

local, or tribal governments in the aggregate.

Through submission of this SIP revision, the state has elected to adopt the program provided for under section 110 of the CAA. These rules may bind state and local governments to perform certain actions, and also require the private sector to perform certain duties. To the extent that the rules being finalized for approval by this action will impose new requirements, sources are already subject to these regulations under state law.

Accordingly, no additional costs to state or local governments, or to the private sector, result from this final 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 or local governments in the aggregate or to the private sector.

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by April 15, 1996. 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, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: December 7, 1995.

William Rice,

*Acting Regional Administrator.*

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 CC—Nebraska**

2. Section 52.1420 is amended by adding paragraph (c)(44) to read as follows:

#### **§ 52.1420 Identification of plan.**

\* \* \* \* \*

(c) \* \* \*

(44) On May 31 and June 2, 1995, the Director of the Nebraska Department of Environmental Quality (NDEQ) submitted revisions to the SIP to update the local ordinances of the Lincoln-Lancaster County Health Department and city of Omaha, respectively, and to create Federally enforceable Class II operating permit programs for these agencies.

(i) Incorporation by reference.

(A) 1993 Lincoln-Lancaster County Air Pollution Control Program, Version March 1995, effective May 16, 1995. This includes the following citations: Article I (except Section 6); Article II, Sections 1–12, 14–17, 19–20, 22, 24–25, 32–38; and Appendix I.

(B) Ordinance No. 33102 dated November 2, 1993, which adopts Chapter 41, Article I, Sections 41–4 through 41–6; 41–9; 41–10; Article II, Sections 41–23; 41–27; 41–38; and 41–40 and Article IV of the Omaha Municipal Code. Ordinance No. 33506 dated March 21, 1995, amends Chapter 41, Article I, Sections 41–2 and 41–9 of the Omaha Municipal Code and adopts Title 129, Nebraska Air Quality Regulations, approved December 2, 1994.

(ii) Additional material.

(A) Letter from the city of Omaha dated September 13, 1995, regarding adequate authority to implement section 112(l).

(B) Letter from the NDEQ dated November 9, 1995, regarding rule omissions and PSD.

3. Section 52.1427 is added to read as follows:

#### **§ 52.1427 Operating permits.**

Emission limitations and related provisions which are established in the city of Omaha and Lincoln-Lancaster operating permits as Federally enforceable conditions shall be enforceable by EPA. The EPA reserves the right to deem permit conditions not Federally enforceable. Such a determination will be made according to appropriate procedures and be based upon the permit, permit approval procedures, or permit requirement which do not conform with the operating permit program requirements or the requirements of EPA underlying regulations.

[FR Doc. 96–3233 Filed 2–13–96; 8:45 am]

BILLING CODE 6560–50–P

#### **40 CFR Part 52**

[CA 95–9–7273a; FRL–5411–1]

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

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

**ACTION:** Direct final rule.

**SUMMARY:** EPA is taking direct final action granting limited approval and limited disapproval of revisions to the California State Implementation Plan (SIP). The revisions concern a rule from the San Diego County Air Pollution Control District (SDCAPCD). The revised rule controls VOC emissions from kelp processing and bio-polymer manufacturing operations. This final action will incorporate this rule into the federally approved SIP. The intended effect of finalizing this action 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). Thus, EPA is finalizing a simultaneous limited approval and limited disapproval of the revised rule under CAA provisions regarding EPA action on SIP submittals and general rulemaking authority because the rule, while strengthening the SIP, also does not fully meet the CAA provisions regarding plan submissions and plan requirements for nonattainment areas. As a result of the limited disapproval portion of this action, EPA will be required to impose highway funding or emission offset sanctions under the CAA unless the State submits and EPA approves corrections to the identified deficiencies within 18 months of the effective date of this disapproval. Moreover, EPA will be required to promulgate a Federal Implementation Plan (FIP) unless the deficiencies are corrected within 24 months of the effective date of this disapproval.

**EFFECTIVE DATE:** This action is effective on April 15, 1996, unless adverse or critical comments are received by March 15, 1996. If the effective date is delayed, a timely notice will be published in the Federal Register.

**ADDRESSES:** Copies of the rule and EPA's evaluation report for 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:

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

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

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 "L" Street, Sacramento, CA 95814.

**FOR FURTHER INFORMATION CONTACT:**

Patricia A. Bowlin, Rulemaking Section (A-5-3), Air and Toxics Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105-3901, Telephone: (415) 744-1188.

**SUPPLEMENTARY INFORMATION:**

**Applicability**

The rule being incorporated into the California SIP is SDCAPCD Rule 67.10, Kelp Processing and Bio-Polymer Manufacturing Operations. This rule was submitted by the California Air Resources Board (CARB) to EPA on July 13, 1994.

**Background**

On March 3, 1978, EPA promulgated a list of ozone nonattainment areas under the provisions of the Clean Air Act, as amended in 1977 (1977 Act or pre-amended Act), that included the San Diego Area. 43 FR 8964, 40 CFR 81.305. On May 26, 1988, EPA notified the Governor of California, pursuant to section 110(a)(2)(H) of the 1977 Act, that the SDCAPCD'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. 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.

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.<sup>1</sup> EPA's SIP-Call used that

<sup>1</sup> 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

guidance to indicate the necessary corrections for specific nonattainment areas. San Diego Area is classified as Serious;<sup>2</sup> therefore, this area was 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 July 13, 1994, including the rule being acted on in this notice. This notice addresses EPA's direct-final action for SDCAPCD Rule 67.10, Kelp Processing and Bio-Polymer Manufacturing Operations. SDCAPCD adopted Rule 67.10 on June 15, 1994. This submitted rule was found to be complete on September 12, 1994 pursuant to EPA's completeness criteria that are set forth in 40 CFR part 51, appendix V<sup>3</sup> and is being finalized for limited approval and limited disapproval into the SIP.

Rule 67.10 controls the emissions of VOCs from kelp processing and bio-polymer manufacturing operations. VOCs contribute to the production of ground level ozone and smog. This rule was originally adopted as part of SDCAPCD's effort to achieve the National Ambient Air Quality Standard (NAAQS) for ozone and has been revised 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

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).

<sup>2</sup> The San Diego Area retained its designation of nonattainment and was classified by operation of law pursuant to sections 107(d) and 181(a) upon the date of enactment of the CAA. See 55 FR 56694 (November 6, 1991). The San Diego Area was reclassified from Severe-15 to Serious on January 19, 1995, 60 FR 3771.

<sup>3</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).

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" their RACT rules. See section 182(a)(2)(A). For source categories that do not have an applicable CTG (such as kelp processing and bio-polymer manufacturing operations), state and local agencies 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. Within the SDCAPCD there is only one facility that performs kelp processing and bio-polymer manufacturing operations. For this source category, the RACT determination required an evaluation of the manufacturing processes and the emissions specific to this facility. The evaluation also considered the technological and economic feasibility of proposed controls at individual emission points.

Further interpretations of EPA policy are found in the Blue Book, referred to in footnote 1. In general, the EPA policy guidance documents have been set forth to ensure that VOC rules are fully enforceable and strengthen or maintain the SIP.

SDCAPCD's submitted Rule 67.10, Kelp Processing and Bio-Polymer Manufacturing Operations, includes the following revisions from the current SIP:

- Expansion of rule applicability to include pilot plant facilities
- More stringent recordkeeping requirements for claiming exemptions
- Addition of an exemption for any VOC with normal boiling point of 185 °C or greater
- Addition of an exemption for temporary equipment in pilot plants
- Addition of new definitions
- Revision of the VOC definition to eliminate the vapor pressure exemption
- Revision of the fugitive liquid leak definition to three drops per minute, or a visible mist, with greater than 10% by weight VOC
- Deletion of the exemption of presses from fugitive liquid leak provisions
- Revisions to the add-on control efficiency requirements for manufacturing lines and pilot plants

- Revision to the compliance determination period for add-on control devices

- Deletion of the provision allowing source to appeal conditional approval/disapproval of an operation and maintenance program

- Deletion of the provision allowing the Air Pollution Control Officer to recommend relaxations of the VOC control efficiency requirements for driers and reactors

- Addition of equipment and operational standards to minimize fugitive emissions

- Addition of capture and control requirements for presses and spent pots

- Specification of recordkeeping requirements and test methods for compliance determinations

EPA has evaluated the submitted rule for consistency with the CAA, EPA regulations, and EPA policy and has found that the revisions address and correct many deficiencies previously identified by EPA. These corrected deficiencies have resulted in a clearer, more enforceable rule. Furthermore, the addition of more stringent standards in submitted Rule 67.10 should lead to more emission reductions.

Although SDCAPCD Rule 67.10 will strengthen the SIP, the rule still contains deficiencies which were required to be corrected pursuant to the section 182(a)(2)(A) requirement of Part D of the CAA. The remaining deficiencies include the following:

- Fifty percent by weight VOC fugitive liquid leak standard for incorporators

- No provisions for frequency of monitoring or inspection for fugitive liquid leaks

- No capture efficiency protocol provision

- Determinations of compliance based on shorter test periods than allowed for determinations of non-compliance

Moreover, the submitted rule adds another significant deficiency: an exemption of VOCs based on boiling point. A detailed discussion of rule deficiencies can be found in the Technical Support Document for Rule 67.10 (1/96), which is available from the U.S. EPA's 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 finalizing a limited approval of SDCAPCD's submitted rule 67.10 under sections 110(k)(3) and 301(a) of the CAA.

At the same time, EPA is also finalizing 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 this final limited disapproval. Moreover, this final limited disapproval triggers the Federal implementation plan (FIP) requirement under section 110(c). It should be noted that the rule covered by this direct final rulemaking has been adopted by the SDCAPCD and is currently in effect in the District. EPA's final limited disapproval action will not prevent the District or EPA from enforcing this rule.

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 a limited approval and limited disapproval of the SIP revision should

adverse or critical comments be filed. This action will be effective April 15, 1996, unless by March 15, 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 15, 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 population of less than 50,000.

Limited 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. Under the CAA, EPA may not base its actions concerning SIPs on such grounds. *Union Electric Co. v. U.S. E.P.A.*, 427 U.S. 246, 256-66 (1976); 42 U.S.C. 7410(a)(2).

EPA's limited disapproval of the State request under sections 110 and 301 and subchapter I, Part D of the CAA does not affect any existing requirements applicable to small entities. Federal disapproval of the state submittal does not affect its state enforceability. Moreover, EPA's limited disapproval of the submittal does not impose any new Federal requirements. Therefore, EPA certifies that this limited disapproval action does not have a significant impact on a substantial number of small entities because it does not remove

existing requirements nor does it impose any new Federal requirements.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by April 15, 1996. 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)).

**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. This rule may bind State, local, and tribal governments to perform certain actions and also require the private sector to perform certain duties. The rule being incorporated into the SIP 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: January 16, 1996.  
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:

**Subpart F—California**

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

2. Section 52.220 is amended by adding paragraph (c)(198)(i)(I) to read as follows:

**§ 52.220 Identification of plan.**

\* \* \* \* \*

(c) \* \* \*  
(198) \* \* \*  
(i) \* \* \*

(I) San Diego County Air Pollution Control District.

(I) Rule 67.10, adopted on June 15, 1994.

\* \* \* \* \*

[FR Doc. 96-3231 Filed 2-13-96; 8:45 am]

BILLING CODE 6560-50-W

**40 CFR Part 52**

[WA40-1-7099; WA42-1-7115; AK11-1-6944; FRL-5337-8]

**Approval and Promulgation of Implementation Plans: Washington and Alaska**

**AGENCY:** Environmental Protection Agency.

**ACTION:** Final rule.

**SUMMARY:** Pursuant to procedures described at 54 FR 2214 (January 19, 1989), EPA has recently approved a number of minor State implementation plan (SIP) revisions submitted by the Washington Department of Ecology (WDOE) and the Alaska Department of Environmental Conservation (ADEC). These revisions included local air pollution control regulations submitted by WDOE from the Puget Sound Air Pollution Control Agency (PSAPCA)

which are at least as stringent as the WDOE statewide rules. The revisions also included the carbon monoxide (CO) contingency measure for Fairbanks, AK., submitted by ADEC. ADEC's SIP revision, identified as the repair technician training and certification program, was previously approved by EPA on April 5, 1995 (60 FR 17232) as part of the State's inspection and maintenance program in the Fairbanks North Star Borough, but no credit had been taken by the State for the program at that time. Therefore, the CO contingency measure in Fairbanks was submitted as a separate element to meet the requirements of the Clean Air Act, as amended in 1990 (the "Act"). This document lists the revisions EPA has approved and incorporates the relevant material into the Code of Federal Regulations.

**EFFECTIVE DATE:** February 14, 1996.

**ADDRESSES:** Copies of Washington's and Alaska's State SIP revision requests and EPA's letter notices of approval are available for public inspection during normal business hours at the following locations: EPA, Region 10, Office of Air, Docket # WA-40-1-7099, WA-42-1-7115, AK-11-1-6944, 1200 Sixth Avenue, Seattle, WA. 98101; WDOE, Mail Stop PV-11, Olympia, WA. 98504-8711; and ADEC, 410 Willoughby Ave., Suite 105, Juneau, AK. 99801-1795.

**FOR FURTHER INFORMATION CONTACT:** Montel Livingston, Office of Air (AT-082), EPA, Seattle, WA. 98101, (206) 553-0180.

**SUPPLEMENTARY INFORMATION:** EPA Region 10 has approved the following minor SIP revision requests under section 110(a) of the Act:

State	Subject matter	Date of submission	Date of approval
WA ...	Amendment to SIP affecting PSAPCA's regulation I. Clarifies intent of requirement, repeals redundancies.	5-17-95	6-19-95