

only allowed to act on the more recent 2001 submittal since this is the district's most current regulation for this source category. EPA was in the process of acting on the SCAQMD's 2001 submittal when that version was recently vacated by the Court. *National Paint and Coatings Association, Inc. v. SCAQMD*, (June 24, 2002, G029462). Also see Response #12.

*Comment #15:* CARB notes that confirmation of the volume of high VOC products sold is additional information that is not typically required for determining compliance with architectural coatings rules but that it is similar to the additional record verification that is necessary to determine compliance with the National Rule's exceedance fee and tonnage exemption options.

*Response #15:* Determining a manufacturer's compliance with an averaging program requires knowing the total volume sold to verify that the actual emissions do not exceed the allowable emissions. This cannot be accomplished and compliance cannot be determined if reliable and specific sales records are not required and available. Also see Responses #3 and #13.

*Comment #16:* CARB comments that EPA's proposed language to rectify Deficiency #2 by clarifying that records must be made available to the Executive Officer upon request is equivalent to the current rule language. CARB contends that requirements on manufacturers to describe the records being used to calculate coating sales under averaging programs are sufficiently specific and do not represent executive officer discretion.

*Response #16:* The current language in these rules is not equivalent to EPA's proposed language. While the current language requires that records be maintained, there is currently no language requiring that these records be surrendered to the Executive Officer.

*Comment #17:* CARB states that the public release of sales data is not necessary to demonstrate compliance. While CARB believes that all emissions data should be made publicly available, they argue that sales data which does not constitute "emissions data" is confidential and not necessary for determining compliance.

*Response #17:* EPA's proposed limited disapproval actions did not specifically identify California's treatment of information claimed confidential as a deficiency. Rather, Deficiency #2 focuses on the fact that the California rules do not specify which records must be maintained to quantify sales. It may well be, as CARB

believes, that the rules can be revised to provide adequate certainty about record maintenance without changing California's treatment of certain records as confidential material. Also see Response #15.

### III. EPA Action

As authorized in sections 110(k)(3) and 301(a) of the Act, EPA is finalizing a limited approval of the submitted rules. This action incorporates the submitted rules into the California SIP, including those provisions identified as deficient. Several submitted comments did change our assessment of the rules as originally described in our proposed actions. Therefore, as authorized under section 110(k)(3), we are only finalizing the five deficiencies identified in our 2003 proposal (68 FR 47279), and these five deficiencies apply to all seven rules. Sanctions will not be imposed under section 179 of the Act according to 40 CFR 52.31, even if EPA does not approve subsequent SIP revisions that correct the rule deficiencies within 18 months of the effective date of this action because, according to specific language incorporated into the rules, the deficient provisions will expire in January 2005, in advance of the end of the 18-month period allowed to correct the deficiencies. Similarly, EPA also will not promulgate a federal implementation plan (FIP) under section 110(c) if subsequent SIP revisions that correct the rule deficiencies are not approved within 24 months. Note that the submitted rules have been adopted by the local agencies, and EPA's final limited disapproval does not prevent the local agencies from enforcing their rules.

### IV. 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 rule 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 rule will not have a significant impact on a substantial number of small entities because 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 create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities.

Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of 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).

#### D. Unfunded Mandates Reform Act

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

#### E. Executive Order 13132, Federalism

Federalism (64 FR 43255, August 10, 1999) revokes and replaces Executive Orders 12612 (Federalism) and 12875 (Enhancing the Intergovernmental