

disclosure of any exculpatory material the Secretary has in her possession.

3. Pre-hearing Conference

The proposed rule provides that the pre-hearing conference be conducted as soon as practicable after the employer has received the narrative and worksheet under the provisions of Rule 206. One commentator suggested that the pre-hearing conference be held only after the employer has also received any photographs or videotapes so that the employer has the benefit of all mandatory disclosure before the pre-hearing conference. The commentator expressed concern that allowing the pre-hearing conference to go forward without the employer's prior access to any photographs or videotapes places the employer in an unfair position. Because Rule 207 requires the parties to set forth an agreed statement of issues and facts, witnesses and exhibits, defenses, motions, and any other pertinent matter including affirmative defenses at the pre-hearing conference, the commentator noted that an employer may not be properly prepared to do so without the photographs and videotapes.

We acknowledge the interest in having an employer fully prepared for the pre-hearing conference, and we note that under the proposed rule, there is no requirement that the Judge hold the pre-hearing conference before the employer receives any photographs or videotapes. We expect that generally the pre-hearing conference will be scheduled after the employer is in receipt of any photographs and videotapes. However, the Commission has decided to adopt the proposed rule which allows the Judge to exercise his or her discretion to conduct the pre-hearing conference at any time after the employer is in receipt of the narrative and the worksheet.

4. Hearing

One of the objectives of the E-Z Trial process is to expeditiously adjudicate less complex cases. As a result, the Commission believes that cases proceeding under the E-Z Trial process should be exempt from Rule 60, which requires that the parties be given notice of the time, place, and nature of the hearing at least thirty days in advance of the hearing. Because the cases designated for E-Z Trial contain relatively few citation items and do not involve complex matters of fact or law, the Commission believes that the parties will not be harmed by allowing the Judge to schedule the hearing with less than 30 days notice. Accordingly, the Commission has revised Rule 209 to reflect the exemption from Rule 60.

List of Subjects in 29 CFR Part 2200

Administrative practice and procedure, Hearing and appeal procedures.

For the reasons set forth in the preamble, the Occupational Safety and Health Review Commission amends Title 29, Chapter XX, Part 2200, Subpart M of the Code of Federal Regulations as follows:

PART 2200—RULES OF PROCEDURE

1. The authority citation for part 2200 continues to read as follows:

Authority: 29 U.S.C. 661(g).

2. Section 2200.201 is amended by removing paragraph (b) and the designation for paragraph (a).

3. Section 2200.202 is revised to read as follows:

§ 2200.202 Eligibility for E-Z Trial.

(a) Those cases selected for E-Z Trial will be those that do not involve complex issues of law or fact. Cases appropriate for E-Z Trial would generally include those with one or more of the following characteristics:

- (1) Relatively few citation items,
- (2) An aggregate proposed penalty of not more than \$10,000,
- (3) No allegation of willfulness or a repeat violation,
- (4) Not involving a fatality,
- (5) A hearing that is expected to take less than two days, or
- (6) A small employer whether appearing pro se or represented by counsel.

(b) Those cases with an aggregate proposed penalty of more than \$10,000, but not more than \$20,000, if otherwise appropriate, may be selected for E-Z Trial at the discretion of the Chief Administrative Law Judge.

4. Section 2200.206(a) is revised to read as follows:

§ 2200.206 Disclosure of information.

(a) *Disclosure to employer.* (1) Within 12 working days after a case is designated for E-Z Trial, the Secretary shall provide the employer, free of charge, copies of the narrative (Form OSHA 1-A) and the worksheet (Form OSHA 1-B), or their equivalents.

(2) Within 30 calendar days after a case is designated for E-Z Trial, the Secretary shall provide the employer with reproductions of any photographs or videotapes that the Secretary anticipates using at the hearing.

(3) Within 30 calendar days after a case is designated for E-Z Trial, the Secretary shall provide to the employer any exculpatory evidence in the Secretary's possession.

(4) The Judge shall act expeditiously on any claim by the employer that the Secretary improperly withheld or redacted any portion of the documents, photographs, or videotapes on the grounds of confidentiality or privilege.

5. Section 2200.207(a) is amended by revising the first sentence to read as follows:

§ 2200.207 Pre-hearing conferences.

(a) *When held.* As early as practicable after the employer has received the documents set forth in § 2200.206(a)(1), the presiding Judge will order and conduct a pre-hearing conference.* * *

6. Section 2200.209(a) is revised to read as follows:

§ 2200.209 Hearing.

(a) *Procedures.* As soon as practicable after the conclusion of the pre-hearing conference, the Judge will hold a hearing on any issue that remains in dispute. The hearing will be in accordance with subpart E of these rules, except for § 2200.60, 2200.73, and 2200.74 which will not apply.* * *

Dated: July 25, 1997.

Earl R. Ohman, Jr.,

General Counsel.

[FR Doc. 97-20130 Filed 7-30-97; 8:45 am]

BILLING CODE 7600-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 173-0044a; FRL-5867-3]

Approval and Promulgation of Implementation Plans; California State Implementation Plan Revision, Sacramento Metropolitan Air Quality Management 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 negative declarations from the Sacramento Metropolitan Air Quality Management District (SMAQMD) and the Santa Barbara County Air Pollution Control District (SBCAPCD). The SMAQMD submitted negative declarations for two source categories that emit volatile organic compounds (VOC): Plastic Parts

Coating: Business Machines and Plastic Parts Coating: Other. The SBCAPCD submitted negative declarations for six source categories that emit VOC: Industrial Wastewater, Plastic Parts Coating: Business Machines, Plastic Parts Coating: Other, Industrial Cleaning Solvents, Offset Lithography, and Shipbuilding Coatings. The SMAQMD and the SBCAPCD have certified that these source categories are not present in their respective Districts and this information is being added to the federally approved State Implementation Plan. The intended effect of approving these negative declarations is to meet the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). 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 September 29, 1997 unless adverse or critical comments are received by September 2, 1997. If the effective date is delayed, a timely notice will be published in the **Federal Register**.

ADDRESSES: Comments must be submitted to Julie Rose at the Region IX office listed below. Copies of the submitted negative declarations are available for public inspection at EPA's Region IX office and also at the following locations during normal business hours.

Rulemaking Office (AIR-4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105

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

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 "L" Street, Sacramento, CA 92123-1095

Sacramento Metropolitan Air Quality Management District, 8411 Jackson Road, Sacramento, CA 95826

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

FOR FURTHER INFORMATION CONTACT: Julie A. Rose, Rulemaking Office (AIR-4), Air Division, U.S. Environmental Protection Agency, San Francisco, CA 94105, Telephone: (415) 744-1184.

SUPPLEMENTARY INFORMATION:

I. Applicability

The revisions being approved as additional information for the California

SIP include negative declarations from the SMAQMD regarding two source categories: Plastic Parts Coating: Business Machines and Plastic Parts Coating: Other and negative declarations from SBCAPCD regarding six source categories: Industrial Wastewater, Plastic Parts Coating: Business Machines, Plastic Parts Coating: Other, Industrial Cleaning Solvents, Offset Lithography, and Shipbuilding Coatings. The negative declarations were submitted by the California Air Resources Board (CARB) to EPA on June 6, 1996 for SMAQMD and July 12, 1996 for SBCAPCD.

II. Background

On March 3, 1978, EPA promulgated a list of ozone nonattainment areas under the provisions of the Clean Air Act, as amended in 1977 (1977 Act or pre-amended Act), that included the SMAQMD within the Sacramento Metropolitan Area (SMA) and the SBCAPCD within the Santa Barbara-Santa Maria-Lompoc Area (SBSMLA). 43 FR 8964, 40 CFR 81.305. Because these areas were unable to meet the statutory attainment date of December 31, 1982, California requested under section 172 (a)(2), and EPA approved, an extension of the attainment date to December 31, 1987. (40 CFR 52.222). 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. Pub. L. 101-549, 104 Stat. 2399, codified at 42 U.S.C. 7401-7671q. In amended section 182(b)(2) of the CAA, Congress statutorily adopted the requirement that States must develop reasonably available control technology (RACT) rules for sources "covered by a Control Techniques Guideline (CTG) document issued by the Administrator between November 15, 1990 and the date of attainment." On April 28, 1992, in the **Federal Register**, EPA published a CTG document which indicated EPA's intention to issue CTGs for eleven source categories and EPA's requirement to prepare CTGs for two additional source categories within the same timeframe. This CTG document established time tables for the submittal of a list of applicable sources and the submittal of RACT rules for those major sources for which EPA had not issued a CTG document by November 15, 1993. The CTG specified that states were required to submit RACT rules by

November 15, 1994 for those categories for which EPA had not issued a CTG document by November 15, 1993.

Section 182(b)(2) applies to areas designated as nonattainment prior to enactment of the amendments and classified as moderate or above as of the date of enactment. The SMA is classified as severe;¹ therefore, SMA was subject to the post-enactment CTG requirement and the November 15, 1994 deadline. The SBSMLA is classified as moderate;² therefore, SBSMLA was also subject to the post-enactment CTG requirements and the November 15, 1994 deadline. For source categories not represented within the portions of the SMA and the SBSMLA designated nonattainment for ozone, EPA requires the submission of a negative declaration certifying that those sources are not present.

The SMAQMD negative declarations were adopted on May 2, 1996 and submitted by the State of California on June 6, 1996. The SBCAPCD negative declarations were adopted on May 16, 1996 and submitted by the State of California on July 12, 1996. The SMAQMD negative declarations were found to be complete on June 27, 1996 pursuant to EPA's completeness criteria that are set forth in 40 CFR part 51, appendix V³ and are being finalized for approval into the SIP as additional information. The SMAQMD negative declarations were found to be complete on January 18, 1997 pursuant to EPA's completeness criteria and are being finalized for approval into the SIP as additional information.

This document addresses EPA's direct-final action for the SMAQMD negative declarations for Plastic Parts Coating: Business Machines and Plastic Parts Coating: Other. The submitted negative declarations represent two of the thirteen source categories listed in EPA's CTG document.⁴ The submitted

¹ Sacramento Metropolitan 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 Sacramento Metropolitan Area was reclassified from serious to severe on June 1, 1995. See 60 FR 20237 (April 25, 1995).

² The Santa Barbara-Santa Maria-Lompoc 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 (November 6, 1991).

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).

⁴ SMAQMD has submitted rules for four source categories: Aerospace, Clean Up Solvents, Offset Lithography, and Volatile Organic Liquid Storage Tanks. SMAQMD has developed rules for Autobody Refinishing and Wood Furniture and is in the

negative declarations certify that there are no VOC sources in these source categories located inside SMAQMD's portion of the SMA. VOCs contribute to the production of ground level ozone and smog. These negative declarations were adopted as part of SMAQMD's effort to meet the requirements of section 182(b)(2) of the CAA.

This document also addresses EPA's direct-final action for the SBCAPCD negative declarations for: (1) Industrial Wastewater, (2) Plastic Parts Coating: Business Machines, (3) Plastic Parts Coating: Other, (4) Industrial Cleaning Solvents, (5) Offset Lithography, and (6) Shipbuilding Coatings. The submitted negative declarations represent six of the thirteen source categories listed in EPA's CTG document.⁵ The submitted negative declarations certify that there are no VOC sources in these source categories located inside the SBCAPCD. VOCs contribute to the production of ground level ozone and smog. These negative declarations were adopted as part of SBCAPCD's effort to meet the requirements of section 182(b)(2) of the CAA.

III. EPA Evaluation and Action

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

An analysis of SMAQMD's emission inventory revealed that there are no sources of VOC emissions from Plastic Parts Coating: Business Machines and Plastic Parts Coating: Other. SMAQMD's review of their permit files also indicated that these source categories do not exist in the SMAQMD. In a document adopted on May 2, 1996, SMAQMD certified that SMAQMD does not have any major stationary sources in these source categories located within the federal ozone nonattainment planning area.

An analysis of SBCAPCD's emission inventory revealed that there are no sources of VOC emissions from Industrial Wastewater, Plastic Parts Coating: Business Machines, Plastic Parts Coating: Other, Industrial Cleaning

Solvents, Offset Lithography, and Shipbuilding Coatings. SBCAPCD's review of their permit files also indicated that these source categories do not exist in the SBCAPCD. In a document adopted on May 16, 1996, SBCAPCD certified that SBCAPCD does not have any major stationary sources in these source categories located within the federal ozone nonattainment planning area.

EPA has evaluated these negative declarations and has determined that they are consistent with the CAA, EPA regulations, and EPA policy. SMAQMD's negative declarations for Plastic Parts Coating: Business Machines and Plastic Parts Coating: Other and SBCAPCD's negative declarations for Industrial Wastewater, Plastic Parts Coating: Business Machines, Plastic Parts Coating: Other, Industrial Cleaning Solvents, Offset Lithography, and Shipbuilding Coatings are being approved under section 110(k)(3) of the CAA as meeting the requirements of section 110(a) and Part D.

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 September 29, 1997 unless, within 30 days of its publication, 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 September 29, 1997.

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.

IV. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866 review.

B. Regulatory Flexibility Act

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 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 impose any new requirements, the Administrator certifies 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 flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co. v. U.S. EPA*, 427 U.S. 246, 255-66 (1976); 42 U.S.C. 7410(a)(2).

C. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated 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 costs of \$100 million or more to either State, local, or tribal governments in the aggregate, or to the

process of developing rules for SOXMI Distillation, Reactors, and Batch Processing. Negative declarations will be developed for the two remaining categories.

⁵SBCAPCD has submitted rules for four source categories: Aerospace, Autobody Refinishing, Volatile Organic Liquid Storage Tanks, and Wood Furniture. SBCAPCD is developing negative declarations for the remaining three source categories.

private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new Federal requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

D. Submission to Congress and the General Accounting Office

Under section 801(a)(1)(A) as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of the rule in today's **Federal Register**. This rule is not a "major" rule as defined by section 804(2) of the APA as amended.

E. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 29, 1997. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated July 16, 1997.

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 52.222 is being amended by adding paragraph (a) (2) and (a)(3) to read as follows:

§ 52.222 Negative declarations.

(a) * * *

(2) Sacramento Metropolitan Air Quality Management District.

(i) Plastic Parts Coating: Business Machines and Plastic Parts Coating: Other were submitted on June 6, 1996 and adopted on May 2, 1996.

(3) Santa Barbara County Air Pollution Control District.

(i) Industrial Wastewater, Plastic Parts Coating: Business Machines, Plastic Parts Coating: Other, Industrial Cleaning Solvents, Offset Lithography, and Shipbuilding Coatings were submitted on July 12, 1996 and adopted on May 16, 1996.

* * * * *

[FR Doc. 97–20217 Filed 7–30–97; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[DC032–2006; FRL–5864–4]

Approval and Promulgation of Air Quality Implementation Plans; District of Columbia, New Source Review Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving a State Implementation Plan (SIP) revision submitted by the District of Columbia. This revision amends the District's new source review program including the regulations for the preconstruction permitting new major sources and major modifications in nonattainment areas. This action is being taken under the provisions of the Clean Air Act for the approval of SIP revisions.

EFFECTIVE DATE: This final rule is effective on September 2, 1997.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air, Radiation, and Toxics Division, U.S.

Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107; the Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460; District of Columbia Department of Consumer and Regulatory Affairs, 2100 Martin Luther King Ave, S.E., Washington, DC 20020.

FOR FURTHER INFORMATION CONTACT: Linda Miller, (215) 566–2068.

SUPPLEMENTARY INFORMATION: On October 22, 1993, the District of

Columbia submitted new source review (NSR) regulations that were subsequently disapproved by EPA in a direct final rulemaking on March 24, 1995. (60 FR 15483). Pursuant to section 179 of the Clean Air Act (CAA), EPA's disapproval required the imposition of sanctions in two phases starting 18 months after disapproval unless and until the deficiencies were corrected. The first sanction, which started on October 24, 1996, required 2:1 emission offsets for the construction of new and modified sources. The second sanction, which was to be imposed 6 months later, would have required the withholding of federal highway funds for all new highway projects in the District.

The District submitted revised NSR regulations on May 2, 1997, which corrected the deficiencies. On June 2, 1997, EPA published a notice of proposed rulemaking (NPR) approving the District's NSR program (62 FR 29682). On the same day, EPA published and solicited comment on an interim final rule that stayed application of the offset sanction and deferred imposition of the highway sanction, based on EPA's proposed full approval of the District's NSR program (62 FR 29668). No public comments were received on the NPR or the interim final rule.

The intended effect of this action is to approve the District's NSR program for the permitting of major new and modified sources pursuant to the requirements of the CAA. Other specific requirements of the NSR program and the rationale for EPA's proposed action were explained in the NPR and will not be restated here. As a consequence of today's final approval of the District's NSR regulations as a SIP revision, the sanctions resulting from EPA's March 24, 1995 disapproval action are hereby lifted and no longer applicable.

Final Action

EPA is approving the new source review (NSR) program as a revision to the District of Columbia SIP. 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.