

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 287-0445; FRL-7804-2]

Revisions to the California State Implementation Plan, Antelope Valley 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 Antelope Valley Air Quality Management District's (AVAQMD) portion of the California State Implementation Plan (SIP). This action was proposed in the **Federal Register** on June 21, 2004 and concerns volatile organic compound (VOC) emissions from architectural coatings. Under authority of the Clean Air Act as

amended in 1990 (CAA or the Act), this action approves a local rule that regulates these emission sources.

DATES: *Effective Date:* This rule is effective on September 27, 2004.

ADDRESSES: You can inspect copies of the administrative record for this action at EPA's Region IX office during normal business hours by appointment. You can inspect copies of the submitted SIP revisions by appointment at the following locations:

- Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105-3901.
- Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, Room B-102, 1301 Constitution Avenue, NW., (Mail Code 6102T), Washington, DC 20460.
- California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 1001 "I" Street, Sacramento, CA 95814.

Antelope Valley Air Quality Management District, 43301 Division Street, Suite 206, Lancaster, CA 93535-4649.

A copy of the rule may also be available via the Internet at <http://www.arb.ca.gov/drdb/drdbltx.htm>. Please be advised that this is not an EPA Web site and may not contain the same version of the rule that was submitted to EPA.

FOR FURTHER INFORMATION CONTACT: Francisco Dóñez, EPA Region IX, (415) 972-3956, Dóñez.Francisco@epa.gov.

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

I. Proposed Action

On June 21, 2004 (69 FR 34323), EPA proposed a limited approval and limited disapproval of the following rule that was submitted for incorporation into the California SIP.

Local agency	Rule No.	Rule title	Adopted	Submitted
AVAQMD	1113	Architectural Coatings	03/18/03	06/05/03

We proposed a limited approval because we determined that this rule improves the SIP and is largely consistent with the relevant CAA requirements. We simultaneously proposed a limited disapproval because some rule provisions conflict with section 110 and part D of the Act. This rule was modeled on the California Air Resources Board's (CARB) Suggested Control Measure for Architectural Coatings (SCM), and contains many of the same deficiencies as that measure. These deficiencies relate to the averaging provisions incorporated into the rule. The deficiencies in AVAQMD Rule 1113 include the following:

1. Because emissions from coatings sold under the sell-through provisions cannot be distinguished (based on the information explicitly required to be maintained under the rule) from emissions from coatings sold under an averaging program, the enforceability of the rule may be compromised by manufacturers claiming that a certain portion of emissions from coatings sold under the sell-through provision should be excluded from averaged emissions.
2. The requirement that manufacturers describe the records being used to calculate coating sales under averaging programs is not sufficiently specific and represents executive officer discretion.
3. The rule's language regarding how violations of the averaging compliance

- option shall be determined is ambiguous.
4. The rule allows manufacturers to average coatings based on statewide or district-specific data, which makes enforceability more difficult and conflicts with other rule provisions which imply that averaging will only be implemented by CARB and conducted on a statewide basis.
 5. The rule grants the Executive Officer of CARB authority to approve or disapprove initial averaging programs, program renewals, program modifications, and program terminations. This raises jurisdictional issues and creates enforceability problems, since CARB has not been granted authority by the state Legislature under the California Health and Safety Code to regulate architectural coatings.
- Our proposed action contains more information on the basis for this rulemaking and on our evaluation of the submittal.
- II. Public Comments and EPA Responses**
- EPA's proposed action provided a 30-day public comment period. We received no comments during this period.
- III. EPA Action**
- No comments were submitted that change our assessment of the rule as described in our proposed action.

Therefore, as authorized in sections 110(k)(3) and 301(a) of the Act, EPA is finalizing a limited approval of the submitted rule. This action incorporates the submitted rule into the California SIP, including those provisions identified as deficient. As authorized under section 110(k)(3), EPA is simultaneously finalizing a limited disapproval of the rule. However, sanctions will not be imposed under section 179 of the Act according to 40 CFR 52.31, even if EPA does not approve subsequent SIP revisions that correct the rule deficiencies within 18 months of the effective date of this action because, according to specific language incorporated into the rule, the deficient provisions will expire in January 2005, in advance of the end of the 18-month period allowed to correct the deficiencies. Similarly, EPA will not promulgate a Federal implementation plan (FIP) under section 110(c) if subsequent SIP revisions that correct the rule deficiencies are not approved within 24 months. Note that the submitted rule has been adopted by the Antelope Valley Air Quality Management District, and EPA's final limited disapproval does not prevent the local agency from enforcing it.

IV. Statutory and Executive Order Reviews

A. Executive Order 12866, Regulatory Planning and Review

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866, entitled "Regulatory Planning and Review."

B. Paperwork Reduction Act

This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*)

C. 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 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).

D. Unfunded Mandates Reform Act

Under sections 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 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 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.

E. Executive Order 13132, Federalism

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 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.

F. Executive Order 13175, Coordination With Indian Tribal Governments

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 9, 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." This final rule does not have tribal implications, as specified in Executive Order 13175. 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. Thus, Executive Order 13175 does not apply to this rule.

G. Executive Order 13045, Protection of Children From Environmental Health Risks and Safety Risks

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.

H. Executive Order 13211, Actions That Significantly Affect Energy Supply, Distribution, or Use

This 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.

I. 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 action does not require the public to perform activities conducive to the use of VCS.

J. Congressional Review Act

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 action is not a "major rule" as defined by 5 U.S.C. 804(2). This rule will be effective September 27, 2004.

K. 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 October 25, 2004. 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, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: August 3, 2004.

Wayne Nastri,
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 paragraph (c)(316)(i)(F) to read as follows:

§ 52.220 Identification of plan.

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(c) * * *

(316) * * *

(i) * * *

(F) Antelope Valley Air Quality Management District.

(1) Rule 1113, adopted on March 18, 2003.

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[FR Doc. 04-19523 Filed 8-25-04; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP-2004-0195; FRL-7371-2]

Pyrimethanil; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances as follows: For residues of pyrimethanil, 4,6-dimethyl-N-phenyl-2-pyrimidinamine, in or on almond; almond, hulls; apple, wet pomace; banana; citrus oil; fruit, citrus, group 10 (post-harvest); fruit, pome, group 11 (pre-harvest and post-harvest); fruit, stone (except cherry), group 12; grape; grape, raisin; onion, dry bulb; onion, green; pistachio; strawberry; tomato; and vegetable, tuberous and corm, subgroup 1C; for residues of pyrimethanil and its metabolite, 4-[4,6-dimethyl-2-pyrimidinyl]amino]phenol in or on cattle, fat; cattle, kidney; cattle, meat; cattle meat-by-products (except kidney); goat, fat; goat, kidney; goat, meat; goat meat-by-products (except kidney); horse, fat; horse, kidney; horse, meat; horse, meat-by-products (except kidney); sheep, fat; sheep, kidney; sheep, meat; and sheep, meat-by-products (except kidney); and for

residues of pyrimethanil and its metabolite 4,6-dimethyl-2-(phenylamino)-5-pyrimidinol in milk. Bayer Crop Science and Janssen Pharmaceutica, Inc. requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (FQPA).

DATES: This regulation is effective August 26, 2004. Objections and requests for hearings must be received on or before October 25, 2004.

ADDRESSES: To submit a written objection or hearing request follow the detailed instructions as provided in Unit VIII. of the **SUPPLEMENTARY INFORMATION**. EPA has established a docket for this action under Docket ID number OPP-2004-0195. All documents in the docket are listed in the EDOCKET index at <http://www.epa.gov/edocket>. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in EDOCKET or in hard copy at the Public Information and Records Integrity Branch (PIRIB), Crystal Mall #2, 1801 S. Bell St., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305-5805.

FOR FURTHER INFORMATION CONTACT: Mary L. Waller, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (703) 308-9354; e-mail address: waller.mary@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS 111), e.g., agricultural workers; greenhouse, nursery, and floriculture workers; farmers.
- Animal production (NAICS 112), e.g., cattle ranchers and farmers, dairy cattle farmers, livestock farmers.
- Food manufacturing (NAICS 311), e.g., agricultural workers; farmers;