ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 179–0060; FRL–5932–7]

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

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a revision to the California State Implementation Plan (SIP) which concerns the control of volatile organic compound (VOC) emissions from architectural coatings.

The intended effect of proposing approval of 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). EPA's final action on this proposed rulemaking will incorporate this rule into the federally approved SIP. EPA has evaluated this rule and is proposing to approve it under provisions of the CAA regarding EPA action on SIP submittals, EPA's general rulemaking authority, plan submissions, and enforceability guidelines.

DATES: Comments must be received on or before January 7, 1998.

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

Comments must be submitted to Andrew Steckel at the Region IX office listed above. Copies of the rule revisions and EPA's evaluation report of this rule are available for public inspection at EPA's Region 9 office during normal business hours. Copies of the submitted rule revisions are also available for inspection at the following locations:

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 ''L'' Street, Sacramento, CA 95812.

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

FOR FURTHER INFORMATION CONTACT: Yvonne Fong, Rulemaking Office (AIR–4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901, (415) 744–1199.

SUPPLEMENTARY INFORMATION:

I. Applicability

The rule being proposed for approval into the California SIP is Bay Area Air Quality Management District (BAAQMD) Rule 8–3, Architectural Coatings. This rule was submitted by the California Air Resources Board to EPA on July 23, 1996.

II. Background

On March 3, 1978, EPA promulgated a list of ozone nonattainment areas under the provisions of the Clean Air Act, as amended in 1977 (1977 CAA or preamended Act), that included the San Francisco Bay Area. 43 FR 8964; 40 CFR 81.305. On May 26, 1988, EPA notified the Governor of California, pursuant to section 110(a)(2)(H) of the pre-amended Act, that the above district's portions of the California SIP were inadequate to attain and maintain the ozone standard and requested that deficiencies in the existing SIP be corrected (EPA's SIP-Call). On November 15, 1990, the Clean Air Act Amendments of 1990 were enacted. Pub. L. 101–549, 104 Stat. 2399, codified at 42 U.S.C. 7401–7671q.

On November 12, 1993, BAAQMD submitted a request for redesignation to attainment of the ozone standard. Subsequently, EPA evaluated and approved BAAQMD's request and the San Francisco Bay Area was reclassified as an attainment area.[1]

The State of California submitted many rules for incorporation into its SIP on July 23, 1996, including the rule being acted on in this document. This document addresses EPA's proposed action for Bay Area Air Quality Management District Rule 8–3, Architectural Coatings. The Bay Area Air Quality Management District adopted Rule 8–3 on December 20, 1995. This submitted rule was found to be complete on October 30, 1996 pursuant to EPA's completeness criteria that are set forth in 40 CFR part 51, appendix V[2] and is being proposed for approval into the SIP.

The Bay Area Air Quality Management District Rule 8–3 controls volatile organic compound (VOC) emissions from architectural coatings. VOCs contribute to the production of ground-level ozone and smog. This rule was originally adopted as part of the district's efforts to achieve the National Ambient Air Quality Standard (NAAQS) for ozone and in response to EPA's SIP-Call and the section 110(a)(2)(A) CAA requirement. The following is EPA's evaluation and proposed action for this rule.

III. EPA Evaluation and Proposed Action

In determining the approvability of a VOC rule, EPA must evaluate the rule for consistency with the requirements of the CAA and EPA regulations, as found in section 110 of the CAA and 40 CFR part 51 (Requirements for Preparation, Adoption, and Submittal of Implementation Plans).

In addition, this rule was evaluated against the SIP enforceability guidelines found in ''Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations—Clarification to Appendix D of November 24, 1987 **Federal Register**'' (EPA's ''Blue Book'') and the EPA Region IX—California Air Resources Board document entitled ''Guidance Document for Correcting VOC Rule Deficiencies'' (April 1991). In general, these guidance documents have been set forth to ensure that VOC rules are fully enforceable and strengthen or maintain the SIP.

On January 24, 1985, EPA approved into the SIP a version of Rule 8–3, Architectural Coatings that had been adopted by the BAAQMD on May 18, 1983. The BAAQMD Rule 8–3 submitted on July 23, 1996 includes the following significant changes from the current SIP:

- Section 8–3–112, 8–3–227, 8–3–305, 8–3–402, and 8–3–403 remove the small business exemption, definition, and all references to it;
- Sections 8–3–212 and 8–3–213 consolidate the industrial maintenance finishes (topcoats) and industrial maintenance primers definitions;
- Section 8–3–233 revises the varnish definition;
- Section 8–3–236 through 8–3–245 define volatile organic compounds (VOCs) and nine subcategories of industrial maintenance coatings;
- Section 8–3–304 changes the effective date of VOC limits from September 1, 1989 to September 1, 1987;
- Section 8–3–306 provides that the most restrictive VOC limit shall apply; and
- Section 8–3–403 removes labeling requirements for coatings subject to interim VOC limits which have now expired.

[1] The San Francisco Bay Area was redesignated to attainment and was classified by operation of law pursuant to Sections 107(d) upon the date of enactment of the CAA. See 60 FR 98 (May 22, 1995). The EPA is proposing to redesignate the San Francisco Bay Area back to nonattainment for ozone based on a number of violations of the National Ambient Air Quality Standards (NAAQS).

[2] 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).

The BAAQMD staff report for Rule 8–3 states that the rule amendments will not change any existing VOC limits. EPA has evaluated the submitted rule and has determined that it is enforceable and strengthens the applicable SIP. Therefore, Bay Area Air Quality Management District Rule 8–3, Architectural Coatings is being proposed for approval under section 110(k)(3) of the CAA as meeting the requirements of section 110(a) and pursuant to EPA's authority under section 301(a) to adopt regulations necessary to further air quality by strengthening the SIP.

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.

IV. 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 section 110 and 301 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 impose any new requirements, the Administrator certifies 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 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).

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 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 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, Ozone, Reporting and recordkeeping requirements, Volatile organic compound.

Authority: 42 U.S.C. 7401–7671q.

Dated: November 23, 1997.

Felicia Marcus,

Regional Administrator.

[FR Doc. 97–32043 Filed 12–5–97; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Office of Hearings and Appeals

43 CFR Part 4

RIN 1090–AA63

Department Hearings and Appeals Procedures

AGENCY: Office of Hearings and Appeals, Interior.

ACTION: Proposed rule; extension of comment period.

SUMMARY: This action extends the comment period an additional 60 days on the Department of the Interior's Office of Hearings and Appeals' proposal to amend its rules to provide that, except as otherwise provided by law or other regulation, a decision will be stayed, if it is appealed, until there is a dispositive decision on the appeal.

DATES: Comments are due to the agency on or before February 6, 1998.

ADDRESSES: Send written comments to Director, Office of Hearings and Appeals, U.S. Department of the Interior, 4015 Wilson Boulevard, Arlington, VA 22203. Comments received will be available for public inspection during regular business hours (9 a.m. to 5 p.m.) in the Office of the Director, Office of Hearings and Appeals, 11th Floor, 4015 Wilson Boulevard, Arlington, VA. Persons wishing to inspect comments are requested to call in advance at (703) 235–3810 to make an appointment.

FOR FURTHER INFORMATION CONTACT: Bruce Harris, Deputy Chief Administrative Judge, Interior Board of Land Appeals, Office of Hearings and Appeals, U.S. Department of the Interior, 4015 Wilson Boulevard, Arlington, VA 22203. Telephone: (703) 235–3750.

SUPPLEMENTARY INFORMATION: On August 19, 1997, the Department of the Interior proposed to amend the regulation contained at 43 CFR 4.21 (August 28, 1997, 62 FR 45606). Comments to this proposed rule were to be received on or before September 29, 1997.

On October 3, 1997, the Department of the Interior extended the comment period an additional 60 days until December 2, 1997, in response to requests received from the National Mining Association and the Rocky Mountain Oil and Gas Association (RMOGA). (62 FR 51822).

The Director of the Office of Hearings and Appeals (OHA) received several letters requesting an additional extension of the comment period beyond December 2, 1997. In a letter dated November 21, 1997, RMOGA requested an additional 45-day extension of the comment period, to allow for receipt of data requested in a Freedom of Information Act (FOIA) request, and full analysis of the data and preparation of a thoughtful response to the proposed change. In addition, by letter dated November 19, 1997, ARCO Permian, a member of RMOGA, requested additional time to respond after review of the response to the RMOGA's FOIA request. By letter dated November 25, 1997, the Natural Gas Supply Association, the Mid-Continent Oil and Gas Association, the Domestic Petroleum Council, the National Ocean