

US EPA ARCHIVE DOCUMENT

depart the Soo Locks. These conditions combined with close quarters slow speed maneuvering, particularly with large vessels not equipped with bow or stern thrusters, may cause control difficulties for certain classes of vessels. Therefore, any vessel requesting lockage which in the opinion of the vessel master in consultation with the pilot on board, where applicable may experience severe control problems due to the above conditions, must request assistance by one or more tugs to ensure full control over the vessel at all times. Vessel masters and pilots must consult with the lockmaster concerning local conditions well in advance of arrival at the lock to allow tug assistance to be arranged if necessary. These guidelines apply to all vessels.

(2) *Non self-powered vessels.* All barges or other vessels navigating within the canal and not operating under their own power, whether approaching or leaving the locks, are required to be assisted by one or more tugs of sufficient power to ensure full control at all times.

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Dated: December 7, 1999.

Eric R. Potts,
Colonel, U.S. Army, Executive Director of
Civil Works.

[FR Doc. 99-32037 Filed 12-10-99; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 236-0197; FRL-6481-8]

Approval and Promulgation of Implementation Plans; California State Implementation Plan Revision, Ventura County Air Pollution Control District, Project XL Site-specific Rulemaking for Imation Corp. Camarillo Plant

AGENCY: Environmental Protection
Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is finalizing the approval of revisions to the California State Implementation Plan (SIP) proposed in the **Federal Register** on September 8, 1999. The revisions concern Rule 37 "Project XL" from the Ventura County Air Pollution Control District (VCAPCD). This approval action will incorporate this rule into the Federally approved SIP. The intended effect of approving this rule is to regulate emissions of VOCs in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act)

and to facilitate implementation of the XL Project at Imation Corp. in Camarillo, CA. Such implementation will result in superior environmental performance and, at the same time, provide Imation with greater operational flexibility. EPA is finalizing the approval of this revision into the California SIP under provisions of the CAA regarding EPA action on SIP submittals, SIPs for national primary and secondary ambient air quality standards and plan requirements for nonattainment areas.

DATES: This action is effective on January 12, 2000.

ADDRESSES: Copies of the rule and EPA's evaluation report for the rule are available for public inspection at EPA's Region IX office during normal business hours. Copies of the submitted rule are available for inspection at the following locations:

- (1) EPA Region 9, 75 Hawthorne Street, San Francisco, CA 94105
- (2) California Air Resources Board, 2020 L Street, Sacramento, CA 95814
- (3) Ventura County Air Pollution Control District, 669 County Square Drive, Ventura, CA 93003.

FOR FURTHER INFORMATION CONTACT: David Albright, Permits Office, [AIR-3], Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105-3901. Telephone: (415) 744-1627. E-mail: albright.david@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Applicability

The rule being approved into the California SIP is VCAPCD Rule 37 (Project XL). This rule was submitted by the California Air Resources Board to EPA on October 29, 1999.

II. Background

On September 8, 1999 in 64 FR 48739, EPA proposed to approve VCAPCD Rule 37 into the California SIP. A detailed discussion of the background of this rule is provided in the proposed rule cited above.

EPA has evaluated VCAPCD Rule 37 for consistency with the requirements of the CAA and EPA regulations and EPA interpretation of these requirements. EPA has found that the rule meets the applicable EPA requirements. A detailed discussion of the rule provisions and evaluations has been provided in the proposed rule and in the technical support document (TSD), dated August 23, 1999, which is available at EPA's Region IX office.

III. Response to Public Comments

A 30-day public comment period was provided in 64 FR 48739. One set of comments was submitted to EPA during the comment period, which ended on October 8, 1999. The comments were submitted by the Environmental Coalition (EC) of Ventura County. A summarization of the EC's comments on the proposed rule and EPA's responses is provided below.

The Environmental Coalition made three recommendations in their submitted comments. Their first recommendation involves a concern raised by the EC that Imation will receive emission reduction credits (ERCs) for banking based on a reduction in their plantwide applicability limit (PAL) for reactive organic compounds (ROC). The EC recommends that any ERCs granted to Imation for an ROC PAL reduction should be forfeited if Ventura County does not meet its 2005 ozone attainment date.

EPA agrees that any banking of emission reduction credits must be done in accordance with the District's Banking Rule (Ventura County APCD Rule 26.4), which would not allow Imation to bank ERCs by reducing their ROC PAL to a lower level, unless Imation were emitting at the level of their PAL at the time of the banking request. Ventura County APCD Rule 37 (Project XL) specifically states at E.2 that "Emission banking shall be conducted pursuant to Rule 26." Further, Imation's draft title V permit contains the following condition: "If the permittee proposes to reduce the level of the PAL, any emissions banking shall be conducted pursuant to Rule 26, New Source Review. Emission reduction credits shall be determined from emission reduction calculations using the definition of actual emissions in Rule 26, at the time of the banking request." EPA believes that the Rule 37 and title V permit language is clear and that it will prevent any inappropriate banking of ERCs based on a reduction in Imation's ROC PAL.

The second recommendation of the Environmental Coalition is to add a fair and affordable appeal hearing process into Rule 37. The EC's underlying concern is that for certain types of permitting appeals, the Ventura County APCD rules require an upfront payment of fees by the appellant. According to the Environmental Coalition, this requirement precludes public participation due to the high costs involved, without any assurance of recovering the money even if the appeal is upheld.

EPA agrees with the principle that if a person appeals a decision to the Ventura County APCD Hearing Board and the appeal has merit and is successful, then the successful appellant should receive a refund of the fees paid for the appeal. Although EPA is aware that in the past there may have been instances where a successful appellant did not receive a refund of appeal fees, VCAPCD Rule 41 (Hearing Board Fees) states that the Hearing Board may waive all or part of the fees associated with an appeal if the Hearing Board reverses the decision of the Air Pollution Control Officer in an appeal. Thus, EPA believes that the current District rule is sufficient to provide for fee refunds to successful appellants.

As for the fairness of the District's appeal process, EPA believes that the District's Hearing Board is a neutral body, operating independently of the District staff, which is charged with adjudicating all appeals of District permitting decisions and that the Board should maintain that responsibility for any permit appeal under the Imation XL project as well. Thus, EPA agrees that the District's existing appeal procedures, in accordance with Rule 41 and all other relevant District rules and regulations, should remain applicable to the Imation XL project. Moreover, EPA believes that for the types of issues that could potentially be raised in an appeal to the Hearing Board (e.g., a significant permit modification), there are existing federal appeal procedures pertaining to title V sources that will also remain in place. These federal procedures, which do not involve the payment of appeal fees, are in place to guarantee citizens' rights to appeal initial title V permits, significant permit modifications, and title V permit renewals.

The Environmental Coalition's third recommendation is that EPA should conduct an environmental review of Rule 37 because of its precedent setting nature and the potential for significant increases in air pollution resulting from numerous other companies applying for ERCs from years when their emissions were much higher.

First, as noted above in response to the Environmental Coalition's first recommendation, Rule 37 requires that any banking of ERCs be done in accordance with the District's banking regulations, which bases ERC calculations on actual emissions at the time of the banking request. Thus, Imation will be treated no differently under Rule 37 (which requires banking pursuant to Rule 26) than any other company with respect to the application for, and granting of, ERCs. Second, EPA has evaluated Rule 37 and has

determined that it is consistent with the Clean Air Act and EPA regulations. A detailed discussion of the rule provisions and EPA's evaluation of Rule 37 is provided in the proposed rule (64 FR 48739) and in the technical support document (TSD), dated August 23, 1999, which is available at EPA's Region IX office. Finally, as noted in EPA's proposal, approval of this SIP revision should not be construed as permitting or allowing or establishing a precedent for any future implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to the relevant statutory and regulatory requirements.

IV. EPA Action

EPA is finalizing this action to approve the above rule for inclusion into the California SIP. EPA is approving the submittal under section 110(k)(3) of the CAA as meeting the requirements of section 110(a) and part D. This approval action will incorporate this rule into the Federally approved SIP. The intended effect of approving this rule is to implement the Imation XL Project in accordance with the requirements of the CAA. This plan revision is not intended to address any outstanding issues with the Ventura County APCD NSR program that will be the subject of a future EPA rulemaking on District Rule 26.

V. Administrative Requirements

A. Executive Order 12866

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

B. Executive Order 13132

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.

This final rule 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. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

C. Executive Order 13045

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be "economically significant" as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to E.O. 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

D. Executive Order 13084

Under E.O. 13084, Consultation and Coordination with Indian Tribal Governments, EPA may not issue a regulation that is not required by statute, that significantly affects or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, EPA must provide to the Office of Management and Budget, in a

separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation.

In addition, E.O. 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities." Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of E.O. 13084 do not apply to this rule.

E. 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 final 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).

F. Unfunded Mandates

Under section 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 annual costs to

State, local, or tribal governments in the aggregate; or to 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 annual 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.

G. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Section 804, however, exempts from section 801 the following types of rules: rules of particular applicability; rules relating to agency management or personnel; and rules of agency organization, procedure, or practice that do not substantially affect the rights or obligations of non-agency parties. 5 U.S.C. section 804(3). EPA is not required to submit a rule report regarding today's action under section 801 because this is a rule of particular applicability (i.e., it applies only to a specifically named entity). A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This rule is not a "major" rule as defined by 5 U.S.C. 804(2).

H. National Technology Transfer and Advancement Act

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires Federal agencies to evaluate existing technical standards when developing a new regulation. To comply with NTTAA, EPA must consider and use "voluntary consensus standards" (VCS) if available and applicable when developing programs and policies unless doing so

would be inconsistent with applicable law or otherwise impractical.

The EPA believes that VCS are inapplicable to this action. Today's action does not require the public to perform activities conducive to the use of VCS.

I. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by February 11, 2000. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Note: Incorporation by reference of the State Implementation Plan for the State of California was approved by the Director of the Federal Register on July 1, 1982.

Dated: November 16, 1999.

Felicia Marcus,

Regional Administrator, Region IX.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart F—California

2. Section 52.220 is amended by adding paragraphs (c)(268), (269), and (270) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *
(268) [Reserved]
(269) [Reserved]
(270) New and amended regulations for the following APCDs were submitted on October 29, 1999, by the Governor's designee.

(i) Incorporation by reference.
(A) Ventura County Air Pollution Control District.

(1) Rule 37 adopted September 14, 1999.

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[FR Doc. 99-30902 Filed 12-10-99; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP-300952; FRL-6396-3]

RIN 2070-AB78

2,4-dichlorophenoxyacetic Acid; Re-establishment of Tolerances for Emergency Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation re-establishes time-limited tolerances for residues of the herbicide 2,4-dichlorophenoxyacetic acid (2,4-D) in or on wild rice at 0.1 parts per million. This tolerance expired on August 31, 1998. This action is in response to EPA's granting of emergency exemptions under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) authorizing use of the pesticide on wild rice. Section 408(l)(6) of the Federal Food, Drug, and Cosmetic Act requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under FIFRA section 18.

DATES: This regulation becomes effective December 13, 1999. Objections and requests for hearings must be received by EPA, on or before February 11, 2000.

ADDRESSES: Written objections and hearing requests may be submitted by mail, in person, or by courier. Please follow the detailed instructions for each method as provided in Unit III. of the "SUPPLEMENTARY INFORMATION." To ensure proper receipt by EPA, your objections and hearing requests must identify docket control number OPP-300952 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Jacqueline Gwaltney, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Rm. 271, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, 703-305-6792, gwaltney.jackie@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

Cat-egories	NAICS	Examples of Potentially Affected Entities
Industry	111	Crop production
	112	Animal production
	311	Food manufacturing
	32532	Pesticide manufacturing

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under "FOR FURTHER INFORMATION CONTACT."

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at <http://www.epa.gov/>. To access this document, on the Home Page select "Laws and Regulations" and then look up the entry for this document under the "Federal Register--Environmental Documents." You can also go directly to the **Federal Register** listings at <http://www.epa.gov/fedrgstr/>.

2. *In person.* The Agency has established an official record for this action under docket control number OPP-300952. The official record consists of the documents specifically referenced in this action, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes

printed, paper versions of any electronic comments submitted during an applicable comment period is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305-5805.

II. Background and Statutory Findings

EPA issued a final rule, published in the **Federal Register** of September 5, 1997 (62 FR 46900) (FRL-5738-9), which announced that on its own initiative under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a and (l)(6), as amended by the Food Quality Protection Act of 1996 (FQPA) (Public Law 104-170) it established time-limited tolerances for the residues of 2,4-D in or on wild rice at 0.1 ppm with an expiration date of August 31, 1998. EPA established the tolerances because section 408(l)(6) of the FFDCA requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under FIFRA section 18. Such tolerances can be established without providing notice or period for public comment.

EPA received requests to extend the use of 2,4-D on wild rice for this year's growing season due to the continued emergency conditions for wild rice. After having reviewed the submission, EPA concurs that emergency conditions exist. EPA has authorized under FIFRA section 18 the use of 2,4-D on wild rice for control of waterplantain.

EPA assessed the potential risks presented by residues of 2,4-D in or on wild rice. In doing so, EPA considered the safety standard in FFDCA section 408(b)(2), and decided that the necessary tolerance under FFDCA section 408(l)(6) would be consistent with the safety standard and with FIFRA section 18. The data and other relevant material have been evaluated and discussed in the final rule of September 5, 1997 (62 FR 46900) (FRL-5738-9). Based on that data and information considered, the Agency reaffirms that re-establishment of the time-limited tolerances will continue to meet the requirements of section 408(l)(6). Therefore, the time-limited tolerances are re-established with an expiration date of December 31, 2000 for wild rice. EPA will publish a document in the **Federal Register** to remove the revoked tolerances from the Code of