Unfunded Mandates

Under Sections 202, 203, and 205 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must undertake various actions in association with proposed or final rules that include a Federal mandate that may result in estimated costs of $100 million or more to the private sector or to State, local, or tribal governments in the aggregate.

Through submission of this state implementation plan or plan revision, the State and any affected local or tribal governments have elected to adopt the program provided for under Part D of the Clean Air Act. These rules may bind State, local, and tribal governments to perform certain actions and also require the private sector to perform certain duties. The rules being approved by this action will impose no new requirements because affected sources are already subject to these regulations under State law. Therefore, no additional costs to State, local, or tribal governments or to the private sector result from this action. EPA has also determined that this direct final action does not include a mandate that may result in estimated costs of $100 million or more to State, local, or tribal governments in the aggregate or to the private sector.

This action has been classified as a Table 3 action for signature by the Regional Administrator under the procedures published in the Federal Register on January 19, 1989 (54 FR 2214–2225), as revised by a July 10, 1995 memorandum from Mary Nichols, Assistant Administrator for Air and Radiation. The Office of Management and Budget (OMB) has exempted this action from review under Executive Order 12866.

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: December 10, 1995.

Felicia Marcus,

Regional Administrator.

Subpart F of part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

Subpart F—California

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

2. Section 52.220 is amended by adding paragraphs (c)(194)(i)(F) (*3*) and (*4*) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(194) * * *

(i) * * *

(F) * * *

(*3*) Rule 420 and Rule 426, adopted on August 25, 1993.

(*4*) Previously submitted to EPA on February 6, 1975 and approved in the Federal Register on July 13, 1987 and now removed without replacement, Rule 428.

[FR Doc. 96–2820 Filed 2–8–96; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 52

[CA 79–4–7252a; FRL–5398–8]

Approval and Promulgation of Implementation Plans; California State Implementation Plan Revision, Monterey Bay Unified Air Pollution Control District, San Diego County Air Pollution Control District, and Santa Barbara County Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action on revisions to the California State Implementation Plan. The revisions concern rules from the following districts: Monterey Bay Unified Air Pollution Control District (MBUAPCD), San Diego County Air Pollution Control District (SDCAPCD), and Santa Barbara County Air Pollution Control District (SBCAPCD). This approval action will incorporate these rules into the federally approved SIP. The intended effect of approving these rules 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 rules control VOC emissions from gasoline storage and transfer and bakery ovens. Thus, EPA is finalizing the approval of these revisions 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 action is effective on April 9, 1996 unless adverse or critical comments are received by March 11, 1996. If the effective date is delayed, a timely notice will be published in the Federal Register.

ADDRESSES: Copies of the rule revisions and EPA's evaluation report for each 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 Section (A–5–3), Air and Toxics Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

Environmental Protection Agency, Air Docket (6102), 401 ''M'' Street, SW., Washington, DC 20460.

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 ''L'' Street, Sacramento, CA 92123–1095.

Monterey Bay Unified Air Pollution Control District, 24580 Silver Cloud Court, Monterey, CA 93940.

Santa Barbara County Air Pollution Control District, 26 Castilian Drive, B–23, Goleta, CA 93117.

San Diego County Air Pollution Control District, 9150 Chesapeake Drive, CA 92123.

FOR FURTHER INFORMATION CONTACT: Christine Vineyard, Rulemaking Section (A–5–3), Air and Toxics Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105, Telephone: (415) 744–1197.

SUPPLEMENTARY INFORMATION:

Applicability

The rules being approved into the California SIP include: Monterey Bay Unified Air Pollution Control District (MBUAPCD) Rule 1002, Transfer of Gasoline into Vehicle Fuel Tanks; San Diego County Air Pollution Control District (SDCAPCD) Rule 67.24, Bakery Ovens; and Santa Barbara County Air Pollution Control District (SBCAPCD) Rule 316, Storage and Transfer of Gasoline. These rules were submitted by the California Air Resources Board to EPA on December 22, 1994, June 16, 1995 and March 29, 1994, respectively.

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 Monterey Bay, San Diego County, and

Santa Barbara County areas. 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 districts' portions of the California SIP were 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. Public Law 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. In amended section 182(b)(2)(C) of the CAA, Congress statutorily required nonattainment areas to submit RACT rules for all major sources of VOCs by November 15, 1992 (the RACT ''catch-up'' requirement).

Section 182(a)(2) 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 Monterey Bay and Santa Barbara County areas are classified as moderate and the San Diego County area is classified as serious.[2] The Monterey Bay and Santa Barbara County areas were subject to the RACT fix-up requirement and the May 15, 1991 deadline. The San Diego County Area was subject to the RACT catch-up requirements and the November 15, 1992 deadline.

The State of California submitted many revised RACT rules for incorporation into its SIP on March 29, 1994, December 22, 1994, and June 16, 1995, including the rules being acted on in this document. This document addresses EPA's direct-final action for MBUAPCD Rule 1002, Transfer of Gasoline into Vehicle Fuel Tanks; SDCAPCD Rule 67.24, Bakery Ovens, and SBCAPCD Rule 316, Storage and Transfer of Gasoline. MBUAPCD adopted Rule 1002 on November 23, 1994; SDCAPCD adopted Rule 67.24 on March 7, 1995; and SBCAPCD adopted Rule 316 on December 14, 1994. These submitted rules were found to be complete on January 3, 1995, June 23, 1995, and June 3, 1994, respectively, pursuant to EPA's completeness criteria that are set forth in 40 CFR part 51, appendix V[3] and is being finalized for approval into the SIP.

MBUAPCD Rule 1002 controls emissions from gasoline dispensing facilities; SDCAPCD Rule 67.24 controls emissions from bakery ovens; and SBCAPCD Rule 316 controls emissions from the storage and transfer of gasoline. VOCs contribute to the production of ground level ozone and smog. This rule was originally adopted as part of MBUAPCD, SDCAPCD, and SBCAPCD's efforts to achieve the National Ambient Air Quality Standard (NAAQS) for ozone and in response to EPA's SIP-Call and the section 182(a)(2)(A) CAA requirement. The following is EPA's evaluation and final action for this rule.

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 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.

For the purpose of assisting state and local agencies in developing RACT rules, EPA prepared a series of Control Technique Guideline (CTG) documents. The CTGs are based on the underlying requirements of the Act and specify the presumptive norms for what is RACT for specific source categories. Under the CAA, Congress ratified EPA's use of these documents, as well as other Agency policy, for requiring States to ''fix-up'' and ''catch-up'' their RACT rules. See section 182(a)(2)(A) and section (b)(2)(C). For some categories such as bakery ovens or storage, transfer and dispensing of gasoline, EPA did not publish a CTG. In such cases, the District may determine what controls are required by reviewing the operation of facilities subject to the regulation and evaluating regulations for similar sources in other areas. Additional guidance for SDCAPCD Rule 67.25, Bakery Ovens, is found in the document entitled, ''Alternative Control Technology Documents for Bakery Oven Emissions,'' EPA 453/R–92–017. Further interpretations of EPA policy are found in the Blue Book, referred to in footnote 1. In general, these guidance documents have been set forth to ensure that VOC rules are fully enforceable and strengthen or maintain the SIP.

MBUAPCD submitted Rule 1002, Transfer of Gasoline into Vehicle Fuel Tanks, is a new rule to be included in the SIP, although it has been enforced in the District since 1989. Rule 1002 includes the following general requirements:

- All gas stations are required to install Phase II vapor recovery equipment.
- Gas stations with throughputs ≥ 120,000 gal./yr. are required to install Phase II vapor recovery equipment by 1991.
- The remaining gas stations with throughputs ≤ 120,000 gal./yr. are required to install Phase II vapor recovery equipment by December 22, 1998.

For a detailed evaluation of MBUAPCD Rule 1002, please refer to the technical support document (TSD) prepared on October 20, 1995.

On December 8, 1994, EPA proposed approval of SDCAPCD Rule 67.24, Bakery Ovens, (59 FR 92388). After that proposal, the San Diego County Area was reclassified from a severe to serious ozone non-attainment area. The SDCAPCD asked EPA to delay final action on Rule 67.24 until the following administrative revisions were made to reflect this reclassification:

- The standards and compliance schedule sections of the rule do not apply to sources where the uncontrolled emissions of VOCs from all bakery ovens combined is less than 50 tons per calendar year.
- The emissions testing requirement and the compliance schedule have been deleted because the District's

[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); ''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); and the existing control technique guidelines (CTGs).

[2] Monterey Bay and Santa Barbara County areas have retained their designation of nonattainment and were classified by operation of law pursuant to sections 107(d) and 181(a) upon the date of enactment of the CAA. See 55 FR 56694 (November 6, 1991). The San Diego area was reclassified from severe to serious on February 21, 1995. See 60 FR 3771 (January 19, 1995)

[3] 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).

calculations indicate that the two largest bakeries in the county emit less than 50 tons of VOCs per year.

For a detailed evaluation of SDCAPCD Rule 67.24, please refer to the TSD dated October 20, 1995, and the notice of proposed rulemaking dated December 8, 1994.

SBCAPCD Rule 316, Storage and Transfer of Gasoline, includes the following significant change from the current SIP:

- Cross references rule 326 (Storage of Reactive Organic Compound Liquids) in the section that specifies the controls required for above-ground tanks larger than 40,000.

For a detailed evaluation of SBCAPCD Rule 316, please refer the TSD dated October 23, 1995.

EPA has evaluated the submitted rules and has determined that they are consistent with the CAA, EPA regulations, and EPA policy. Therefore, MBUAPCD, Rule 1002, Transfer of Gasoline into Vehicle Fuel Tanks; SDCAPCD Rule 67.24, Bakery Ovens; and SBCAPCD Rule 316, Storage and Transfer of Gasoline are 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 document without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in a separate document in this Federal Register publication, the EPA is proposing to approve the SIP revision should adverse or critical comments be filed. This action will be effective April 9, 1996, unless, by March 11, 1996, adverse or critical comments are received.

If the EPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on this action serving as a 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 action will be effective April 9, 1996.

Regulatory Process

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 sections 110 and 301(a) and subchapter I, Part D 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 impose any new requirements, I certify 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 regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. E.P.A.*, 427 U.S. 246, 256–66 (S. Ct. 1976); 42 U.S.C. 7410 (a)(2).

Unfunded Mandates

Under Sections 202, 203, and 205 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must undertake various actions in association with proposed or final rules that include a Federal mandate that may result in estimated costs of $100 million or more to the private sector or to State, local, or tribal governments in the aggregate.

Through submission of this state implementation plan or plan revision, the State and any affected local or tribal governments have elected to adopt the program provided for under Part D of the Clean Air Act. These rules may bind State, local, and tribal governments to perform certain actions and also require the private sector to perform certain duties. The rules being approved by this action will impose no new requirements because affected sources are already subject to these regulations under State law. Therefore, no additional costs to State, local, or tribal governments or to the private sector result from this action. EPA has also determined that this final action does not include a mandate that may result in estimated costs of $100 million or more to State, local, or tribal governments in the aggregate or to the private sector.

This action has been classified as a Table 3 action for signature by the Regional Administrator under the procedures published in the Federal Register on January 19, 1989 (54 FR 2214–2225), as revised by a July 10, 1995 memorandum from Mary Nichols, Assistant Administrator for Air and Radiation. The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866 review.

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: December 10, 1995.

Felicia Marcus,

Regional Administrator.

Subpart F of 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. 7401–7671q.

Subpart F—California

2. Section 52.220 is amended by adding paragraphs (c)(196)(i)(C), (210)(i)(D), and (222)(i)(D) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(196)* * *

(i) * * *

(C) Santa Barbara County Air Pollution Control District.

(*1*) Rule 316, adopted on December 14, 1993.

* * * * *

(210)* * *

(i) * * *

(D) Monterey Bay Unified Air Pollution Control District.

(*1*) Rule 1002, adopted on November 23, 1994.

* * * * *

(222)* * *

(i) * * *

(D) San Diego County Air Pollution Control District.

(*1*) Rule 67.24, adopted on March 7, 1995.

* * * * *

[FR Doc. 96–2822 Filed 2–8–96; 8:45 am]

BILLING CODE 6560–50–W

40 CFR Part 52

[IN58–1–7216a; FRL–5342–9]

Approval and Promulgation of Implementation Plans; Revision to the Indiana State Implementation Plan for Ozone

AGENCY: Environmental Protection Agency (USEPA).

ACTION: Direct final rule.

SUMMARY: The USEPA approves the State Implementation Plan (SIP) revision request submitted by the State of Indiana on August 25, 1995, establishing a summertime gasoline Reid Vapor Pressure (RVP) limit of 7.8 pounds per square inch (psi) for gasoline distributed in Clark and Floyd Counties, as part of the State's plan to attain 15 percent (%) Reasonable Further Progress (RFP) reductions of Volatile Organic Compounds (VOC) emissions in these two Counties by 1996. Emissions of VOC react with other pollutants, such as oxides of nitrogen, on hot summer days to form ground-level ozone, commonly known as smog. Ozone pollution is of particular concern because of its harmful effects upon lung tissue and breathing passages. RFP plans are intended to bring areas which have been exceeding the public health-based Federal ozone air quality standard closer toward the goal of attaining and maintaining this standard. Indiana expects that the summertime RVP gasoline limit will reduce VOC emissions by 2.29 tons per day in the Clark and Floyd Counties ozone nonattainment area. A final approval action is being taken because the submittal meets all pertinent Federal requirements.

DATES: The ''direct final'' is effective on April 9, 1996, unless USEPA receives adverse or critical comments by March 11, 1996. If the effective date is delayed, timely notice will be published in the Federal Register.

ADDRESSES: Copies of the revision request is available for inspection at the following address: U.S. Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. (It is recommended that you telephone Mark J. Palermo at (312) 886–6082 before visiting the Region 5 Office.)

Written comments should be sent to: J. Elmer Bortzer, Chief, Regulation Development Section, Regulation Development Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Mark J. Palermo at (312) 886–6082.

SUPPLEMENTARY INFORMATION:

I. Background

RVP is a measure of a fuel's volatility and thereby affects the rate at which gasoline evaporates and emits VOC; the lower the RVP, the lower the rate of evaporation. The RVP of gasoline can be lowered by reducing the amount of its volatile components, such as butane. Lowering RVP in the summer months can offset the effect of summer temperature upon the volatility of gasoline, which in turn lowers emissions of VOC. Because VOC is a necessary component in the production of ground level ozone in hot summer months, reduction of RVP will assist the State of Indiana to attain the National Ambient Air Quality Standard (NAAQS) for ozone, which all States must promulgate SIPs to achieve under section 110(a) of the Act.

The USEPA first proposed to regulate gasoline RVP in 1987 (52 FR 31274). USEPA's gasoline RVP proposal resulted in a two-phased final regulation which was incorporated into the 1990 Amendments to the Clean Air Act (Act) in section 211(h). Phase I of the regulation took effect in 1990 (54 FR 11868) for the years 1990 and 1991. Phase II of the regulation became effective in 1992 (55 FR 23658). The rule divides the continental United States into two control regions, Class B and Class C. Generally speaking, the Class B states are the warmer southern and western states, and Class C states are the cooler northern states. The Phase II regulation limits the volatility of gasoline sold during the high ozone season to 9.0 psi RVP for Class C areas and 7.8 psi RVP for Class B ozone nonattainment areas. Indiana is a Class C State, and therefore, required under the Federal rule to meet the 9.0 psi RVP standard.

State governments are generally preempted under section 211(c)(4)(A) of the Act from requiring any or all areas in a state to meet a more stringent volatility standard.[1] However, a state can require a more stringent standard in its SIP if the state can show under section 211(c)(4)(C) that the more stringent standard is necessary to achieve the National Ambient Air Quality Standard (NAAQS) for ozone in a particular nonattainment area. The state can make this showing by providing evidence that no other measures exist that would bring about timely attainment, or that such measures exist and are technically possible to implement, but are unreasonable or impractical. If a state makes this showing, it can lower the RVP of gasoline to whatever level has been shown to be necessary in the nonattainment area(s).

II. State Submittal

Section 182 of the Act requires all moderate, serious, severe, and extreme ozone nonattainment areas to submit an RFP plan to achieve a 15% reduction of 1990 emissions of VOC by 1996. In Indiana, Clark and Floyd Counties are classified as moderate nonattainment for ozone, and as such, subject to the 15% RFP requirement. *See* 40 CFR 81.315.

The Indiana Department of Environmental Management (IDEM) developed and submitted a plan to USEPA on July 12, 1995, outlining the VOC emission control measures which will be implemented in order to satisfy the 15% RFP requirement for Clark and Floyd Counties. USEPA is currently reviewing the plan. One of the measures identified in the Clark and Floyd Counties plan is a summertime gasoline RVP limit of 7.8 psi. On August 3, 1994, the Indiana Air Pollution Control Board (IAPCB) held a preliminary adoption hearing on a proposed rule to limit summertime gasoline RVP to 7.8 psi, and on January 11, 1995, the IAPCB adopted the rule. The rule became effective on August 5, 1995, and was published in the Indiana State Register on August 1, 1995. IDEM formally submitted the RVP rule to USEPA on August 25, 1995, as a revision to the Indiana ozone SIP. USEPA made a finding of completeness of this SIP revision in a letter dated October 2, 1995.

In the 15% RFP plan for Clark and Floyd Counties, Indiana reviewed all reasonable control measures and calculated the total reductions that it could achieve through these measures. The plan's modeling demonstrates that limiting the RVP of gasoline to 7.8 reduces emissions in Clark and Floyd Counties by approximately 2.29 tons per day.

''Opt-in'' into the Federal reformulated gasoline program, pursuant to section 211(k)(6) of the Act, could also achieve this amount of

[1] USEPA's federal standards were promulgated under both section 211(c) and section 211(h). States are generally preempted under section 211(c)(4)(A) from requiring fuel standards promulgated under section 211(c).