

ENVIRONMENTAL PROTECTION AGENCY**40 CFR Part 52**

[CA 241–0310b; FRL–7224–3]

Revisions to the Arizona State Implementation Plan, California State Implementation Plan, Maricopa County Environmental Services Department, and Bay Area Air Quality Management District**AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Proposed rule.

SUMMARY: EPA is proposing a limited approval and limited disapproval of revisions to the Maricopa County Environmental Services Department (MCESD) portion of the Arizona State Implementation Plan (SIP), and the Bay Area Air Quality Management District (BAAQMD) portion of the California SIP. These revisions concern volatile organic compound (VOC) emissions from solvent cleaning operations. We are proposing action on local rules that 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 July 5, 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 94105–3901.

You can inspect copies of the submitted SIP 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 SIP revisions at the following locations:

Arizona Department of Environmental Quality (ADEQ), 3033 North Central Avenue (T5109), Phoenix, Arizona, 85012.
Maricopa County Environmental Services Department, Air Quality Division, 1001 North Central Avenue, Suite 201, Phoenix, Arizona 85004.

California Air Resources Board (CARB), Stationary Source Division, Rule Evaluation Section, 1001 "I" Street, Sacramento, CA 95814.
Bay Area Air Quality Management District, 939 Ellis Street, San Francisco, California 94109.

FOR FURTHER INFORMATION CONTACT: Charnjit Bhullar, Rulemaking Office

(AIR–4), U.S. Environmental Protection Agency, Region IX, (415) 744–1153.

SUPPLEMENTARY INFORMATION:

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

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I. The State's Submittal**A. What Rules Did the State Submit?**

Table 1 lists the rules addressed by this proposal with the dates that they were adopted by local air agencies and submitted by the Arizona Department of Environmental Quality (ADEQ) and California Air Resources Board (CARB).

TABLE 1.—SUBMITTED RULES

Local agency	Rule No.	Rule title	Adopted	Submitted
MCESD	331	Solvent Cleaning	04/07/99	08/04/99
BAAQMD	8–16	Solvent Cleaning Operations	09/16/98	03/28/00

On October 18, 1999 and May 19, 2000, these rule 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?

MCESD and BAAQMD adopted earlier versions of these rules on June 19, 1996 and June 15, 1994, and ADEQ and CARB submitted them to us on February 26, 1997 and September 28, 1994. We approved these versions into the SIP on February 9, 1998 and December 9, 1994.

C. What Is the Purpose of the Submitted Rules?

Rule 331 applies to all operations using solvents containing VOCs including batch-loaded and in-line, non-vapor and vapor degreasers. Rule 331 does not apply to degreasing operations using solvents containing hazardous air pollutants which are regulated by the National Emission Standards for

Hazardous Air Pollutants (NESHAPS) for halogenated solvent cleaning (40 CFR part 63, subpart T).

Rule 8–16 implements control measure A–18 of the BAAQMD's Clean Air Plans. It was adopted by the BAAQMD as part of its June 16, 1999 Ozone Attainment Plan in response to EPA's July 10, 1998 redesignation of the Bay Area as a nonattainment area for the 1-hour ozone National Ambient Air Quality Standard (63 FR 37258). Rule 8–16 applies to cold and vapor cleaners using solvents containing VOCs.

Both rules establish work practice standards and other requirements designed to control VOC emissions. The TSDs have more information about these rules.

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 Act), must require Reasonably Available Control Technology (RACT) for major sources in nonattainment areas (see

section 182(a)(2)(A)), and must not relax existing requirements (see sections 110(1) and 193). The MCESD and BAAQMD regulate ozone nonattainment areas (see 40 CFR part 81), so Rule 331 and Rule 8–16 must fulfill RACT.

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

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

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

3. *Control of Volatile Organic Emissions from Solvent Metal Cleaning*, (EPA–450/2–77–022, November 1977).

4. *Determination of Reasonably Available Control Technology and Best Available Control Technology for*

Organic Solvent Cleaning and Degreasing Operations (CARB, July 18, 1991).

B. Do the Rules Meet the Evaluation Criteria?

These rules improve the SIP by establishing more stringent emission limits and by clarifying monitoring, reporting and recordkeeping provisions. 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.

C. What Are the Rule Deficiencies?

These provisions conflict with section 110 and part D of the Act and prevent full approval of the SIP revisions.

Rule 331 Deficiencies:

1. The provisions of this rule exempt sources that are not necessarily covered by another federally approved rule.

2. Subsections of this rule provide methods of determining capture efficiency, but do not refer to EPA's January 9, 1995 guidance document, "Guidelines for Determining Capture Efficiency" describing calculation procedures.

3. Sections II and III of the appendix to this rule do not clarify which and

how standards are adjusted for boiling point.

4. Section II-6 of the appendix to this rule raise the threshold limit for additional control (from 10.75 ft² to 13 ft²) without adequately justifying this relaxation.

Rule 8-16 Deficiencies:

1. Section 8-16-501.2 allows facility-wide make-up solvent recording on an annual basis, which is not sufficient to ensure that the rule is enforceable pursuant to CAA section 110(a)(2)(A).

2. Rule 8-16 contains a number of incorrect section references that may result in enforcement ambiguity.

D. EPA Recommendations To Further Improve the Rules

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

E. Proposed Action and Public Comment

As authorized in sections 110(k)(3) and 301(a) of the Act, EPA is proposing a limited approval of the submitted rules 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 this disapproval is finalized, sanctions will be imposed under section 179 of the Act unless EPA approves subsequent SIP revisions that correct the rule deficiencies within 18 months. These sanctions would be imposed according to 40 CFR 52.31. 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 MCESD and BAAQMD, and EPA's final limited disapproval would not prevent the local agency from enforcing them.

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

III. Background Information

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, 1998	EPA notified Governors that parts of their SIPs were inadequate to attain and maintain the ozone standard and requested that they correct the deficiencies (EPA's SIP- Call). See section 110(a)(2)(H) of the pre-amended Act.
November 15, 1990	Clean Air Act Amendments of 1990 were enacted. Pub. L. 101-549, 104 Stat. 2399, codified at 42 U.S.C. 7401-7671q.
May 15, 1991	Section 182(a)(2)(A) requires that ozone nonattainment areas correct deficient RACT rules by this date.

IV. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget 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 Clean Air Act. 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 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).

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, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compound.

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

Dated: May 20, 2002.

Keith Takata,

Acting Regional Administrator, Region IX.
[FR Doc. 02–14038 Filed 6–4–02; 8:45 am]

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