ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 184–0086a FRL–6137–9]

Approval and Promulgation of Implementation Plans; California State Implementation Plan Revision, San Diego Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action on a revision to the California State Implementation Plan. The revision concerns a rule from the San Diego Air Pollution Control District (SDAPCD). This approval action will incorporate this rule into the federally approved SIP. The intended effect of approving this rule 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 rule controls VOC emissions from organic solvents. Thus, EPA is finalizing the approval of this revision 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 October 13, 1998 without further notice, unless EPA receives relevant adverse comments by September 10, 1998. If EPA receives such comment, EPA 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 the Region IX office listed below. Copies of the rule revisions and EPA's evaluation report for this 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

San Diego Air Pollution Control District, 9150 Chesapeake Drive, San Diego, CA 92123–1096

FOR FURTHER INFORMATION CONTACT: Yvonne Fong, Rulemaking Office (AIR–4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105, Telephone: (415) 744–1199.

SUPPLEMENTARY INFORMATION:

I. Applicability

SDAPCD Rule 66, Organic Solvents is being approved into the California SIP. This rule was submitted by the California Air Resources Board (CARB) to EPA on October 18, 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 Diego Area. 43 FR 8964, 40 CFR 81.305. On May 26, 1988, EPA notified the Governor of California, pursuant to section 110(a)(2)(H) of the 1977 Act, that the above district's portion of the California SIP was inadequate to attain and maintain the ozone standard and requested that deficiencies in the existing SIP be corrected (EPA's SIP-Call). On November 15, 1990, the Clean Air Act Amendments of 1990 were enacted. Pub. L. 101–549, 104 Stat. 2399, codified at 42 U.S.C. 7401–7671q. The San Diego Area is classified as serious.[1]

The State of California submitted many rules for incorporation into its SIP on October 18, 1996, including the rule being acted on in this document. This document addresses EPA's direct-final action for SDAPCD Rule 66, Organic Solvents. The SDAPCD adopted Rule 66 on July 25, 1995. This submitted rule was found to be complete on December 19, 1996 pursuant to EPA's completeness criteria that are set forth in 40 CFR part 51, Appendix V[2] and is being finalized for approval into the SIP.

Rule 66 controls the emission of VOCs from organic solvent use. VOCs contribute to the production of ground level ozone and smog. This rule was originally adopted as part of the SDAPCD's effort to achieve the National Ambient Air Quality Standard (NAAQS) for ozone and in response to EPA's SIP-Call and the section 110(a)(2)(A) CAA requirement. The following is EPA's evaluation and final action for this rule.

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 ''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 was published in the **Federal Register** on May 25, 1988). In general, this guidance document has been set forth to ensure that VOC rules are fully enforceable and strengthen or maintain the SIP.

On July 12, 1990, EPA approved into the SIP a version of Rule 66, Organic Solvents that had been adopted by SDAPCD on September 17, 1985. SDAPCD's submitted Rule 66, Organic Solvents includes the following significant changes from the current SIP:

- Section d of the SIP rule which prohibits the use of photochemically reactive solvents to thin or reduce coatings has been removed. No coating sources in San Diego are subject to Rule 66. Coating sources within SDAPCD are now subject to source specific rules.
- Sections e, f, g, l, m, n, q, r, and s of the SIP rule which pertain to degreasing, drycleaning, and marine coating operations have been removed. These sources are now respectively covered by Rules 67.6, 67.8, and 67.18.
- Section i of the SIP rule which allows sources to discard, dump, or otherwise dispose of up to 1.5 gallons of photochemically reactive compounds per day has been removed.
- Section j of the submitted rule which contains a boiling point cutoff in the definition for organic solvents has been altered to allow for compliance determination via an ASTM test method.
- An exemption for sources that install and use Best Available Control Technology or Lowest Achievable Emission Rate control technology pursuant to the New Source Review rules has been added under Section n6 of the submitted rule.
- Section o of the submitted rule contains new recordkeeping

[1] The San Diego Area retained its designation of nonattainment and was classified by operation of law pursuant to sections 107(d) and 181(a) upon the date of enactment of the CAA as a severe ozone nonattainment area. See 56 FR 56694 (November 6, 1991). The San Diego area was subsequently reclassified as a serious ozone nonattainment area on January 19, 1995. See 60 FR 3771.

[2] 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).

requirements for sources subject to the rule.

• Section p of the submitted rule requires the use of test methods suitable for determining compliance with the rule.

EPA has evaluated the submitted rule and has determined that it is consistent with the CAA, EPA regulations, and EPA policy. Therefore, SDAPCD Rule 66, Organic Solvents is being approved under section 110(k)(3) of the CAA as meeting the requirements of section 110(a) and part D.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

EPA is publishing this rule without prior proposal because the Agency views this as a 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 relevant adverse comments be filed. This rule will be effective October 13, 1998 without further notice unless the Agency receives relevant adverse comments by September 10, 1998.

If the EPA receives such comments, then EPA will publish a document withdrawing the final rule and 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 on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this rule will be effective on October 13, 1998 and no further action will be taken on this action.

IV. Administrative Requirements

A. Executive Orders 12866 and 13045

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order (E.O.) 12866 review.

The proposed and final rules are not subject to E.O. 13045, entitled ''Protection of Children from Environmental Health Risks and Safety Risks,'' because it is not an ''economically significant'' action under E.O. 12866.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

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 impose any new requirements, the Administrator certifies that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the CAA, preparation of a 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.* versus *U.S. EPA*, 427 U.S. 246, 255-66 (1976); 42 U.S.C. 7410(a)(2).

C. 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 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 Federal requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

D. Submission to Congress and the General Accounting Office

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**. This rule is not a ''major'' rule as defined by 5 U.S.C. 804(2).

E. 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 13, 1998. 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.

Note: Incorporation by reference of the State Implementation Plan for the State of California was approved by the Director of the Federal Register on July 1, 1982.

Dated; July 27, 1998.

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)(241)(i)(A)(*3*) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(241) * * *

(i) * * *

(A) * * *

(*3*) Rule 66, adopted on July 1, 1972, revised on July 25, 1995.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[ME014–01–6994a; A–1–FRL–6136–3]

Approval and Promulgation of Air Quality Implementation Plans; Maine; Source Surveillance Regulation

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving a State Implementation Plan (SIP) revision submitted by the State of Maine on June 30, 1994. This revision consists of a continuous emissions monitoring (CEM) regulation. The intended effect of this action is to approve Maine's CEM rule into the Maine SIP. This action is being taken in accordance with the Clean Air Act.

DATES: This direct final rule is effective on October 13, 1998 without further notice, unless EPA receives adverse comment by September 10, 1998. If adverse comment is received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Comments may be mailed to Susan Studlien, Deputy Director, Office of Ecosystem Protection, U.S. Environmental Protection Agency, Region I, JFK Federal Building, Boston, MA 02203. Copies of the documents relevant to this action are available for public inspection during normal business hours, by appointment at the Office of Ecosystem Protection, U.S. Environmental Protection Agency, Region I, One Congress Street, 11th floor, Boston, MA; and the Bureau of Air Quality Control, Department of Environmental Protection, 71 Hospital Street, Augusta, ME 04333.

FOR FURTHER INFORMATION CONTACT: Anne E. Arnold, (617) 565–3166.

SUPPLEMENTARY INFORMATION: On July 13, 1994, EPA received a formal SIP submittal from the Maine Department of Environmental Protection (DEP) containing the State's Chapter 117 ''Source Surveillance'' regulation.

I. Summary of SIP Revision

Maine's Chapter 117 was first adopted by the State on August 9, 1988 and submitted to EPA as a SIP revision on August 22, 1988. EPA approved this rule into the Maine SIP on March 21, 1989 (54 FR 11525). Maine has since repealed the 1988 version of the rule and replaced it with a new Chapter 117. This new version of Chapter 117 was submitted to EPA as a SIP revision on June 30, 1994 and is the subject of today's action. This regulation is briefly summarized below.

Chapter 117: Source Surveillance

This regulation requires certain air emissions sources to operate continuous emission monitoring systems and details the performance specifications, quality assurance procedures, and recordkeeping and reporting requirements for such systems.

EPA's Evaluation of Maine's Submittal

EPA has evaluated Maine's Chapter 117 and has found that it is consistent with the requirements of 40 CFR Part 51, Appendix P. Maine's regulation and EPA's evaluation are detailed in a memorandum, dated June 24, 1998, entitled ''Technical Support Document—Maine—Source Surveillance Rule.'' Copies of that document are available, upon request, from the EPA Regional Office listed in the **ADDRESSES** section of this document.

One aspect of Maine's Chapter 117 which is somewhat unique is the rule's data recovery requirements. The data recovery requirements of the Maine regulation contain a basic requirement that ''emission monitoring devices must record accurate and reliable data during all source-operating time except for periods when the emission monitoring devices are subject to established quality assurance and quality control procedures [(''QA/QC'')] or to unavoidable malfunction.'' (Chapter 117, Section 5.) This basic provision is consistent with both 40 CFR Part 51, Appendix P and 40 CFR part 60, appendix F. However, the regulation contains a limitation that prohibits the Department's enforcement of the basic requirement when a source's emission monitoring system records accurate and reliable data 90% of the time in a given quarter (95% of the time for opacity monitoring). The regulation further states that if the monitoring system does not record such data for the minimum percentage of time, then the Department may initiate an enforcement action for any period of down time that the owner or operator (''licensee'') cannot establish was due to QA/QC or unavoidable malfunctions. (See Chapter 117, Section 5.A and 5.B.)

The language in the Maine regulation and the authorizing state legislation, Title 38 MRSA Section 589(3), is not an express exemption from the basic data recovery requirement. If the regulation and the authorizing legislation were intended to provide an exemption, then a more direct statement of an exemption would have been drafted (e.g., ''Monitoring devices must record accurate and reliable data for 90% of the source-operating time * * * ''). Instead, the language simply provides direction to the Department on when it may initiate enforcement for failure to maintain operational CEMS. In this respect, the language is more of a mandate from the legislature on how the Department must manage its resources than a grant of immunity from all potential enforcement.

The EPA does not interpret the language restricting when the Department may initiate an enforcement action as applying to other potential enforcers such as citizens and the EPA. Otherwise, the basic underlying requirement to maintain operational CEMS at all times except during QA/QC and unavoidable malfunctions would have no binding effect. If this language were binding on other potential enforcers, then the limitation would make the Maine regulation less stringent than the requirements of Appendix P. Maine's regulation includes a note providing fair notice that the ''requirements under federal law may be more stringent than the requirements of Chapter 117 and Title 38 MRSA Section 589(3).'' (Chapter 117, section 5, Note.) This note confirms that the Department may have fewer opportunities to initiate enforcement under its regulation than others may have under federal law. Therefore, in incorporating by reference this rule into the SIP, the EPA adopts a literal interpretation of the language restricting when the Department may initiate an enforcement action as applying only to the Department and as not restricting when other potential enforcers may initiate enforcement action.

One other aspect of the data recovery requirements should be clarified as part of the EPA's approval of Chapter 117 into the SIP. The most natural reading of the affirmative defense available