

24, 1995, we determined that the MDAQMD Rule 430 submittal met the completeness criteria.

#### *B. Are There Other Versions of These Rules?*

There are no previous versions of AVAQMD Rule 430, BCAQMD Rule 275, MDAQMD Rule 430 or SHAQMD Rule 3:10 in the SIP. We approved a version of KCAPCD Rule 111 into the SIP on October 24, 1980. The Kern County Air Pollution Control District adopted a revision to the SIP-approved version on May 2, 1996, and CARB submitted it to us on July 23, 1996.

#### *C. What Is the Purpose of the Submitted Rules?*

AVAQMD Rule 430, KCAPCD Rule 111, and MDAQMD Rule 430 establish that the Air Pollution Control Officer (APCO) may, in his discretion, refrain from enforcement action against an owner or operator of any equipment which has violated a technology-based emission limitation provided that a breakdown has occurred and certain other conditions are met. BCAQMD Rule 275 and SHAQMD Rule 3:10 establish that an emergency constitutes an affirmative defense to any action brought for non-compliance with technology-based emission limits. SHAQMD Rule 3:10 also provides that excess emissions during start-up and shutdown shall not be considered a violation if the owner or operator can demonstrate that the excess emissions are unavoidable. Finally, SHAQMD Rule 3:10 states that the APCO may provide an exemption for excess emissions during start-up and shutdown in the permit for a particular source. The TSDs have more information about these rules.

## **II. EPA's Evaluation and Action**

#### *A. How Is EPA Evaluating the Rules?*

Generally, SIP rules must be enforceable (see section 110(a) of the Act), must require Reasonably Available Control Technology (RACT) for major sources in nonattainment areas (see section 182(a)(2)(A)), and must not relax existing requirements (see sections 110(l) and 193).

Guidance and policy documents that we used to help evaluate specific enforceability and RACT requirements consistently include the following:

1. "Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations," EPA, May 25, 1988 (the Bluebook).

2. "Guidance Document for Correcting Common VOC & Other Rule Deficiencies," EPA Region 9, August 21, 2001 (the Little Bluebook).

3. "State Implementation Plans: Policy Regarding Excess Emissions During Malfunctions, Startup and Shutdown," EPA Office of Air and Radiation, and EPA Office of Enforcement and Compliance Assurance, September 20, 1999 ("Excess Emissions Policy").

4. "Guidelines for Including State and Local Rules in SIPs," EPA Region IX, December 17, 1998. These guidelines were transmitted to the California Air Resources Board in a letter dated December 23, 1998 from David P. Howekamp, Director, Air Division, EPA Region IX, to Michael Kenny, Executive Officer, California Air Resources Board.

#### *B. Do the Rules Meet the Evaluation Criteria?*

The submitted SIP revisions conflict with section 110 and part D of the Act for the following reasons:

1. AVAQMD Rule 430, KCAPCD Rule 111, and MDAQMD Rule 430 describe how the districts intend to apply their enforcement discretion in instances where facilities exceed emissions limits due to breakdown. As stated in EPA's Excess Emissions Policy, a state or EPA may exercise its enforcement discretion to refrain from taking an enforcement action where excess emissions result from sudden and unavoidable malfunctions caused by circumstances entirely beyond the control of the owner or operator. However, the September 20, 1999 policy also makes clear that EPA will not approve SIP revisions that allow a state director's decision to bar EPA's or citizens' ability to take enforcement action. Accordingly, were EPA to approve enforcement discretion rules such as these, we would do so only while making clear that such action had no effect on EPA's or citizens' enforcement prerogatives. Under these circumstances, such a SIP revision would have no effect on the SIP. For this reason EPA considers it unproductive and potentially confusing to approve these enforcement discretion rules into the SIP.

2. As stated in the Excess Emissions Policy, EPA interprets the Act to require that all periods of excess emissions are violations of the applicable emissions limitation. A SIP revision may provide an affirmative defense for excess emissions so long as a State director's decision not to take an enforcement action does not bar EPA's or citizens' ability to take enforcement action. Further, acceptable affirmative defense provisions may only apply to actions for penalties, but not to actions for injunctive relief. BCAQMD Rule 275 and SHAQMD Rule 3:10 do not limit the applicability of the affirmative defense

for excess emissions during an emergency to actions for penalties, but rather apply the defense to any action brought for non-compliance with technology-based emissions limits. BCAQMD Rule 275 and SHAQMD Rule 3:10 also fail to make clear that the excess emissions are violations of the applicable emissions limitation and that a determination by the APCO not to take an enforcement action (or a finding by the APCO that an emergency exists) would not bar EPA or citizen action.

These and other rule provisions which do not meet the evaluation criteria are discussed further in the TSDs.

#### *C. Proposed Action and Public Comment*

As authorized in sections 110(k)(3) of the Act, we are proposing a disapproval of the submitted AVAQMD Rule 430, BCAQMD Rule 275, KCAPCD Rule 111, MDAQMD Rule 430 and SHAQMD Rule 3:10. These are not required SIP submittals, so this disapproval would have no sanction implications under CAA section 179 or FIP implications under CAA section 110(c).

We will accept comments from the public on the proposed disapproval for the next 30 days.

## **III. Statutory and Executive Order Reviews**

#### *A. Executive Order 12866, Regulatory Planning and Review*

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

#### *B. Paperwork Reduction Act*

This rulemaking does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*)

#### *C. 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 rulemaking action will not have a significant impact on a substantial number of small entities because SIP disapprovals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply disapprove for inclusion in the