

asserts that there are ultimately no SIP implications from these temporary programs.

*Response #9:* EPA is required to ensure that SIP regulations fully comply with enforceability and other requirements of CAA section 110 and part D. Because of the near-term sunset date of the averaging provisions, however, we concur that it will not be necessary to impose sanctions because the deficient rule provisions will vacate before the sanction clocks would expire. For further discussion see our 2003 proposal (68 FR 47279).

*Comment #10:* VCAPCD and CARB state that EPA should not examine the averaging programs based on the possibility that the averaging programs would be extended and notes that an extension of the averaging programs would require a revision to the rules through action by their respective Boards.

*Response #10:* The evaluation of these rules was not based on the possibility of the extension of the averaging provisions. All evaluation of these rules was based on the programs as they exist under current rule language. EPA noted in our TSDs for these rules one additional recommendation to evaluate these programs after three years if the averaging programs were to be extended beyond 2005. We clearly stated that this was a recommendation to improve the rule and that it was not an issue affecting our current action.

*Comment #11:* In response to Deficiency #5, VCAPCD and CARB comment that district-specific data is equally enforceable as statewide data. CARB believes that district-specific data should be allowed so that smaller regional manufacturers may utilize the averaging provisions of these rules.

*Response #11:* Submitting statewide data does not prevent smaller regional manufacturers from averaging their coatings. If these manufacturers do not have sales in particular areas of the state then the sales in those areas would be assumed to be zero and statewide data could be generated. In part, we are concerned that the existing language would allow manufacturers to game the system and moderate overall emission calculations by using district-specific or statewide data, depending on whichever produced more favorable results. Also see Response #5.

*Comment #12:* VCAPCD and CARB comment that the language that describes which records may be used to calculate emissions is sufficient for determining compliance when coupled with the Statewide Averaging Guidance Document and active cooperation with individual manufacturers. BAAQMD

states that this language is meant to recognize the unique nature of a specific manufacturers' program and does not constitute executive officer discretion because the stringency of the rule cannot be affected by an administrative decision. SJVUAPCD comments that many rule provisions allow inspectors to verify the accuracy of records for determining compliance. CARB notes that a definition for enforceable sales record proposed by EPA is essentially what is being followed when approving acceptable records and cites this as an example of where EPA should have raised this concern earlier during the development of South Coast Air Quality Management Districts' (SCAQMD) Rule 1113.

*Response #12:* These rules do not specify what records may be submitted as an enforceable record. Any record, including those that may be unverifiable, may be submitted to substantiate emission calculations and it is the purview of the Executive Officer to approve any of these records as acceptable. This unlimited executive officer discretion is unenforceable. There is currently no provision under these rules to verify the accuracy of a particular record before an averaging program is approved. While the Statewide Averaging Guidance Document may further delineate and limit the records that may be submitted, the Statewide Averaging Guidance Document is not an enforceable element of the SIP and could not be relied upon for enforcement purposes. EPA raised this concern regarding enforceable records to SCAQMD during the development of Rule 1113 in a May 13, 1999 letter and notes that this provision was not proposed as an amendment to Rule 1113 until the March 31, 1999 Working Group meeting. This same concern was raised to the CARB in a June 21, 2000 letter after it proposed a similar provision in a draft of the SCM emailed on June 14, 2000 for consideration. Although not relevant to this rulemaking, our review of these provisions as they were developed was timely and responsive.

*Comment #13:* SJVUAPCD, BAAQMD, and CARB comment that the emissions reductions associated with these rules are valuable. CARB comments that these rules are significantly more stringent than the National Rule. SJVUAPCD asserts that approval of these rules would encourage other districts to adopt similar rules which could achieve up to 10 tons of emission reductions per day across California. CARB claims that EPA's proposed limited disapproval of these rules is discouraging districts from submitting their architectural coating

rules as SIP revisions. BAAQMD indicates that the development of the SCM and these rules were the result of over two years of work and that the difficulties historically encountered in adopting architectural coatings rules should be balanced against the marginal benefits of EPA's suggested rule changes.

*Response #13:* EPA does not dispute that these rules reduce VOC emissions by putting more restrictive VOC content limits into effect for architectural coatings and we recognize the significant efforts of the CARB and districts to develop the SCM and these rules modeled on it. At the same time, EPA's role is to ensure that all rules approved into the SIP meet the statutory requirements of the CAA. Because these programs provide the regulated industry considerable compliance flexibility, this must be balanced by enforcement certainty and adequate penalties for non-compliance. It is not EPA's intention to discourage the submittal of similar rules, and note that no sanctions will be imposed due to our action on these rules. Also see Response #9.

*Comment #14:* BAAQMD comments that EPA should have submitted comments to CARB and districts at the time of SCM adoption or shortly thereafter. CARB comments that the averaging provisions in these rules were based on SCAQMD Rule 1113 and that timely action by EPA on SCAQMD's February 18, 2000 submittal of Rule 1113 would have allowed the districts to consider EPA's concerns when they were adopting their rules.

*Response #14:* EPA did participate in the regulatory development process for the SCM and SCAQMD's Rule 1113. We note that the bulk of the deficiencies that we have identified in these rules relate to the averaging program which was added to the SCM one week before the SCM was adopted by the CARB. After only limited review, EPA did express concerns regarding the program to the CARB before adoption of the SCM. We were informed that our issues would be addressed through various means such as the Statewide Averaging Guidance Document and the MOU. The discussions with CARB and districts during the development of these documents has, instead, brought even more issues to light. EPA notes that our comments during rule development are not final and that our ultimate evaluation and approval or disapproval of rules only occurs after formal submittal. EPA did receive submittals of SCAQMD's Rule 1113 on February 18, 2000 and on December 14, 2001. The CAA prevents EPA from acting on the 2000 submittal of Rule 1113. EPA is