

reporting, teaching, scholarship, or research?

13. What impact has the use of technological measures that effectively control access to copyrighted works had on the ability of interested persons to engage in noninfringing uses of such works, including fair use and activities permitted by exemptions prescribed by law?

14. Are there specific works or classes of works with respect to which the ability of interested persons to engage in criticism, comment, news reporting, teaching, scholarship, or research has been hindered because of the implementation of such technological measures? If so, identify them, explain how such activities have been hindered, and explain whether those works or classes of works are also available in other formats to which such technological measures have not been applied.

15. Are there specific works or classes of works with respect to which the ability of interested persons to engage in noninfringing uses has been hindered because of the implementation of such technological measures? If so, identify them, explain how such activities have been hindered, and explain whether those works or classes of works are also available in other formats to which such technological measures have not been applied.

16. For purposes of this rulemaking, in classifying works that are to be exempted from the prohibition against circumvention of technological measures that control access, should any classes of works be defined, in part, based on whether the works are being used for purposes of criticism, comment, news reporting, teaching, scholarship, or research? Explain why or why not.

17. For purposes of this rulemaking, in classifying works that are to be exempted from the prohibition against circumvention of technological measures that control access, should any classes of works be defined, in part, based on whether the works are being used in ways that do not constitute copyright infringement, e.g., as fair use or in a manner permitted by exemptions prescribed by law? Explain why or why not.

#### *E. Effect of Circumvention on the Market for or Value of Copyrighted Works*

18. In what ways can technological measures that effectively control access to copyrighted works be circumvented? How widespread is such circumvention?

19. Has such circumvention (or the likelihood of circumvention) had any impact on the price of copyrighted works? Please explain.

20. Has such circumvention (or the likelihood of circumvention) had any impact on the availability of copyrighted works? In particular formats or in all formats? Please explain.

21. Has such circumvention had any other impact on the marketing of copyrighted works? If so, please explain the impact and which works or classes of works have been affected.

22. Do the answers to any of these questions relating to the effect of circumvention on the market for or value of copyrighted works depend upon the class of work? Please explain.

#### *F. Other Factors and Questions*

23. For purposes of this rulemaking, what criteria should be used in determining what is a "class" of copyrighted works?

24. With respect to any adverse effect on use of or access to copyrighted works that has been identified in response to any of the preceding questions, is there an explanation for the adverse effect other than the presence of technological measures that effectively control access to copyrighted works?

25. Has the use of technological measures that effectively control access to copyrighted works resulted in making copyrighted works more widely available? Please explain.

26. Has the use of technological measures that effectively control access to copyrighted works resulted in facilitating lawful uses of copyrighted works?

27. Are there other factors that should be taken into account? If so, please identify and address those factors.

28. What other comments, if any, do you have?

29. Do you wish to testify at a hearing to be conducted by the Copyright Office in connection with this rulemaking?

Dated: November 15, 1999.

**Marybeth Peters,**

*Register of Copyrights.*

Approved by:

**James H. Billington,**

*The Librarian of Congress.*

[FR Doc. 99-30556 Filed 11-23-99; 8:45 am]

**BILLING CODE 1410-30-P**

## **POSTAL SERVICE**

### **39 CFR Part 111**

#### **Standards Governing the Design of Curbside Mailboxes; Meeting**

**AGENCY:** Postal Service.

**ACTION:** Notice of Meeting.

**SUMMARY:** The Postal Service will hold further meetings of a Consensus Committee to develop recommendations for revision of USPS STD 7A, which governs the design of curbside mailboxes. The committee will develop and adopt its recommendations through a consensus process. The committee will consist of persons who represent the interests affected by the proposed rule, including mailbox manufacturers, mailbox accessory manufacturers, and postal customers.

**Meeting Dates:** The third committee meeting is tentatively scheduled for January 12-13, 2000. The meeting tentatively scheduled for December 14-15, 1999 is canceled.

**Meeting Place:** U.S. Postal Service Headquarters, 475 L'Enfant Plaza, SW, Washington, DC 20260.

**FOR FURTHER INFORMATION CONTACT:** Annamarie Gildea, (202) 268-3558.

**SUPPLEMENTARY INFORMATION:** Mail comments and all other communications regarding the committee to Annamarie Gildea, U.S. Postal Service Headquarters, 475 L'Enfant Plaza, SW, Room 7142, Washington, DC 20260. Committee documents will be available for public inspection and copying between 9 a.m. and 4 p.m. weekdays at the address above. Entry into U.S. Postal Service Headquarters is controlled. Persons wishing to attend the next meeting must send a fax to Annamarie Gildea at 202-268-5293 no later than January 5, 2000 with the person's name and organizational affiliation, if any. For additional information regarding the USPS STD 7A Consensus Committee, see **Federal Register** Vol 64, No. 158, p. 44681 (August 17, 1999).

**Stanley F. Mires,**

*Chief Counsel, Legislative.*

[FR Doc. 99-30377 Filed 11-23-99; 8:45 am]

**BILLING CODE 7710-12-P**

## **ENVIRONMENTAL PROTECTION AGENCY**

### **40 CFR Part 52**

**[CA 022-0196; FRL-6480-7]**

#### **Approval and Promulgation of Implementation Plans; California State Implementation Plan Revision; South Coast Air Quality Management District**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing a disapproval of revisions to the

California State Implementation Plan (SIP). These revisions concern the potential exemption of sources from applicable emission limits contained in certain source category specific rules when excess emissions occur during facility start-up and shutdown. EPA has evaluated these revisions and is proposing to disapprove them because they contain deficiencies that, if approved, would weaken the SIP.

**DATES:** Comments on this proposed action must be received in writing on or before December 9, 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 (the Technical Support Document, or TSD, dated November 9, 1999) 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:

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.

South Coast Air Quality Management District, 21865 E. Copley Drive, Diamond Bar, CA 91765.

**FOR FURTHER INFORMATION CONTACT:** Thomas C. Canaday, Rulemaking Office (AIR-4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105, Telephone: (415) 744-1202.

**SUPPLEMENTARY INFORMATION:**

**I. Applicability**

The rule being proposed for disapproval is South Coast Air Quality Management District (SCAQMD) Rule 429—Startup and Shutdown Exemption Provisions for Oxides of Nitrogen. Rule 429 was submitted to EPA by the SCAQMD on January 28, 1992.

**II. Background**

This document addresses EPA's proposed action for South Coast Air Quality Management District (SCAQMD) Rule 429—Startup and Shutdown Exemption Provisions for Oxides of Nitrogen. SCAQMD adopted Rule 429 on December 21, 1990, and submitted it to EPA on January 28, 1992. Rule 429 was found to be complete on April 3, 1992, pursuant to EPA's

completeness criteria that are set forth in 40 CFR Part 51 Appendix V<sup>1</sup>.

**III. EPA Evaluation and Proposed Action**

In determining the approvability of a rule, EPA must evaluate the rule for consistency with the requirements of the Clean Air Act (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). EPA's interpretation of these requirements, which forms the basis for this action, appears in EPA policy guidance documents. EPA policy on excess emissions occurring during start-up and shutdown is contained in a memorandum dated September 20, 1999, entitled "State Implementation Plans: Policy Regarding Excess Emissions During Malfunctions, Start-up, and Shutdown" (the Excess Emissions Policy). In general, the guidance document cited above, as well as other relevant and applicable guidance documents, have been set forth to ensure that submitted rules meet Federal requirements, are fully enforceable, and strengthen or maintain the SIP.

There is currently no version of South Coast Air Quality Management District (SCAQMD) Rule 429—Startup and Shutdown Exemption Provisions for Oxides of Nitrogen in the SIP. The submitted rule includes the following provisions:

- Definitions of various terms used in the rule.
- General provisions establishing the applicability of the rule and requiring that facilities seeking relief under Rule 429 mitigate emissions to the extent practicable.
- Time limits on start-up and shutdown intervals and a maximum number of scheduled start-ups/shutdowns per year for each affected source category.
- Provisions describing the notification and recordkeeping requirements for facilities seeking relief under Rule 429.

SCAQMD Rule 429 requires that facilities seeking exemption for excess emissions give prior notification of scheduled start-ups and shutdowns. Exemptions are allowed only for excess emissions that occur during scheduled start-ups and shutdowns for which notification is given. Rule 429 also

requires that records of certain process variables be maintained and kept on-site for a period of two years.

Under Section 110(l) of the CAA, EPA may not approve a SIP revision "if the revision would interfere with any applicable requirement concerning attainment and reasonable further progress, or any other applicable requirement of [the Act]." This provision serves to ensure that the State, in seeking a revision to its SIP, does not impair its compliance with the statutory mandates applicable to the SIP. One such requirement is Section 172(c)(1), which mandates that SIP provisions implement reasonably available control technology (RACT).

In order to clarify which excess emissions provisions are approvable as SIP revisions under the CAA, and to provide guidance to States and local air districts, the Agency recently reissued its policy. The Excess Emissions Policy states that EPA may approve SIP revisions providing source-category specific exemptions for excess emissions that occur during start-up and shutdown periods only if the source's control strategy is such that compliance with otherwise applicable emission limits is technologically infeasible during these periods. The policy also requires that the frequency and duration of the excess emissions be minimized to the maximum extent practicable. These requirements are based on Sections 110(l) and 172(c)(1) and are meant to ensure that the excess emissions provisions do not interfere with attainment, maintenance, or other applicable requirements.

The SCAQMD Staff Report (dated October 30, 1990) that provides the technical basis for Rule 429 fails to establish the technological necessity of the exemptions and, further, does not demonstrate that the exemption periods have been minimized. The source category specific rules from which Rule 429 provides exemption implement RACT for sources in those source categories. Therefore, exemption from those rules is allowable under Section 172(c)(1) only when the otherwise reasonably available control technologies are not reasonably available during start-up and shutdown. Further, in keeping with Section 110(l) of the CAA, EPA may approve into the SIP exemptions such as those provided under Rule 429 only if they do not interfere with attainment or maintenance. If Rule 429 excused only those excess emissions that are technologically unavoidable, then the Rule would be less likely to interfere with attainment. However, Rule 429 fails to include such a limitation.

<sup>1</sup> 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).

An additional deficiency of Rule 429 is that it contains vague or contradictory language that makes it unclear when otherwise applicable emission limits would apply to a given source. These instances include sections (a)(5) and (b)(3) of the rule and are detailed in the TSD. Section 110(a)(2)(A) of the CAA requires that the emissions limitations included in SIPs be enforceable. Thus, Rule 429 violates Section 110(a)(2)(A) of the CAA and is not an approvable SIP revision.

In conclusion, rules submitted to EPA for approval as revisions to the SIP must be fully enforceable, must maintain or strengthen the SIP, and must conform with EPA policy in order to be approved by EPA. As described above, SCAQMD Rule 429 is deficient because it does not maintain or strengthen the SIP, and because its vague or contradictory language renders it unenforceable. SCAQMD Rule 429, if approved, would exempt certain sources from applicable emissions limits contained in the SIP. The CAA and EPA policy, under certain circumstances, allow for such exemptions. However, the exemptions provided by Rule 429 are not sufficiently limited and could result in exempted emissions that might threaten the NAAQS, PSD increments, or other air quality standards. Thus the submitted Rule 429 would, if approved, weaken the SIP. A more detailed discussion of EPA's evaluation of SCAQMD Rule 429 can be found in the TSD.

Because of the identified deficiencies, EPA cannot grant approval of SCAQMD Rule 429 under section 110(k)(3) and part D. Therefore, in order to maintain the SIP, EPA is proposing a disapproval of this rule.

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 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 proposed 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. 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 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 Executive Order 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, Executive Order 13084 requires EPA to 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 officials 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 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.

#### List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Reporting and recordkeeping requirements.

**Authority:** 42 U.S.C. 7401-7671q.

Dated: November 12, 1999.

**Laura Yoshii,**

*Deputy Regional Administrator, Region IX.*

[FR Doc. 99-30613 Filed 11-23-99; 8:45 am]

**BILLING CODE 6560-50-P**

## NATIONAL SCIENCE FOUNDATION

### 45 CFR Parts 612 and 613

**RIN 3145-AA31 and -AA32**

### Revision of Freedom of Information Act and Privacy Act Regulations and Implementation of Electronic Freedom of Information Act Amendments of 1996

**AGENCY:** National Science Foundation.

**ACTION:** Proposed rule.

**SUMMARY:** This document sets forth proposed revisions of the Foundation's regulations under the Freedom of Information Act (FOIA) and Privacy Act. The new FOIA provisions implement the Electronic Freedom of Information Act Amendments of 1996, including revised time limit on response, negotiating with the requester, and expedited processing procedures. They make no changes in the figures currently used for calculating and charging fees under the FOIA. The Privacy Act regulations have been restructured for ease of use and outdated information eliminated.

**DATES:** Submit comments on or before December 27, 1999.

**ADDRESSES:** Address all comments concerning this proposed rule to D. Matthew Powell, Assistant General Counsel, Office of the General Counsel, National Science Foundation, 4201 Wilson Boulevard, Suite 1265, Arlington, VA 22230.

**FOR FURTHER INFORMATION CONTACT:** D. Matthew Powell (703) 306-1060.

#### SUPPLEMENTARY INFORMATION:

#### Availability of Records and Information (45 CFR part 612) (FOIA Regulations)

This revision of part 612 incorporates changes to the language and structure of the regulations and also adds new provisions to implement the Electronic Freedom of Information Act Amendments of 1996 (Pub. L. 104-231). New provisions implementing the amendments are found at § 612.2(b) (electronic reading rooms), § 612.5(b) (timing of responses), § 612.6(b) (deletion marking), § 612.6(c)(1) (volume estimation), § 612.10(b)(3) (format of disclosure), and § 612.10(b)(8) (electronic searches).

#### Privacy Act Regulations (45 CFR 613)

This revision of part 613 revises the structure of the regulations and makes them more consistent with the FOIA regulations. It applies the FOIA fee schedule for duplication of Privacy records which should eliminate copying fees for nearly all Privacy Act requesters. Verification procedures have been updated to include the use of a statement of identity under 28 U.S.C. 1746 and to allow for release of records to a third party in specified circumstances. The revision includes exemptions to protect from disclosure confidential sources of information compiled for enforcement of the Antarctic Conservation Act, and in investigations of scientific misconduct

and personnel security clearances. It also eliminates references to out-of-date system notices.

*Regulatory Flexibility Act, Unfunded Mandates Reform Act, Executive Order 12866, and Paperwork Reduction Act*

For purposes of the Regulatory Flexibility Act (5 U.S.C. 601), the proposed rule will not have a significant economic effect on a substantial number of small entities; the proposed rule addresses the procedures to be followed when submitting or responding to requests for information under the Freedom of Information Act and Privacy Act. For purposes of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4) the proposed rule would not significantly or uniquely affect small governments and would not result in increased expenditures by State, local, and tribal governments, or by the private sector, of \$100 million or more. For purposes of Executive Order 12866, the proposed rule is not a significant regulatory action requiring review by the Office of Management and Budget. For the purposes of the Paperwork Reduction Act of 1995 (44 U.S.C. 35) it has been determined that this proposed rulemaking does not impose any reporting or recordkeeping requirement on the public.

#### List of Subjects

##### 45 CFR part 612

Administrative practice and procedure; Freedom of information

##### 45 CFR part 613

Administrative practice and procedure; Privacy.

For the reasons stated in the preamble, the National Science Foundation proposes to amend 45 CFR Chapter VI as follows:

1. By revising Part 612 to read as follows:

### PART 612—AVAILABILITY OF RECORDS AND INFORMATION

Sec.	
612.1	General provisions.
612.2	Public reading room.
612.3	Requirements for making requests.
612.4	Responding to requests.
612.5	Timing of responses to requests.
612.6	Responses to requests.
612.7	Exemptions.
612.8	Business information.
612.9	Appeals.
612.10	Fees.
612.11	Other rights and services.

**Authority:** 5 U.S.C. 552, as amended.

#### § 612.1 General provisions

This part contains the rules that the National Science Foundation follows in