ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA247–0361; FRL–7272–6]

Revisions to the California State Implementation Plan, South Coast 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 South Coast Air Quality Management District portion of the California State Implementation Plan (SIP). This action was proposed in the **Federal Register** on March 8, 2002 and concerns volatile organic compound (VOC) emissions from aerospace manufacturing and coating, metal parts coating, wood products coating, and fiberglass composite manufacturing. Under authority of the Clean Air Act as amended in 1990 (CAA or the Act), this action simultaneously approves a local rule, Rule 1132, that regulates these emission sources and directs California to correct the rule's deficiencies.

EFFECTIVE DATE: This rule is effective on October 15, 2002.

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

Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901;

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; and,

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

FOR FURTHER INFORMATION CONTACT: Jerald S. Wamsley, Rulemaking Office (AIR–4), U.S. Environmental Protection Agency, Region IX, (415) 947–4111.

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

I. Proposed Action

On March 8, 2002 (67 FR 10653), 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
SCAQMD	1132	Further Control of VOC Emissions from High-Emitting Spray Booth Facilities.	01/19/01	05/08/01

We proposed a limited approval, because we determined that Rule 1132 improves the SIP and is largely consistent with the relevant CAA requirements. We simultaneously proposed a limited disapproval because some of the rule's provisions conflict with section 110 and part D of the Act. These provisions are discussed below.

1. Section (d)(1) describes a series of actions that composite manufacturing facilities must comply with as part of submitting an Alternative Compliance Plan (ACP.) SCAQMD stated within the rule's staff report that these measures can be expected to achieve a facility average of 40% emission reductions while new techniques are developed by 2002 that will achieve the 65% VOC reduction requirement of the rule. However, the rule needs to specify how compliance with the 65% requirement will be demonstrated.

2. Section (d)(3) does not delimit ''director's discretion'' in any manner. Such discretion should be limited by emission estimation protocols and specific criteria for determining source compliance.

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. During this period, we received comments from the following parties:

1. John Schweitzer, Composites Fabricators Association (CFA), letter dated April 2, 2002 with enclosure titled ''Guidance for Compliance with Rule 1132(d)(1): Alternative Compliance Plan for Composites Manufacturers Adopted by SCAQMD (date),'' dated 3/20/02;

2. John McKnight, National Marine Manufacturers Association (NMMA), letter dated April 2, 2002;

3. Bruce B. Crowell, Reichhold, letter dated April 4, 2002;

4. Laki Tisopulos, SCAQMD, letter dated April 5, 2002; and

5. Craig Peterson, Xerxes Corporation, facsimile dated April 8, 2002.

The comments and our responses are summarized below.

Comment #1: SCAQMD commented that most composite manufacturers will be able to meet the 65% reduction requirement of Rule 1132 by complying with the standards in Rule 1162 amended November 9, 2001. SCAQMD and the composites manufacturing industry have discussed the compliance demonstration approach in section (d)(1) and agree on its simplicity. Therefore, any further amendments attempting to clarify Rule 1132 are unnecessary.

Response #1: Rule 1132 must be enforceable as it is written. Furthermore, since Rule 1162 does not specify a 65% VOC reduction requirement, Rule 1132 needs emission reduction quantification protocols to demonstrate that compliance with Rule 1162's work practice requirements meets Rule 1132's 65% VOC emission reduction requirement.

Comment #2: The NMMA asserts that EPA's proposal rejects pollution prevention technology as a compliance option and indirectly requires the use of capture and control technologies such as pollution control devices. For instance, Xerxes states that they have already invested in pollution prevention technologies; and, any new requirement for capture and control technologies would be an added financial burden.

Response #2: We appreciate that a source may use pollution prevention methods such as product input reformulation, lower polluting application methods, or a combination thereof to reduce VOC emissions. EPA has endorsed pollution prevention (P2) methods in many different venues and our proposed action on Rule 1132 did not reject P2 as a VOC reduction option. However, our proposal did point out that Rule 1132 does not specify

enforceable criteria needed to evaluate ACPs that may apply P2 techniques.

Comment #3: Regarding the deficiency in section (d)(1) of the rule, all respondents suggest that the Unified Emission Factors (UEF) developed by the Composite Fabricators Association (CFA) provide an accurate, practical, and enforceable method for sources to demonstrate compliance with Rule 1132's 65% emission reduction requirement. Consequently, no amendments to Rule 1132 are necessary.

Response #3: Section (d)(1) is deficient because the rule does not specify how the Executive Officer (EO) will determine that the emission reductions described in the ACP are indeed real, adequately quantified, and verifiable. Although the UEF may represent an adequate set of protocols for calculating emission reductions, they have not been incorporated within the rule in a manner that requires their use by a source in demonstrating compliance and by the EO in determining the adequacy of an ACP. For instance, SCAQMD could amend Rule 1132 either to incorporate acceptable protocols and bind sources and the EO to their use, or to specify EPA review of all ACPs.

Comment #4: The CFA and NMMA pointed out that the UEF were developed using EPA test methods and EPA has certified that they meet EPA's Category II Quality Assurance criteria. Furthermore, the UEF may be used to replace EPA's withdrawn AP–42 emission factors for composite manufacturing operations, and they will be adopted for use in the National Emissions Standard for Hazardous Air Pollutants (NESHAP) for the same industry.

Response #4: We understand that the data underlying the UEF were developed with EPA test methods and that they meet some level of our quality assurance criteria. Although the UEF may have met some criteria for reliability and validity and have demonstrated utility in other EPA forums, we have not reviewed the UEF for their intended use in Rule 1132. Consequently, if the UEF are incorporated within Rule 1132 and the rule is then submitted to EPA, we will formally review the UEF and the propriety of their use within this rule. At the same time, we will coordinate our action with other EPA offices also working with the UEF. Also, during any SCAQMD rule revision process, we will informally review rule amendments and any added protocols, such as the UEF.

Comment #5: SCAQMD stated that compliance with the rule's requirements using section (d)(1) can be demonstrated through mass balance calculations using information such as resin usage volume, the respective application technique, and associated emissions factors derived from the test methods listed in the rule. Under section (d)(1) a composites manufacturing facility may use pollution prevention strategies such as lower monomer, less polluting resins and gelcoats.

Response #5: As SCAQMD suggests, sources may calculate their own idiosyncratic emission factors for demonstrating compliance. Consequently, the EO may determine the adequacy of each source's ACP on a case by case basis without regard to specific emission reduction calculation protocols within the rule. This kind of compliance scheme is unenforceable because the rule lacks the internal means for enforcing its own requirements and determining compliance with the rule; nothing delimits the EO's judgement. Consequently, EPA cannot endorse this regulatory framework. Please also see Response #6.

Comment #6: SCAQMD disagrees with the deficiency cited in section (d)(3); that the EO's discretion is unlimited. SCAQMD suggests that EO discretion in section (d)(3) is limited by the following factors:

a. a facility electing to comply with section (d)(3) must achieve an added 10% emissions reduction compared to the requirements of subdivision (c);

b. such a facility will have to demonstrate compliance with the emission reduction requirements of (d)(3) on a mass basis;

c. such a facility must demonstrate compliance with (d)(3) through real, quantifiable, and verifiable emission reductions;

d. the EO shall impose permit conditions that ensure continuous compliance with the rule;

e. all facilities subject to Rule 1132 are major facilities (have a potential to emit more than 10 tons per year of VOC) and as a result, are subject to Title V of the CAA and permit review by EPA.

Given these limitations, SCAQMD asserts that further amendment to Rule 1132 is unnecessary.

Response #6: We will address SCAQMD's specific comments in turn.

a. While it may set aside some uncertainty as to how emission reductions may be generated within a given ACP, an added ten percent emissions reduction requirement does not address our concerns about how emission reductions will be achieved, what protocols will be used to predict this, and how those protocols will delimit EO discretion in reviewing an ACP.

b. This SCAQMD comment does not address our concern about how the EO will determine that the ACP will achieve its intended effect and compliance with the rule. For example, nothing in section (d)(3) or elsewhere in the rule prohibits the EO from approving an ACP relying on voluntary rideshare programs or any other VOC reduction strategy that may be difficult to quantify.

c. No adequate set of protocols for calculating emission reductions have been incorporated within the rule in a manner requiring their use by a source in demonstrating compliance and by the EO in determining the adequacy of an ACP. It is not sufficient merely to require that emission reductions are real, quantifiable and verifiable. Rules must specify the protocols that will be used to assure that reductions are real, quantifiable and verifiable. Otherwise, there would arguably be no need to describe specific test method, recordkeeping, or monitoring requirements in any rule.

d. Incorporation of ACP provisions into a permit does not limit the EO's discretion. Permit conditions generally have their basis in the specific requirements of a subject rule. Otherwise, these conditions are subject to interpretation and, as a result, may be changeable and unenforceable. Since the EO's discretion in approving ACPs is not adequately delimited by section (d)(3), it would not be adequately delimited within a permit. Continuing the example above, nothing in Rule 1132 would prevent the EO from incorporating a voluntary rideshare program into a facility permit.

e. Title V permit review is not an adequate substitute for a fully enforceable rule. EPA's review of Title V permits generally is restricted to assuring that applicable rule requirements are appropriately reflected in the permit. If SIP-approved Rule 1132 allows inappropriate EO discretion, EPA would lack a basis for objecting to use of that discretion when reviewing a Title V permit.

Comment #7: Xerxes Corp. states that an ACP provision is needed because meeting Rule 1132's requirements using a pollution control device is unworkable for the following reasons: it is infeasible or impractical given their facilities, production processes, or product requirements; it is too expensive; it emits greenhouse gases by converting styrene to carbon dioxide; noise pollution may be increased; and, pollution prevention techiques are effective and in some cases have already

been implemented. For these reasons and the reasons outlined by the CFA, Xerxes Corp. requests the EPA approve Rule 1132 in its present form.

Response #7: We acknowledge Xerxes Corp.''s comment. We do not wish to dispute their cited impracticalities with using a pollution control device.

However, to correct the deficiencies identified in EPA's March 8, 2002 proposal, we do not require elimination of the ACP concept described in section (d). We require removal of the associated EO discretion. This can be accomplished two ways, both of which would still allow Xerxes Corp. and other facilities to use ACPs: (1) Require EPA approval of ACPs; or, (2) specify emission quantification protocols in the rule that would be used by the EO to evaluate ACPs.

III. EPA Action

No comments were submitted that change our assessment of Rule 1132 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. As a result, sanctions will be imposed unless EPA approves subsequent SIP revisions that correct the rule deficiencies within 18 months of the effective date of this action. These sanctions will be imposed under section 179 of the Act according to 40 CFR 52.31. In addition, EPA must promulgate a federal implementation plan (FIP) under section 110(c) unless we approve subsequent SIP revisions that correct the rule deficiencies within 24 months. Note that Rule 1132 has been adopted by the SCAQMD, and EPA's final limited disapproval does not prevent the local agency from enforcing it.

IV. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget has exempted this regulatory action from Executive Order 12866, entitled ''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 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.

C. 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 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 rule.

D. 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 final 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.

E. Executive Order 13211

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

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

I. 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).

J. 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 November 12, 2002. 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, Volatile organic compounds.

Dated: August 5, 2002.

Laura Yoshii,

Deputy 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 paragraphs (c)(284)(i)(B)(*6*) to read as follows:

§ 52.220 Identification of plan.

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(c) * * *

(284) * * *

(i) * * *

(B) * * *

(*6*) Rule 1132, adopted on January 19, 2001.

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[FR Doc. 02–23255 Filed 9–13–02; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 270–0366a; FRL–7272–4]

Revisions to the California State Implementation Plan, El Dorado County Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve revisions to the El Dorado County Air Pollution Control District (EDCAPCD) portion of the California State Implementation Plan (SIP). These revisions concern Oxides of Nitrogen (NO_X) emissions from stationary internal combustion (IC) engines rated at more than 50 brake horsepower (bhp). We are approving a local rule that regulates these emission sources under the Clean Air Act as amended in 1990 (CAA or the Act).

DATES: This rule is effective on November 12, 2002, without further notice, unless EPA receives adverse comments by October 15, 2002. If we receive such comment, we will publish a timely withdrawal in the **Federal Register** to notify the public that this rule will not take effect.

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 document (TSD) at our Region IX office during normal