

Local agency	Rule	Rule title	Adopted	Submitted
AVAQMD	430	Breakdown Provisions	03/17/98	02/16/99
BCAQMD	275	Reporting Procedures for Excess Emissions	02/15/96	05/10/96
KCAPCD	111	Equipment Breakdown	05/02/96	07/23/96
MDAQMD	430	Breakdown Provisions	12/21/94	01/24/95
SHCAQMD	3:10	Excess Emissions	12/05/95	05/10/96

We proposed to disapprove these rules because some rule provisions conflict with section 110 and part D of the Act. In particular, we are disapproving AVAQMD Rule 430, KCAPCD Rule 111, and MDAQMD Rule 430 because the rules describe how the districts intend to apply their enforcement discretion in instances where facilities exceed emissions limits due to breakdown. We are disapproving BCAQMD Rule 275 and SHCAQMD Rule 3:10 because they fail to make clear that the excess emissions are violations of the applicable emissions limitations and that a determination by the APCO not to take an enforcement action (or finding by the APCD that an emergency exists) would not bar EPA or citizen action.

Our proposed action contains more information on the basis for this rulemaking and on our evaluation of the submittal.

II. Public Comments and EPA Responses

EPA's proposed action provided a 30-day public comment period. During this period, we received no comments.

III. EPA Action

Therefore, as authorized in section 110(k)(3) of the Act, EPA is finalizing a disapproval of the submitted rules. These are not required SIP submittals, so this disapproval has no sanction or FIP implications under CAA sections 179 or 110(c). Note that the submitted rules have been adopted by the AVAQMD, BCAQMD, KCAPCD, MDAQMD, and SHCAQMD, and EPA's final disapproval does not prevent the local agency from enforcing them.

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

These rules do 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.

These rules will not have a significant impact on a substantial number of small entities because this SIP disapproval under section 110 and subchapter I, part D of the Clean Air Act does not create any new requirements but simply disapproves requirements that the State is already imposing. Therefore, because the Federal SIP disapproval 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 disapproval 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 disapproves 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 Partnership). Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

These rules will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, because it merely disapproves a state rule implementing a federal standard, and