general fund of the Treasury in a separate account known as the ''Customs User Fee Account'' (19 U.S.C. 58c(f)).

Specifically, except as otherwise provided, merchandise that is formally entered is subject to an ad valorem MPF of .21 percent (19 CFR 24.23(b)(1)(i)(A)); however, on any one such entry of merchandise, the fee may not exceed $485, subject to certain provisions not here relevant (19 CFR 24.23(b)(1)(i)(B)).

As a result, in those cases where a company must now make a separate entry for each of its removals of merchandise from a zone, and its total payment of the MPF for all entries so made during a week greatly exceeds $485, the company would be able to lower this payment substantially if it could instead make one entry covering all its removals from the zone for the week, with the MPF thereby capped at $485.

Clearly, Customs collection of the MPF would be significantly reduced under an expanded weekly entry program. Indeed, some parties expressing interest in the proposed rule even asserted that they would apply for foreign trade zone status just to gain the benefit of the reduced MPF through the use of a weekly entry.

Moreover, other industries, such as bonded warehouse associations, stated that similar entry procedures should as well be available to them, which also raised a fairness concern.

Withdrawal of Proposal

In view of the foregoing, and following further consideration of the matter, Customs has determined to withdraw the notice of proposed rulemaking that was published in the **Federal Register** (62 FR 12129) on March 14, 1997. Customs, however, will continue to cooperate with the trade in seeking mutually satisfactory ways in which to further facilitate entry processing or imported merchandise, so as to reduce associated paperwork and costs to industry, while at the same time reasonably preserving the integrity of the MPF which is necessary to offset merchandise processing costs incurred by the Government in this regard.

Raymond W. Kelly,

Commissioner of Customs.

Approved: February 9, 1999.

John P. Simpson,

Deputy Assistant Secretary of the Treasury.

[FR Doc. 99–6467 Filed 3–16–99; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 211–0140; FRL–6310–2]

Approval and Promulgation of Implementation Plans; California State Implementation Plan Revision, Bay Area Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing a limited approval and limited disapproval of a revision to the California State Implementation Plan (SIP) which concerns the control of volatile organic compound (VOC) emissions from adhesive and sealant products.

The intended effect of proposing a limited approval and limited disapproval of this rule is to regulate emissions of VOCs in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). EPA's final action on this proposed rule will incorporate this rule into the federally approved SIP. EPA has evaluated the rule and is proposing a simultaneous limited approval and limited disapproval under provisions of the CAA regarding EPA action on SIP submittals and general rulemaking authority because this revision, while strengthening the SIP, does not fully meet the CAA provisions regarding plan submissions and requirements for nonattainment areas.

DATES: Comments must be received on or before April 16, 1999.

ADDRESSES: Comments may be mailed to: Andrew Steckel, Rulemaking Office [AIR–4], Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Copies of the rule and EPA's evaluation report of the rule are available for public inspection at EPA's Region IX office during normal business hours. Copies of the submitted rule are also available for inspection at the following locations:

Bay Area Air Quality Management District, 939 Ellis Street, San Francisco, CA 94109.

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

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 94105–3901, Telephone: (415) 744–1199.

SUPPLEMENTARY INFORMATION:

I. Applicability

The rule being proposed for approval into the California SIP is Bay Area Air Quality Management District, BAAQMD, Rule 8–51, Adhesive and Sealant Products. This rule was submitted by the California Air Resources Board to EPA on June 23, 1998.

II. Background

On March 3, 1978, EPA promulgated a list of ozone nonattainment areas under the provisions of the 1977 Clean Air Act (1977 CAA or pre-amended Act), that included the San Francisco Bay Area. 43 FR 8964. The San Francisco Bay Area did not attain the ozone standard by the approved attainment date. On May 26, 1988, EPA notified the Governor of California, pursuant to section 110(a)(2)(H) of the pre-amended Act, that the Bay Area Air Quality Management District's portion of the 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, amendments to the 1977 CAA were enacted. Pub. L. 101–549, 104 Stat. 2399, 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.[1] EPA's SIP-Call used that guidance to indicate the necessary corrections for specific nonattainment areas. The San Francisco Bay Area is designated as nonattainment without

[1] 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) and the document ''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).

further classification;[2] therefore, this area is 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 June 23, 1998, including the rule being acted on in this document. This document addresses EPA's proposed action for BAAQMD Rule 8–51, Adhesives and Sealant Products. The BAAQMD adopted this rule on January 7, 1998. 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 V;[3] and is being proposed for limited approval and limited disapproval.

BAAQMD Rule 8–51 limits the volatile organic compound (VOC) emissions resulting from the application of adhesive and sealant products. VOCs contribute to the production of ground level ozone and smog. Rule 8–51 is a new rule which has been adopted to meet the EPA's SIP-Call and the section 182(a)(2)(A) CAA requirement. The following is EPA's evaluation and proposed action for BAAQMD Rule 8–51.

III. EPA Evaluation and Proposed 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.

In addition, this rule was evaluated against the SIP enforceability guidelines found in 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.

There is currently no version of BAAQMD Rule 8–51, Adhesive and Sealant Products in the SIP. The submitted rule includes provisions which:

- Specify VOC content limits for adhesives, aerosol adhesives, and sealants (Sections 301, 302, 303, and 304);
- Allow sources to comply using emission control systems with an overall abatement efficiency of at least 85 percent (Section 305);
- Prohibit the specification and sale of any adhesives, aerosol adhesives, or sealants that would result in a violation of the provisions of Rule 8–51 (Section 306 and 307);
- Require any person using organic solvents for surface preparation and clean-up to use closed containers and to minimize evaporation of organic compounds to the atmosphere (Section 320);
- Require facilities within the District that use more than 20 gallons of adhesive and/or sealant products per year to keep monthly records (Section 501);
- Mandate that persons using an emission control system keep daily records of key system operating parameters and amounts of adhesive or sealant product used (Section 502); and
- Provide test methods for determining the amount of VOC in adhesives and sealants, aerosol adhesives, and low solids adhesives, sealant products and primers and for determining control and collection efficiency (Sections 601 and 602).

Although these provisions will strengthen the SIP, this rule also contains deficiencies which are required to be corrected pursuant to the section 182(a)(2)(A) requirement of Part D of the CAA. Rule 8–51 contains the following deficiencies:

- The rule does not require users of adhesive and sealant products to record their daily use of non-compliant coatings;
- The rule allows for director's discretion in the approval of alternate recordkeeping plans; and
- The rule contains a number of deviations from RACT level controls which have not been substantiated by an adequate 5% equivalency demonstration based on source specific data.

A detailed discussion of rule deficiencies can be found in the Technical Support Document for Rule 8–51 (February 1999), which is available from the U.S. EPA, Region IX office. Because of these deficiencies, the rule is not approvable pursuant to section 182(a)(2)(A) of the CAA because it is not consistent with the interpretation of section 172 of the 1977 CAA as found in the Blue Book and may lead to rule enforceability problems.

Because of the above deficiencies, EPA cannot grant full approval of this rule under section 110(k)(3) and Part D. Also, because the submitted rule is not composed of separable parts which meet all the applicable requirements of the CAA, EPA cannot grant partial approval of the rule under section 110(k)(3). However, EPA may grant a limited approval of the submitted rule under section 110(k)(3) in light of EPA's authority pursuant to section 301(a) to adopt regulations necessary to further air quality by strengthening the SIP. The approval is limited because EPA's action also contains a simultaneous limited disapproval. In order to strengthen the SIP, EPA is proposing a limited approval of BAAQMD's submitted Rule 8–51 under sections 110(k)(3) and 301(a) of the CAA.

At the same time, EPA is also proposing a limited disapproval of this rule because it contains deficiencies that have not been corrected as required by section 182(a)(2)(A) of the CAA, and, as such, the rule does not fully meet the requirements of Part D of the Act. Under section 179(a)(2), if the Administrator disapproves a submission under section 110(k) for an area designated nonattainment, based on the submission's failure to meet one or more of the elements required by the Act, the Administrator must apply one of the sanctions set forth in section 179(b) unless the deficiency has been corrected within 18 months of such disapproval. Section 179(b) provides two sanctions available to the Administrator: highway funding and offsets. The 18 month period referred to in section 179(a) will begin on the effective date of EPA's final limited disapproval. Moreover, the final disapproval triggers the Federal implementation plan (FIP) requirement under section 110(c). It should be noted that the rule covered by this proposed rulemaking has been adopted by the BAAQMD and is currently in effect in the BAAQMD. EPA's final limited disapproval action will not prevent the BAAQMD or EPA from enforcing this rule.

[2] The San Francisco Bay Area, originally designated as an ozone nonattainment area on March 3, 1978, retained its designation and was classified by operation of law pursuant to sections 107(d) and 181(a) upon the date of enactment of the CAA. See 56 FR 56694 (November 6, 1991). On May 22, 1995 EPA approved BAAQMD's request for redesignation and the San Francisco Bay Area was reclassified as an attainment area. See 60 FR 27028. Based on a number of violations of the National Ambient Air Quality Standards, EPA redesignated the San Francisco Bay Area back to nonattainment for ozone on July 10, 1998 without assigning it a specific classification of marginal, moderate, serious, severe, or extreme. See 63 FR 37258.

[3] EPA adopted 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).

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any state 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.

IV. Administrative Requirements

A. Executive Order 12866

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

B. Executive Order 12875

Under E.O. 12875, Enhancing the Intergovernmental Partnership, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a state, local, or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments, or EPA consults with those governments. If EPA complies by consulting, E.O. 12875 requires EPA to provide to the OMB a description of the extent of EPA's prior consultation with representatives of affected state, local, and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, E.O. 12875 requires EPA to develop an effective process permitting elected officials and other representatives of state, local, and tribal governments ''to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates.''

Today's rule does not create a mandate on state, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of E.O. 12875 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 E.O. 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 E.O. 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

D. Executive Order 13084

Under E.O. 13084, Consultation and Coordination with Indian Tribal Governments, EPA may not issue a regulation that is not required by statute, that significantly 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, or EPA consults with those governments. If EPA complies by consulting, E.O. 13084 requires EPA to provide to the OMB, 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, E.O. 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 E.O. 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 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).

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 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.

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.

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

Dated: March 4, 1999.

Laura Yoshii,

Deputy Regional Administrator, Region IX.

[FR Doc. 99–6506 Filed 3–16–99; 8:45 am]

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