

versions of these rules on November 14, 2001, November 21, 2001, February 24, 2003, and April 17, 2002, respectively. CARB submitted the YSAQMD rule revision to us on January 22, 2002, the BAAQMD and MBUAPCD rule revisions on June 18, 2002, and the MDAQMD rule revision on April 1, 2003. The YSAQMD rule revision submitted on January 22, 2002 contained errors and omissions and a correct version of the rule was forwarded to us on January 21, 2003.

C. What Is the Purpose of the Submitted Rule Revisions?

The rule revisions primarily modify the rules for consistency with the Suggested Control Measure for Architectural Coatings (SCM). The SCM is a model rule developed by CARB which seeks to provide statewide consistency for the regulation of architectural coatings. The recommended VOC content limits and other provisions of the SCM are the results of an extensive investigation of architectural coatings which included a statewide survey of architectural coatings sold in California and several technology assessments. CARB adopted the SCM on June 22, 2000. 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) in moderate to extreme nonattainment areas for VOC sources covered by a Control Technique Guideline (CTG) and for major sources in nonattainment areas (*see* section 182(a)(2)(A)), must not relax requirements adopted before the 1990 CAA amendments in nonattainment areas (section 193), and must not interfere with attainment, reasonable further progress or other applicable requirements of the CAA (section 110(1)). The YSAQMD and BAAQMD regulate ozone nonattainment areas (*see* 40 CFR part 81), however, because these rules, including MDAQMD and MBUAPCD's, regulate sources that are not covered by a CTG and that are nonmajor area sources, they are not subject to CAA RACT requirements.

Guidance and policy documents that we used to help evaluate these revised rules to ensure enforceability and compliance with other CAA requirements include the following:

1. Portions of the proposed post-1987 ozone and carbon monoxide policy that concern RACT, 52 FR 45044, November 24, 1987.

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

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

4. National Volatile Organic Compound Emission Standards for Architectural Coatings, September 11, 1998 (40 CFR part 59, Subpart D).

5. "Suggested Control Measure for Architectural Coatings," CARB, June 22, 2000.

6. "Improving Air Quality with Economic Incentive Programs," EPA-452/R-01-001, EPA, January 2001 (the EIP).

B. Do the Rules Meet the Evaluation Criteria?

These rules improve the SIP by establishing more stringent emission limits and by clarifying labeling and reporting provisions. They are largely consistent with the relevant policy and guidance regarding enforceability and SIP relaxations. Provisions of the rules which do not meet the evaluation criteria are summarized below and discussed further in the TSDs.

C. What Are the Rules' Deficiencies?

These rules were all based on the same model—the SCM—and, as a result, contain many of the same rule deficiencies. The deficiencies relate to the averaging provisions incorporated into these rules. While we believe the VOC limits contained in these rules to be feasible and substantiated by a significant investigation of architectural coatings, the averaging provisions provide a valuable alternative compliance mechanism for the VOC limits contained in these rules and may reduce the overall economic impact of compliance with the VOC limits on manufacturers. We have identified five specific problems with these provisions. The first four could be addressed through relatively minor changes to the averaging provisions which we have described below. The fifth could also be addressed by relatively minor changes or by clarification of the State's authority. The following provisions common to YSAQMD Rule 2.14, BAAQMD Rule 8-3, MDAQMD Rule 1113, and MBUAPCD Rule 426 conflict with section 110 of the Act and prevent full approval of the SIP revisions.

1. The rules allow for the sell-through of coatings included in approved averaging programs. Because emissions from coatings sold under the sell-through provision cannot be distinguished based on the information

explicitly required to be maintained under the rule from emissions from coatings sold under an averaging program, the enforceability of the rules may be compromised by manufacturers claiming that a certain portion of emissions from coatings sold under the sell-through provision should be excluded from averaged emissions. One way to correct this is to clarify that manufacturers with an approved averaging program cannot also use the sell-through provision.

2. The provisions of the averaging compliance option that require manufacturers to describe the records being used to calculate emissions are not specific enough to verify compliance with the rules and represent executive officer discretion. More specificity as to the types of suitable records is needed to verify compliance with the averaging compliance option.

3. The rules' language regarding how violations of the averaging compliance option shall be determined is ambiguous. The language should be clarified to specify that "an exceedance for each coating that is over the limit shall constitute a separate violation for each day of the compliance period."

4. The rules allow manufacturers to average coatings based on statewide or district-specific data which makes enforceability more difficult and conflicts with other rule provisions which imply that averaging will only be implemented by CARB and conducted on a statewide basis. The rules should clarify whether emissions from averaging programs will be calculated using statewide or district-specific data.

5. The rules grant the Executive Officer of CARB authority to approve or disapprove initial averaging programs, program renewals, program modifications, and program terminations. This raises jurisdictional issues which could create enforceability problems since CARB has not been granted authority by the state Legislature under the California Health and Safety Code to regulate architectural coatings.

D. EPA Recommendations to Further Improve the Rules

The TSDs describe additional rule revisions that do not affect EPA's current action but are recommended for the next time the local agencies modify the rules.

E. Proposed Action and Public Comment

As authorized in sections 110(k)(3) and 301(a) of the Act, EPA is proposing a limited approval of the submitted rules to improve the SIP. If finalized,