

ENVIRONMENTAL PROTECTION AGENCY**40 CFR Part 52**

[CA172-0209a; FRL-6529-4]

Approval and Promulgation of Implementation Plans; California State Implementation Plan Revision, Kern County Air Pollution Control District**AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Direct final rule.

SUMMARY: EPA is taking direct final action on revisions to the California State Implementation Plan. The revisions concern rules from the Kern County Air Pollution Control District (KCAPCD). This approval action will incorporate these rules into the federally approved SIP. The intended effect of approving these rules is to regulate emissions of volatile organic compounds (VOCs) in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). The revised rules control VOC emissions from fugitive emissions and the loading of organic liquids. Thus, EPA is finalizing the approval of these revisions into the California SIP under provisions of the CAA regarding EPA action on SIP submittals, SIPs for national primary and secondary ambient air quality standards and plan requirements for nonattainment areas.

DATES: This rule is effective on April 3, 2000 without further notice, unless EPA receives adverse comments by March 6, 2000. If EPA receives such comment, it will publish a timely withdrawal **Federal Register** informing the public that this rule will not take effect.

ADDRESSES: Written comments must be submitted to Andrew Steckel at the Region IX office listed below. Copies of the rule revisions and EPA's evaluation report for each rule are available for public inspection at EPA's Region IX office during normal business hours. Copies of the submitted rule revisions are available for inspection at the following locations:

Rulemaking Office (AIR-4), Air Division,
U.S. Environmental Protection Agency,
Region IX, 75 Hawthorne Street, San
Francisco, CA 94105

Environmental Protection Agency, Air
Docket (6102), 401 "M" Street, S.W.,
Washington, D.C. 20460

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

Kern County Air Pollution Control District,
2700 M. Street, Suite 302, Bakersfield, CA
93301.

FOR FURTHER INFORMATION CONTACT:
Christine Vineyard, Rulemaking Office,
AIR-4, Air Division, U.S.
Environmental Protection Agency,
Region IX, 75 Hawthorne Street, San
Francisco, CA 94105, Telephone: (415)
744-1197.

SUPPLEMENTARY INFORMATION:**I. Applicability**

The rules being approved into the California SIP include: KCAPCD Rule 413, Organic Liquid Loading and KCAPCD Rule 414.1, Valves, Pressure Relief Valves, Flanges, Threaded Connections and Process Drains at Petroleum Refineries and Chemical Plants. These rules were submitted by the California Air Resources Board (CARB) to EPA on May 10, 1996.

II. Background

On March 3, 1978, EPA promulgated a list of ozone nonattainment areas under the provisions of the Clean Air Act, as amended in 1977 (1977 Act or pre-amended Act), that included the San Joaquin Valley Area which encompassed the following eight air pollution control districts (APCDs): Fresno County APCD, Kern County APCD,¹ Kings County APCD, Madera County APCD, Merced County APCD, San Joaquin County APCD, Stanislaus County APCD, and Tulare County APCD. 43 FR 8964, 40 CFR 81.305. On March 20, 1991, the San Joaquin Valley Unified APCD (SJVUAPCD) was formed. The SJVUAPCD has authority over the San Joaquin Valley Air Basin which includes all of the above eight counties except for the Southeast Desert Air Basin portion of Kern County. Thus the Kern County Air Pollution Control District still exists, but only has authority over the Southeast Desert Air Basin portion of Kern County.

On May 26, 1988, EPA notified the Governor of California, pursuant to section 110(a)(2)(H) of the 1977 Act, that portions of the California SIP were inadequate to attain and maintain the ozone standard and requested that deficiencies in the existing SIP be corrected (EPA's SIP-Call).² On November 15, 1990, the Clean Air Act Amendments of 1990 were enacted. Public Law 101-549, 104 Stat. 2399,

¹ At that time, Kern County included portions of two air basins; the San Joaquin Valley Air Basin and the Southeast Desert Air Basin. The San Joaquin Valley Air Basin portion of Kern County was designated as nonattainment, and the Southeast Desert Air Basin portion of Kern County was designated as unclassified. See 40 CFR 81.305 (1991).

² EPA's SIP-Call applied to all of the KCAPCD, including the Southeast Desert Air Basin portion of Kern County.

codified at 42 U.S.C. 7401-7671q. 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.³ EPA's SIP-Call used that guidance to indicate the necessary corrections for specific nonattainment areas. The Southeast Desert Air Basin portion of Kern County was not a pre-amendment nonattainment area, and therefore, was not designated and classified upon enactment of the amended Act. Consequently, KCAPCD is not subject to the section 182(a)(2)(A) RACT fix-up requirement. The KCAPCD is subject to the requirements of EPA's SIP-Call, because the SIP-Call included all of Kern County. The Southeast Desert is classified as serious;⁴ therefore, this area was subject to the RACT fix-up requirement and the May 15, 1991 deadline.

The State of California submitted many revised RACT rules for incorporation into its SIP on May 10, 1996, including the rules being acted on in this document. This document addresses EPA's direct-final action for KCAPCD Rule 413, Organic Liquid Loading and Rule 414.1, Valves, Pressure Relief Valves, Flanges, Threaded Connections and Process Drains at Petroleum Refineries and Chemical Plants. KCAPCD adopted these rules on March 7, 1996. These submitted rules were found to be complete on July 19, 1996 pursuant to EPA's completeness criteria that are set forth in 40 CFR part 51, appendix V⁵

³ 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** document" (Blue Book) (notice of availability was published in the **Federal Register** on May 25, 1988); and the existing control technique guidelines (CTGs).

⁴ The Southeast Desert Air Basin portion of Kern County was designated nonattainment on November 6, 1991 (56 FR 56694).

⁵ EPA adopted the 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).

and is being finalized for approval into the SIP.

KCAPCD Rule 413 controls VOC emissions associated with the loading of organic liquids. KCAPCD Rule 414.1 applies to all valves, pressure relief valves, flanges, threaded connections and process drains at petroleum refineries and chemical plants that may be the source of fugitive VOC emissions. VOCs contribute to the production of ground level ozone and smog. These rules were originally adopted as part of KCAPCD's 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) CAA requirement. The following is EPA's evaluation and final action for these rules.

III. EPA Evaluation and 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 the various EPA policy guidance documents listed in footnote 1. Among those provisions is the requirement that a VOC rule must, at a minimum, provide for the implementation of RACT for stationary sources of VOC emissions. This requirement was carried forth from the pre-amended Act.

For the purpose of assisting state and local agencies in developing RACT rules, EPA prepared a series of Control Technique Guideline (CTG) documents. 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). The CTGs applicable to all of these rules are entitled: 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); Control of Volatile Organic Compound Leaks from Gasoline Tank Trucks and Vapor Collection Systems, (EPA-450/2-78-051); and Control of Volatile Organic Compounds Leaks from Synthetic Organic Chemical and Polymer Manufacturing Equipment, (EPA-450/3-83-006). Further interpretations of EPA policy are found in the Blue Book,

referred to in footnote 1. In general, these guidance documents have been set forth to ensure that VOC rules are fully enforceable and strengthen or maintain the SIP.

KCAPCD Rule 414.1, Valves, Pressure Relief Valves, Flanges, Threaded Connections and Process Drains at Petroleum Refineries and chemical Plants has been revised to delete the definition of VOC and to reference District Rule 102, Definitions.

KCAPCD Rule 413, Organic Liquid Loading has been revised to delete the definition of VOC and to reference District Rule 102, Definitions. In addition, the Equipment section of Rule 413 was revised to clarify the pressure requirement for delivery trucks being loaded with organic liquids. The changes to Rule 414.1 and Rule 413 do not have a significant impact on air quality.

EPA has evaluated the submitted rules and has determined that they are consistent with the CAA, EPA regulations, and EPA policy. Therefore, KCAPCD Rule 414.1, Valves, Pressure Relief Valves, Flanges, Threaded Connections and Process Drains at Petroleum Refineries and chemical Plants, and Rule 413, Organic Liquid Loading are being approved under section 110(k)(3) of the CAA as meeting the requirements of section 110(a) and part D.

EPA is publishing these rules without prior proposal because the Agency views this as noncontroversial amendment and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should adverse comments be filed. These rules will be effective April 3, 2000 without further notice unless the Agency receives adverse comments by March 6, 2000.

If the EPA receives such comments, then EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period. Any parties interested in commenting on these rules should do so at this time. If no such comments are received, the public is advised that this rule is effective on April 3, 2000 and no further action will be taken on the proposed rule.

IV. Administrative Requirements

A. Executive Order 12866

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

B. Executive Order 13132

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 (64 43255, August 10, 1999), 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.

C. Executive Order 13045

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 13084

Under Executive Order 13084, Consultation and Coordination with Indian Tribal Governments, EPA may not issue a regulation that is not required by statute, that significantly affects or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, EPA must provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA’s prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation.

In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments “to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities.” Today’s rule does not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities.

Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

This final rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply 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).

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 approval action promulgated 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 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.

G. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides

that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This rule is not a “major” rule as defined by 5 U.S.C. 804(2).

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.

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.

I. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by April 3, 2000. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements.

Dated: January 10, 2000.

Felicia Marcus,

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)(231)(i)(B)(7) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *
(231) * * *
(i) * * *
(B) * * *

(7) Rules 413 adopted on April 18, 1972 and Rule 414.1 adopted on January 9, 1979, both amended on March 7, 1996.

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[FR Doc. 00–2171 Filed 2–2–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY**40 CFR Part 52**

[CA 234–0187a; FRL–6529–6]

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

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action on revisions to the California State Implementation Plan. The revisions concern rules from the Kern County Air Pollution Control District (KCAPCD), San Diego County Air Pollution Control District (SDCAPCD), San Joaquin Valley Unified Air Pollution Control District (SJVUAPCD), and South Coast Air Quality Management District (SCAQMD). This approval action will incorporate these revisions into the federally approved SIP. The intended effect of approving these revisions is to regulate emissions of volatile organic compounds (VOCs) in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). Thus, EPA is finalizing the approval of these revisions into the California SIP under provisions of the CAA regarding EPA action on SIP submittals, SIPs for

national primary and secondary ambient air quality standards and plan requirements for nonattainment areas.

DATES: This rule is effective on April 3, 2000 without further notice, unless EPA receives adverse comments by March 6, 2000. If EPA receives such comment, it will publish a timely withdrawal in the **Federal Register** informing the public that this rule will not take effect.

ADDRESSES: Comments must be submitted to Andrew Steckel at Region IX office listed below. Copies of the rule, along with EPA's evaluation report for each rule are available for public inspection at EPA's Region IX office during normal business hours. Copies of the submitted rule revisions are also available for inspection at the following locations:

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Washington, D.C. 20460

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

Kern County Air Pollution Control District
Southeast Desert, 2700 “M” Street, Suite
302, Bakersfield, CA 93301–2370

San Diego County Air Pollution Control
District, 9150 Chesapeake Dr., San Diego,
CA 92123–1096

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

South Coast Air Quality Management
District, 21865 E. Copley Dr., Diamond Bar,
CA 91765–4182

FOR FURTHER INFORMATION CONTACT:

Cynthia G. Allen, Rulemaking Office,
AIR–4, Air Division, U.S.
Environmental Protection Agency,
Region IX, 75 Hawthorne Street, San
Francisco, CA 94105, Telephone: (415)
744–1189.

SUPPLEMENTARY INFORMATION:**I. Applicability**

The rules being approved into the California SIP include: KCAPCD Rule 102, Definitions; SDCAPCD Rule 2, Definitions; SJVUAPCD Rule 1020, Definitions; and SCAQMD Rule 102, Definitions Terms. In addition, SDCAPCD Rule 3, Standard Conditions, is being rescinded. The revisions were adopted by KCAPCD on July 1, 1999; SDCAPCD on June 30, 1999; SJVUAPCD on June 17, 1999; and SCAQMD on April 9, 1999. These rules were submitted by the California Air Resources Board to EPA on September 7, 1999.

II. Background

On March 3, 1978, EPA promulgated a list of ozone nonattainment areas under the provisions of the Clean Air Act, as amended in 1977 (1977 Act or pre-amended Act), that included the KCAPCD, SDCAPCD, SJVUAPCD, and SCAQMD. 43 FR 8964, 40 CFR 81.305. In response to section 110 (a) of the Act and other requirements, KCAPCD, SDCAPCD, SJVUAPCD, and SCAQMD submitted many rules which EPA approved into the SIP.

On February 7, 1996 (61 FR 4588) EPA published a final rule excluding perchloroethylene from the definition of VOC. On April 9, 1998 (63 FR 17331) EPA published a final rule excluding methyl acetate from the definition of VOC. These compounds were determined to have negligible photochemical reactivity and, thus, were added to the Agency's list of Exempt Compounds.

This document addresses EPA's direct-final action for KCAPCD Rule 102, Definitions; SDCAPCD Rule 2, Definitions and Rule 3, Standard Conditions; SJVUAPCD Rule 1020, Definitions; and SCAQMD Rule 102. The revised rules were adopted by KCAPCD on July 1, 1999; SDCAPCD on June 30, 1999; SJVUAPCD on December 17, 1992, and SCAQMD on April 9, 1999. These rules were submitted by the California Air Resources Board to EPA on September 7, 1999. These rules were found to be complete on October 20, 1999, pursuant to EPA's completeness criteria that are set forth in 40 CFR part 51, appendix V¹ and is being finalized for approval into the SIP.

The following are EPA's summary and final action for these rules:

III. EPA Evaluation and 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 the various EPA policy guidance documents.²

¹ EPA adopted the 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).

² 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**