sailboard, a rowboat, a canoe, or a kayak?

d. Any person being towed behind a recreational vessel on water skis, on an inflatable raft or tube, or on some other device?

e. Any boater who is the sole occupant of a recreational vessel? If so, should the rule not apply when a vessel capable of rendering assistance accompanies the first vessel?

f. Any boater on a recreational vessel operating either in certain water or weather—such as fast currents, white water, high tides, cold weather, or gale-force winds—or where the recreational vessel is, or could drift to, more than a given distance from land.

g. Any boater on a recreational vessel defined by a specific combination of the boater's age, the vessel's type and size, its operation, and the prevailing water or weather?

3. Should we propose any Federal rules that allow alternatives to wearing Coast Guard approved lifejackets? If so, which alternatives? And if so, for which vessels, activities, water or weather, or boaters?

4. Please describe any nonregulatory ways to reduce the number of deaths by drowning, that are achievable at lower cost or with less burden than by Federal rules for wearing lifejackets.

Dated: September 28, 1999.

Terry M. Cross,

Rear Admiral, U.S. Coast Guard, Acting Assistant Commandant for Operations.

[FR Doc. 99–25864 Filed 10–4–99; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA083–0182; FRL–6452–2]

Clean Air Act Approval and Promulgation of New Source Review Implementation Plan for El Dorado County Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA proposes three actions on rules submitted by El Dorado Air Pollution Control District (District or EDCAPCD) for the purpose of meeting requirements of the Clean Air Act, as amended in 1990 (CAA or Act), with regard to new source review (NSR) in areas that have not attained the national ambient air quality standards (NAAQS). First, EPA proposes to approve the following rules into State Implementation Plan (SIP): Rule 501, General Permit Requirements; Rule 520, Enhanced Monitoring and Compliance Certification; Rule 524, Emission Reduction Credits; and Rule 525, Priority Reserve. Second, EPA proposes a limited approval and limited disapproval of Rule 523, New Source Review. Finally, EPA proposes to rescind from the SIP 36 District rules that will be replaced by the rules mentioned above. All of these rules were submitted by the State of California on behalf of the District as a requested SIP revision to satisfy certain federal requirements for an approvable NSR SIP.

DATES: EPA is requesting comments on all aspects of the requested SIP revision and EPA's proposed rulemaking action. Comments on this proposed action must be received in writing by November 4, 1999.

ADDRESSES: To submit comments or receive further information, please contact Roger Kohn, Environmental Protection Specialist, Permits Office, Air Division (AIR–3), EPA Region 9, 75 Hawthorne Street, San Francisco, CA 94105. Copies of the State's submittal and other information are available for inspection during normal business hours 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) El Dorado County Air Pollution Control District, 2850 Fairlane Ct., Bldg. C, Placerville, CA 95667–4100. A courtesy copy of these rules may be available via the Internet at http://arbis.arb.ca.gov/drdb/ed/cur.htm. These versions of the District rules, however, may be different from the versions submitted to EPA for approval. Readers are cautioned to verify that the adoption date of the rule listed is the same as the rule submitted to EPA for approval. The official submittals are available only at the three addresses listed above.

FOR FURTHER INFORMATION CONTACT: Roger Kohn, Permits Office, (AIR–3), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901, Telephone: (415) 744–1238 E-mail: kohn.roger@epa.gov

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I. What Action is EPA Proposing?

A. Today's Proposed Actions

EPA's proposed actions on NSR rules submitted by the District are summarized in Tables 1, 2, and 3 below.

TABLE 1.—EPA PROPOSES APPROVAL

Rule No.	Rule title
501	General Permit Requirements.
520	Enhanced Monitoring and Compliance Certification.
524	Emission Reduction Credits.
525	Priority Reserve.

TABLE 2.—EPA PROPOSES LIMITED APPROVAL AND LIMITED DISAPPROVAL

Rule No.	Rule title
523	New Source Review.

TABLE 3.—EPA PROPOSES RESCISSION FROM SIP

Rule No	Rule title
401 through 407. 410, 411 415, 416 418 through 425 501 through 508 510 through 513 515 517 through 519 521	Various—refer to TSD.

B. Limited Approval and Limited Disapproval of Rule 523

EPA is proposing limited approval and limited disapproval of El Dorado County Air Pollution Control District (EDCAPCD) Rule 523, New Source Review into the California SIP. This rule consists of definitions and standards, including applicability, major source and major modification definitions, offsets, and Best Available Control Technology. EPA is proposing simultaneous limited approval and limited disapproval of this rule because, while it strengthens the SIP, it also does not fully meet the CAA provisions regarding plan submissions and requirements for nonattainment areas. The deficiencies that are the basis for our action are identified in section II below. A detailed discussion of the rule deficiencies is included in the Technical Support Document (TSD) for this rulemaking.

If our final action remains a limited approval and limited disapproval, the action would constitute a disapproval under section 179(a)(2) of the Act (see 57 FR 13566–13567). As provided under section 179(a) of the Act, the District would have up to 18 months after a final SIP disapproval to correct the deficiencies that are the subject of the disapproval before EPA is required to impose sanctions. If the District does not correct its SIP deficiencies within 18 months, then section 179(a)(4) requires the immediate application of sanctions. According to section 179(b), sanctions can take the form of a loss of highway funds or a two to one emissions offset ratio. Once the Administrator applies one of the section 179(b) sanctions, the State will then have an additional six months to correct any deficiencies. Section 179(a)(4) requires that both highway and offsets sanctions must be applied if any deficiencies are still not corrected after the additional six month period.

In addition, a final disapproval would trigger section 110(c) provisions for federal implementation plans. Section 110(c) requires EPA to promulgate a federal implementation plan within two years of disapproving a state implementation plan submittal in whole or in part.

C. Full Approval of Rules 501, 520, 524, and 525

EPA is proposing to approve rules 501, 520, 524, and 525 into the California SIP. Rule 501, General Permit Requirements, contains procedures for the review of new stationary sources of air pollution and the modification and operation of existing sources through the issuance of permits. In addition to these substantive requirements, the rule also contains twelve definitions and twelve exemptions. EPA has reviewed the submitted rule for consistency with applicable requirements of the Act. The standards and definitions in the rule are consistent with the CAA and EPA regulations, and the rule does not exempt any stationary sources that are subject to federal review under the Act. Therefore, EPA proposes to approve Rule 501 into the SIP.

Rule 501 contains a provision that states that an Authority to Construct (ATC) permit ''shall remain in effect until a permit to operate the equipment is granted or denied or the application is cancelled.'' The expiration of ATC permits upon issuance of permits to operate (PTO) appears to conflict with EPA policy, which requires that terms and conditions of ATCs remain in effect for the life of a facility. While the EDCAPCD provision is not the approach favored by EPA, we believe the District's rule is approvable because PTOs will contain the same permanent, enforceable conditions that were in the ATCs. EPA interprets the rule to mean that when a PTO is issued, all substantive terms and conditions of the ATC permit must be incorporated into the PTO. This includes, but is not limited to, emission limits, and all monitoring, record-keeping, and reporting necessary to verify compliance.

Since EPA views ATC terms and conditions as federally enforceable (see section 113(b)(1) of the CAA and 40 CFR 52.23), these conditions remain federally enforceable when they are incorporated into the PTO.

Rule 520, Enhanced Monitoring and Compliance Certification, provides standards by which compliance with CAA requirements can be determined. The rule allows the use of any credible evidence, including but not limited to EPA or EPA-approved reference test methods, compliance assurance monitoring pursuant to 40 CFR part 64, and periodic monitoring associated with part 70 federal operating permits, to be used to demonstrate compliance with federally enforceable permit conditions. This rule contains language recommended by EPA in a May 16, 1994 SIP-call. Since the rule submittal was responsive to the SIP-call and satisfies the requirements of sections 110, 113, and 114 of the CAA, EPA proposes approval into the SIP.

Rule 524, Emission Reduction Credits, allows the District to quantify, adjust, and certify surplus emission reductions for later use as offsets. This rule relates to new source review because these credits can be obtained by new sources and used as offsets. Rule 524 satisfies EPA criteria that all emission reductions used as offsets be real, surplus, quantifiable, enforceable and permanent.

Rule 525, Priority Reserve, is a mechanism to provide loans of emission reductions for essential public services (publicly owned and operated sources such as sewage treatment plants). The rule requires, pursuant to Rule 524 (Emission Reduction Credits), that all offsets in the Priority Reserve bank be real, enforceable, quantifiable, and permanent. Therefore Rule 525 is consistent with CAA requirements and EPA policy and EPA proposes approval into the SIP.

D. Recission of 36 Rules

On April 26, 1994, EDCAPCD repealed 43 rules and adopted four new rules to replace them. Thirty-six of the repealed rules remained federally enforceable because they are still in the El Dorado County SIP. In its May 24, 1994 submittal to EPA, the California Air Resources Board (CARB) requested that EPA rescind the repealed rules from the SIP. The repealed rules, which are no longer enforced by the District, constituted EDCAPCD's stationary source permitting program at the time they were approved into the SIP in 1982 and 1983. After the 1990 CAA amendments, however, the District substantially revised its rules to include the substantive nonattainment new source review requirements mandated by the 1990 amendments. The rules that EPA is proposing to rescind from the SIP have been replaced by the more stringent rules proposed for approval and limited approval today. Thus, EPA has determined that the recission of the 36 repealed rules is approvable because they are being replaced in the SIP by more stringent rules that satisfy requirements mandated by the 1990 amendments. A summary document that shows how the repealed rules correspond to the more stringent rules that supercede them is included in the docket for this rulemaking.

E. 1982 NSR SIP Conditional Approval

In a 1982 final rulemaking action (47 FR 29536, July 7, 1982), EPA conditionally approved the nonattainment area plan (NAP) for the Mountain Counties Air Basin, which includes El Dorado County. As a result of that action, 40 CFR 52.232 was amended to require El Dorado County to revise its NSR rules by October 30, 1985 in order to correct deficiencies identified at the time. Today, we propose to delete from 40 CFR part 52

the requirement that the District correct NSR rule deficiencies identified when EPA finalized the District's NSR rules in 1982 for the following reasons:

- The current rules will, upon final approval, supercede the rules submitted in 1981.
- EPA has not taken action on any revisions to EDCAPCD NSR rules.
- EPA has not done a final rulemaking to correct the deficiencies of EDCAPCD NSR rules discussed in the July 7, 1982 final rulemaking.
- The District has revised and submitted new NSR rules to comply with the 1990 CAA amendments.

II. Rule 523 Deficiencies

A. Offset Ratio for Severe Ozone Nonattainment Area

Section 523.3.C: This section allows an offset ratio of 1.2 to 1.0 for nonattainment pollutants if the offset is located within a 15-mile radius and within the District. Most of El Dorado County was designated as severe nonattainment for ozone in 1995. Section 182(d)(2) of the CAA requires offset ratios of at least 1.3 to 1.0 for such areas, unless the SIP requires all existing major sources in the nonattainment area to apply Best Available Control Technology (BACT). Since the EDCAPCD SIP does not contain such a provision, the District must revise the ratio to comply with the CAA requirement.

B. Offsetting Total Emissions

Section 523.3.B: This section contains offset thresholds, and requires new or modified sources to offset emissions that exceed these thresholds. Section 173(c)(1) of the CAA requires that the total tonnage of increased emissions be offset, not just the amount of emissions that exceed the threshold. Accordingly, the District must revise the rule to satisfy this federal requirement. The District could do this by either revising the rule to require that all new and modified sources that exceed federal offset thresholds offset down to zero, or by tracking offsets and demonstrating on an on-going basis that the implementation of Rule 523 creates a quantity of offsets that meets or exceeds CAA requirements.

C. Incomplete BACT Definition

Section 523.2.G: The definition of BACT in this section does not include the most stringent emissions limitation ''which is contained in the implementation plan of any State for such class or category of stationary source, unless the owner or operator of the proposed stationary source demonstrates that such limitations are not achievable.'' (40 CFR 51.165(a)(xiii)) This provision must be added to the definition.

D. Exemption for Regulatory Compliance

Section 523.1.G: This section allows an exemption from NSR for modifications that are necessary to comply with District prohibitory rules. This exemption for regulatory compliance, as written, is not allowed by the Clean Air Act. This provision must be either deleted or revised to be consistent with EPA policy that allows exemptions for pollution control projects if certain substantive and procedural criteria are satisfied. (The policy is described in a July 1, 1994 memorandum entitled ''Pollution Control Projects and New Source Review (NSR) Applicability'', included in the docket for this rulemaking.) Under this policy, the District could exempt such projects, provided that they are environmentally beneficial and do not cause or contribute to a violation of a national ambient air quality standard, or PSD increment, or adversely affect an air quality related value in a Class 1 area.

E. Interpollutant Trading

Section 523.3.D: This section allows interpollutant offsets (trading among different precursors to the same secondary pollutant), and must either be removed or revised. There are no provisions addressing interpollutant trading in the CAA or EPA regulations. The CAA and EPA regulations provide only for trading (offsets) of the same pollutant. EPA has considered the approvability of interpollutant trading if certain criteria are met. If the District wishes to retain this provision, the District must revise the rule to require adequate modeling to determine the appropriate offset ratio, public notification, and EPA concurrence for all interpollutant trades.

III. How Did EPA Arrive at the Proposed Action?

The air quality planning requirements for nonattainment NSR are set out in part D of title I of the Clean Air Act. EPA has issued a ''General Preamble'' describing EPA's preliminary views on how EPA intends to review SIPs and SIP revisions submitted under part D, including those State submittals containing nonattainment NSR SIP requirements (see 57 FR 13498 (April 16, 1992) and 57 FR 18070 (April 28, 1992)). Because EPA is describing its interpretations here only in broad terms, the reader should refer to the General Preamble for a more detailed discussion.

The Act requires States to observe certain procedural requirements in developing implementation plans and plan revisions for submission to EPA. Section 110(a)(2) and section 110(l) of the Act provide that each implementation plan or revision to an implementation plan submitted by a State must be adopted after reasonable notice and public hearing. Section 172(c)(7) of the Act provides that plan provisions for nonattainment areas shall meet the applicable provisions of Section 110(a)(2).

Rules 501, 523, 524, and 525 were adopted by the District Board of Directors on April 26, 1994. On that date, the District also repealed 36 rules that are in the EDCAPCD SIP. The newly adopted rules, along with a request to rescind the repealed rules from the SIP, were subsequently submitted by CARB to EPA as proposed revisions to the California SIP on May 24, 1994. Rule 520 was adopted by the District on June 27, 1995, and submitted by CARB to EPA as a SIP revision on October 13, 1995. The submitted rules, which are new additions to the SIP, constitute the District's New Source Review permitting regulations.

Most of El Dorado County, except for that portion within the Lake Tahoe basin, is included in the Sacramento Metro Area, which is currently designated as severe nonattainment for ozone. For all other pollutants, the County is designated as attainment or unclassifiable with respect to the NAAQS. District NSR rules therefore apply to all new or modified stationary sources proposing to emit VOC or NOx in the nonattainment area. The nonattainment provisions must also apply to any source which would contribute to a violation of the NAAQS. The Clean Air Act requirements are found at sections 172 and 173 for nonattainment NSR permitting. With certain exceptions, described in section II above, the District's submittal satisfies these requirements. For a detailed description of how the submitted rule meets the applicable requirements, please refer to EPA's technical support document (TSD).

IV. Administrative Requirements

A. Executive Order 12866

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

B. Executive Order 12875

Under Executive Order 12875, Enhancing the Intergovernmental Partnership, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 12875 requires EPA to provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected State, local and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local and tribal governments ''to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates.'' Today's rule does not create a mandate on State, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of E.O. 12875 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 is does not involve decisions intended to mitigate environmental health or safety risks.

D. Executive Order 13084

Under Executive Order 13084, Consultation and Coordination with Indian Tribal Governments, EPA may not issue a regulation that is not required by statute, that significantly 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, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to 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, Executive Order 13084 requires EPA to develop an effective process permitting elected officials 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.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Nitrogen dioxide, Particulate matter, Carbon monoxide, Reporting and recordkeeping requirements, Sulfur dioxide, Volatile organic compounds.

Dated: September 17, 1999.

Laura Yoshii,

Acting Regional Administrator, Region IX.

[FR Doc. 99–25835 Filed 10–4–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 258

[FRL–6451–8]

Rhode Island: Determination of Adequacy for the State's Municipal Solid Waste Permit Program

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) proposes to issue a determination of adequacy for the State