

(c) Amending the AFM, as required by this AD, may be performed by the owner/operator holding at least a private pilot certificate as authorized by section 43.7 of the Federal Aviation Regulations (14 CFR 43.7), and must be entered into the aircraft records showing compliance with this AD in accordance with section 43.11 of the Federal Aviation Regulations (14 CFR 43.11).

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(e) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Atlanta Aircraft Certification Office (ACO), Campus Building, 1701 Columbia Avenue, suite 2-160, College Park, Georgia 30337-2748. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Atlanta ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Atlanta ACO.

(f) Information related to this AD may be examined at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Issued in Kansas City, Missouri, on July 17, 1997.

Carolanne L. Cabrini,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97-19485 Filed 7-23-97; 8:45 am]

BILLING CODE 4910-13-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 179-0033; FRL-5863-3]

Approval and Promulgation of Implementation Plans; California State Implementation Plan Revision; Bay Area Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rulemaking.

SUMMARY: EPA is proposing a limited approval and limited disapproval of revisions to the California State Implementation Plan (SIP) for ozone. These revisions concern the control of oxides of nitrogen (NO_x) and carbon monoxide from boilers, steam generators, and process heaters in petroleum refineries in the San Francisco Bay Area. The intended effect of proposing limited approval and limited disapproval of this rule is to regulate emissions of NO_x in

accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). EPA's final action on this notice of proposed rulemaking will incorporate this rule into the Federally approved SIP. EPA has evaluated this rule and is proposing a simultaneous limited approval and limited disapproval under provisions of the CAA regarding EPA actions on SIP submittals and general rulemaking authority because these revisions, while strengthening the SIP, also do not fully meet the CAA provisions regarding plan submissions and SIP enforceability guidelines. This rule is being incorporated into the SIP in accordance with the requirements for contingency measures contained in the area's ozone maintenance plan.

DATES: Comments on this proposed action must be received in writing on or before August 25, 1997.

ADDRESSES: Comments may be mailed to: Andrew Steckel, Rulemaking Section (AIR-4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105-3901.

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

Environmental Protection Agency, Air Docket (6102), 401 "M" Street, S.W., Washington, D.C. 20460.

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 "L" Street, Sacramento, CA 95814.

Bay Area Air Quality Management District, Rule Development Section, 939 Ellis Street, San Francisco, CA 94109.

FOR FURTHER INFORMATION CONTACT: Lily Wong, Rulemaking Office (AIR-4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105, Telephone: (415) 744-1190.

SUPPLEMENTARY INFORMATION:

Background

This document addresses EPA's proposed action for Bay Area Air Quality Management District (BAAQMD) Regulation 9, Rule 10, Nitrogen Oxides and Carbon Monoxide from Boilers, Steam Generators, and Process Heaters in Petroleum Refineries. BAAQMD adopted Regulation 9, Rule 10 on January 5, 1994. The State of California originally submitted the rule being acted on in this document on May

24, 1994. Regulation 9, Rule 10 was found to be complete on July 14, 1994 pursuant to EPA's completeness criteria that are set forth in 40 CFR part 51, appendix V¹.

NO_x emissions contribute to the production of ground level ozone and smog. BAAQMD Regulation 9, Rule 10, controls emissions of NO_x from boilers, steam generators, and process heaters in petroleum refineries. The rule was adopted as part of BAAQMD's efforts to achieve the National Ambient Air Quality Standards (NAAQS) for ozone, as well as to satisfy the mandates of the California State Clean Air Act requirements. The rule was originally submitted in response to the CAA requirements for the reduction of NO_x emissions through reasonably available control technology (RACT) contained in section 182.

However, prior to the complete submittal of the BAAQMD NO_x rules pursuant to the CAA, the district applied for an exemption from the NO_x RACT requirements pursuant to section 182(f)(3). The BAAQMD's exemption request was submitted along with amendments to the BAAQMD's request for redesignation to attainment of the ozone standard. The basis for the BAAQMD's exemption request was that the area had achieved the ozone standard, as demonstrated by three years of monitoring data, without having implemented the NO_x measures. While the BAAQMD had adopted the measures in response to both the State and Federal requirements, the emission reductions obtained by the rules would not occur until full implementation in the future. The district was able to demonstrate with three years of monitoring data that the Federal ozone standard was reached without having implemented the NO_x control measures. Subsequently, EPA evaluated the exemption request and published an approval for the BAAQMD's petition for a NO_x RACT exemption on May 22, 1995 (60 FR 27028).

While the BAAQMD was no longer required to submit NO_x RACT rules pursuant to section 182(b)(2), the BAAQMD incorporated several of the previously submitted NO_x rules as contingency measures in its ozone maintenance plan as a requirement for redesignation to attainment. Since being redesignated to attainment of the ozone standard,² the Bay Area has recorded violations of the Federal ozone

¹ EPA adopted the completeness criteria on February 16, 1990 (55 FR 5830) and, pursuant to section 110(k)(1)(A) of the CAA, revised the criteria on August 26, 1991 (56 FR 42216).

² See 60 FR 27028 (May 22, 1995).

standard, thereby triggering the contingency measures of the maintenance plan. In accordance with the redesignation maintenance plan, and at the request of the BAAQMD, EPA is incorporating the NO_x measures into the SIP. The BAAQMD resubmitted the contingency measures being acted on in this document on July 23, 1996. This action encompasses part of the measures identified in the plan as contingency measures.

EPA Evaluation and Proposed Action

Because BAAQMD Regulation 9, Rule 10 is being incorporated into the SIP as part of the maintenance measures for the area's redesignation plan, the rule is not being evaluated for meeting the RACT emission limits pursuant to section 182(f) of the CAA. Rather, the rule is being incorporated into the SIP as an attainment maintenance measure for ozone. It is therefore being evaluated against the emissions reductions committed to in the maintenance plan, and SIP enforceability guidelines.

BAAQMD Regulation 9, Rule 10 controls emissions of nitrogen oxides and carbon monoxide from boilers, steam generators, and process heaters in petroleum refineries with rated capacities greater than or equal to 1 million Btu per hour heat input. The rule requires sources (excluding carbon monoxide boilers) to meet a facility-wide emission rate of 0.20 pounds NO_x per million Btu heat input limit, and carbon monoxide boilers to meet 300 parts per million by volume (ppmv) of NO_x. The rule requires compliance by May 31, 1995.

Although Regulation 9, Rule 10 will strengthen the SIP, this rule still contains deficiencies related primarily to the lack of enforceability. This rule does not specify any test method for determination of compliance with the NO_x emission limit, and it does not require recordkeeping to demonstrate compliance with the emission rate. A more detailed discussion of the sources controlled, the controls required, and rule deficiencies can be found in the Technical Support Document (TSD), dated May 30, 1997.

Because of the above deficiencies, EPA cannot grant full approval of this rule under section 110(k)(3). Also, because the submitted rule is not composed of separable parts which meet all the applicable requirements of the CAA, EPA cannot grant partial approval of the rule under section 110(k)(3). However, EPA may grant a limited approval of the submitted rule under section 110(k)(3) in light of EPA's authority pursuant to section 301(a) to adopt regulations necessary to further

air quality by strengthening the SIP. The approval is limited because EPA's action also contains a simultaneous limited disapproval. In order to strengthen the SIP, EPA is proposing a limited approval of BAAQMD's submitted Regulation 9, Rule 10 under sections 110(k)(3) and 301(a) of the CAA as meeting the requirements of section 110(a). At the same time, EPA is also proposing a limited disapproval of this rule because it contains deficiencies which must be corrected in order to meet the requirement for enforceability under section 110(a). If the Administrator disapproves a submission under section 110(k) for an area designated attainment, based on the submission's failure to meet one or more of the elements required by the Act, the Administrator may, at her discretion, apply one of the sanctions set forth in section 179(b), pursuant to section 110(m). Moreover, the final disapproval triggers the Federal implementation plan (FIP) requirement under section 110(c). It should be noted that the rule covered by this document has been adopted by the BAAQMD and is currently in effect in the BAAQMD. EPA's final limited disapproval action will not prevent BAAQMD or EPA from enforcing this rule.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any state 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 relevant statutory and regulatory requirements.

Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866 review.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under sections 110 and 301, and subchapter I, part D of the CAA do not create any new requirements but

simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the CAA, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its action 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).

C. 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 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 proposed 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 Federal 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, Hydrocarbons, Intergovernmental relations, Oxides of nitrogen, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Authority: 42 U.S.C. 7401-7671q.

Dated: July 10, 1997.

Felicia Marcus,

Regional Administrator.

[FR Doc. 97-19549 Filed 7-23-97; 8:45 am]

BILLING CODE 6560-50-P