

Consistency of State and Federal standards is required by SMCRA.

VI. Procedural Determinations

Executive Order 12866

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

Executive Order 12988

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 (Civil Justice Reform) and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon corresponding Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule

would have a significant economic impact, the Department relied upon the data and assumptions for the corresponding Federal regulations.

Unfunded Mandates

This rule will not impose a cost of \$100 million or more in any given year on any governmental entity or the private sector.

List of Subjects in 30 CFR Part 935

Intergovernmental relations, Surface mining, Underground mining.

Dated: September 16, 1998.

Ronald C. Recker,

Acting Regional Director, Appalachian Regional Coordinating Center.

For the reasons set out in the preamble, Title 30, Chapter VII, Subchapter T of the Code of Federal Regulations is amended as set forth below:

PART 935—OHIO

1. The authority citation for part 935 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. Section 935.15 is amended in the table by adding a new entry in chronological order by "Date of Final Publication" to read as follows:

§ 935.15 Approval of Ohio regulatory program amendments.

* * * * *

Original amendment submission date	Date of final publication	Citation/description
* February 11, 1993	* September 29, 1998	* OAC 1501:13–9-15(F)(4)(c), (F)(5), and (F)(6).

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 211–0102a; FRL–6161–8]

Approval and Promulgation of Implementation Plans; California State Implementation Plan Revision, Bay Area Air Quality Management 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 Bay Area Air Quality Management District (BAAQMD). This approval action will incorporate this rule into the federally approved SIP. The intended effect of approving this rule is to clarify the general provisions and definitions that apply to the regulation of emissions of volatile organic compounds (VOCs), oxides of nitrogen (NOx), and other pollutants 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 this revision into the California SIP under provisions of the CAA regarding EPA action on SIP submittals and general rulemaking authority.

DATES: This rule is effective on November 30, 1998 without further notice, unless EPA receives adverse comments by October 29, 1998. 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: Written comments must be submitted to Andrew Steckel at the Region IX office listed below. Copies of the rule revision are available for public inspection at EPA's Region IX office during normal business hours and 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
Bay Area Air Quality Management
District, 939 Ellis Street, San
Francisco, CA 94109

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

The rule being approved into the California SIP is BAAQMD Regulation 1, General Provisions and Definitions. This rule was submitted by the California Air Resources Board (CARB) to EPA on June 23, 1998. A corrected version of BAAQMD Regulation 1, revised only to remove a provision that was inadvertently included with the rule, was subsequently forwarded by CARB to EPA on September 2, 1998.

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 Francisco Bay Area. 43 FR 8964. 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.

On November 12, 1993, BAAQMD submitted a request for redesignation to attainment of the ozone standard. Subsequently, EPA evaluated and approved BAAQMD's request and the San Francisco Bay Area was reclassified as an attainment area.¹ 40 CFR 81.305.

On May 27, 1998, EPA proposed limited approval and limited disapproval of the version of Regulation 1 adopted by BAAQMD on December 19, 1990 and submitted by CARB on May 13, 1991. 63 FR 28958. EPA did not propose full approval of Regulation 1 because that version contained a public nuisance provision and references to a Manual of Procedures that are

inappropriate for incorporation into the SIP. EPA will not finalize action on this previous submittal of the rule because CARB withdrew the May 13, 1991 submittal of BAAQMD Regulation 1 at the request of the district on July 20, 1998.

This document addresses EPA's direct-final action for BAAQMD Regulation 1, General Provisions and Definitions. The BAAQMD adopted Regulation 1 on November 11, 1993. This submitted rule was found to be complete on August 25, 1998 pursuant to EPA's completeness criteria that are set forth in 40 CFR part 51, Appendix V² and is being finalized for approval into the SIP. Regulation 1, as submitted by BAAQMD on June 23, 1998, inadvertently contained a provision that the district had not intended to submit to the EPA for inclusion in the SIP. The State of California removed the provision from Regulation 1 at the request of BAAQMD and resubmitted the corrected version to EPA on September 2, 1998. It is this corrected version, as submitted to EPA by the State of California, that this direct final action incorporates into the Federally approved SIP.

BAAQMD Regulation 1 clarifies the definitions and general provisions that apply to the regulation of emissions of VOCs, NOx, and other pollutants. These pollutants contribute to the production of ground level ozone and smog. This rule was originally adopted as part of the district's effort to achieve the National Ambient Air Quality Standard (NAAQS) for ozone and has been revised in response to EPA's SIP-Call. The following is EPA's evaluation and final action for this rule.

III. EPA Evaluation and Action

In determining the approvability of a rule, EPA must evaluate the rule for consistency with the requirements of the CAA and EPA regulations, as found in section 110 of the CAA and 40 CFR part 51 (Requirements for Preparation, Adoption, and Submittal of Implementation Plans).

In addition, this rule was evaluated against the SIP enforceability guidelines found in "Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations—Clarification to Appendix D of November 24, 1987 **Federal Register**" (EPA's "Blue Book"), the EPA Region IX—California Air Resources Board document entitled "Guidance Document for Correcting VOC Rule Deficiencies"

(April, 1991), and against other EPA policies. In general, these guidance documents have been set forth to ensure that VOC rules are fully enforceable and strengthen or maintain the SIP.

EPA previously approved various portions of BAAQMD Regulation 1, General Provisions and Definitions, into the SIP on September 2, 1981, July 6, 1982, and November 10, 1982. These portions were originally adopted by BAAQMD on September 5, 1979, May 21, 1980, December 17, 1980, and March 17, 1982. BAAQMD Regulation 1 includes the following significant changes from the current SIP:

- The scope of the exemption in Section 110.5 has been narrowed to prohibit the disposal of waste propellants, explosives, or pyrotechnics by manufacturing facilities in open outdoor fires, and
- Definitions for volatile organic compound and reduced sulfur compounds have been added in Section 236 and 237. The deficiencies noted in EPA's May 27, 1998 proposed limited approval and limited disapproval have been corrected in this version.

EPA has evaluated the submitted rule and has determined that it is consistent with the CAA, EPA regulations, and EPA policy. Therefore, BAAQMD Regulation 1, General Provisions and Definitions is being approved under section 110(k)(3) of the CAA as meeting the requirements of section 110(a).

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 adverse comments be filed. This rule will be effective November 30, 1998 without further notice unless the Agency receives adverse comments by October 29, 1998.

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 on this rule. Any parties interested in commenting on this rule should do so at this time. If no such comments are received, the public is advised that this rule will be effective on November 30, 1998 and no further action will be taken on the proposed rule.

¹ The San Francisco Bay Area was redesignated to attainment. See 60 FR 98 (May 22, 1995). The EPA subsequently redesignated the San Francisco Bay Area back to nonattainment for ozone based on a number of violations of the National Ambient Air Quality Standards (NAAQS) on July 10, 1998. See 63 FR 37258.

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).

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, entitled "Regulatory Planning and Review."

The final rule is 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

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 sections 110 and 301 of the CAA 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 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., v. 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 annual 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 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.

D. 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**. 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 November 30, 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, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, 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: September 4, 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)(256) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(256) New and amended regulations for the following APCDs were submitted on June 23, 1998, by the Governor's designee.

(i) Incorporation by reference.

(A) Bay Area Air Quality Management District.

(I) Regulation 1, revised on November 3, 1993.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP-300722; FRL 6032-4]

RIN 2070-AB78

Acrylic Acid, Styrene, α -Methyl Styrene Copolymer, Ammonium Salt; and Styrene, 2-Ethylhexyl Acrylate, Butyl Acrylate Copolymer; Exemption from the Requirements of a Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes an exemption from the requirement of a tolerance for residues of acrylic acid, styrene, α -methyl styrene copolymer, ammonium salt; and styrene, 2-ethylhexyl acrylate, butyl acrylate copolymer when used as inert ingredients (encapsulating agent, dispensers, resins, fibers, and beads) in pesticide formulations applied to growing crops, raw agricultural commodities after harvest, and animals. Westvaco Corporation, Chemical Division requested these exemptions from the requirement of a tolerance under the Federal Food, Drug and