:

Matthew B. Miller, P.E., Chief, Hazards Study Branch, Federal Insurance and Mitigation Administration, FEMA, 500 C Street SW., Washington, DC 20472, (202) 646-3461, or (e-mail) matt.miller@fema.gov.

SUPPLEMENTARY INFORMATION: FEMA proposes to make determinations of BFEs and modified BFEs for each community listed below, in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed BFEs and modified BFEs, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

National Environmental Policy Act. This proposed rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act. The Acting Administrator, Federal Insurance and Mitigation Administration certifies that this proposed rule is exempt from the requirements of the Regulatory Flexibility Act because proposed or modified BFEs are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and are required to establish and maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

Regulatory Classification. This proposed rule is not a significant regulatory action under the criteria of Section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism. This proposed rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform. This proposed rule meets the