

Federal Actions to State or Federal Implementation Plans.

(i) *Incorporation by reference.*

(A) Illinois Administrative Code, Title 35: Environmental Protection, Subtitle B: Air Pollution, Chapter 2: Environmental Protection Agency, Part 255 General Conformity: Criteria and Procedures. Adopted at 21 Ill. Reg. effective March 6, 1997.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA179-0052a] [FRL-5911-2]

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

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action on a revision to the California State Implementation Plan (SIP). The revision concerns Rule 1115 from the Mojave Desert Air Quality Management District (MDAQMD). This approval action will incorporate Rule 1115 into the federally approved SIP. The intended effect of approving this rule is to regulate emissions of volatile organic compounds (VOCs) in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). The revised rule controls VOC emissions from metal parts and products coating operations. Thus, 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 February 23, 1998, unless adverse or critical comments are received by January 22, 1998. If the effective date is delayed, a timely notice will be published in the **Federal Register**.

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

Rulemaking Office (AIR-4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105

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 92123-1095
Mojave Desert Air Quality Management District, 15428 Civic Drive, Suite 200, Victorville, CA 92392

FOR FURTHER INFORMATION CONTACT: Jerald S. Wamsley, Rulemaking Office, AIR-4, Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105, Telephone: (415) 744-1226.

SUPPLEMENTARY INFORMATION:

I. Applicability

The rule being approved into the California SIP is Rule 1115, Metal Parts and Products Coating Operations. This rule was submitted by the California Air Resources Board (CARB) 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 Act or pre-amended Act), that included the Mojave Desert portion of San Bernardino County, California (see 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 1977 Act, that the above district's portion of the California SIP was 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. In amended section 182(a)(2)(A) of the CAA, Congress statutorily adopted the requirement that nonattainment areas fix their deficient reasonably available control technology (RACT) rules for ozone and established a deadline of May 15, 1991 for states to submit corrections of those deficiencies.

Section 182(a)(2)(A) applies to areas designated as nonattainment prior to enactment of the amendments and classified as marginal or above as of the date of enactment. It requires such areas to adopt and correct RACT rules pursuant to pre-amended section 172(b)

as interpreted in pre-amended guidance.¹ EPA's SIP-Call used that guidance to indicate the necessary corrections for specific nonattainment areas. The Mojave Desert portion of San Bernardino County is classified as "severe".² Therefore, this area was subject to the RACT fix-up requirement and the May 15, 1991 deadline.

The State of California submitted many revised RACT rules for incorporation into its SIP on July 23, 1996, including the rule being acted on in this document. This document addresses EPA's direct-final action for MDAQMD Rule 1115, Metal Parts and Products Coating Operations. MDAQMD revised and adopted Rule 1115 on April 22, 1996. 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 V³ and is being finalized for approval into the SIP.

MDAQMD Rule 1115 is a prohibitory rule governing the use and application of coating compounds containing photochemically reactive volatile organic compounds (VOCs) in the metal parts and products coating industry. VOCs contribute to the production of ground level ozone and smog. This rule was originally adopted as part of the MDAQMD effort to achieve the National Ambient Air Quality Standard (NAAQS) for ozone and in response to EPA's SIP-Call and the section 182(a)(2)(A) CAA requirement.

Formerly, on January 5, 1993, EPA proposed a limited approval/disapproval of MDAQMD's Rule 1115 (see 58 FR 322). This version of Rule 1115 was adopted by MDAQMD on March 2, 1992 and submitted by the CARB to EPA on June 19, 1992 as a revision to the California SIP. EPA has not taken final action on the January 5, 1993 proposal.

In response to EPA's January 5, 1993 proposal, the MDAQMD Board amended Rule 1115 and adopted these revisions

¹ Among other things, the pre-amendment guidance consists of those portions of the proposed post-1987 ozone and carbon monoxide policy that concern RACT, 52 FR 45044 (November 24, 1987); "Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations, Clarification to Appendix D of November 24, 1987 **Federal Register** Notice" (Blue Book) (notice of availability was published in the **Federal Register** on May 25, 1988); and the existing control technique guidelines (CTGs).

² Mojave Desert retained its designation of nonattainment and was classified by operation of law pursuant to sections 107(d) and 181(a) upon the date of enactment of the CAA. See 56 FR 56694 (November 6, 1991).

³ 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).

on April 22, 1996. The CARB submitted the revised rule to EPA on July 23, 1996. This revision of Rule 1115 is the subject of today's approval action. EPA's evaluation and final action for this rule follows below.

III. EPA Evaluation and 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 and part D of the CAA and 40 CFR part 51 (Requirements for Preparation, Adoption, and Submittal of Implementation Plans). The EPA interpretation of these requirements, which forms the basis for today's action, appears in the various EPA policy guidance documents listed in footnote one. Among those provisions is the requirement that a VOC rule must, at a minimum, provided for the implementation of RACT for stationary sources of VOC emissions. This requirement was carried forth from the pre-amended Act.

For the purpose of assisting state and local agencies in developing RACT rules, EPA prepared a series of Control Technique Guideline (CTG) documents. The CTGs are based on the underlying requirements of the Act and specify the presumptive norms for what is RACT for specific source categories. Under the CAA, Congress ratified EPA's use of these documents, as well as other Agency policy, for requiring States to "fix-up" their RACT rules. See section 182(a)(2)(A). The CTG applicable to this rule is entitled, "Control of Volatile Organic Emissions from Exist Stationary Sources Volume VI: Surface Coating of Miscellaneous Metal Parts and Products," USEPA, June 1978, EPA-450/2-78-015. Further interpretations of EPA policy are found in the Blue Book, referred to in footnote one. In general, these guidance documents have been set forth to ensure that VOC rules are fully enforceable and strengthen or maintain the SIP.

Currently, there is no version of MDAQMD Rule 1115, Miscellaneous Metal Parts and Products Coating Operations, in the SIP. The submitted rule includes the following provisions: rule applicability; definitions, coating requirements; add-on emission control device requirements; exceptions from the rule; administrative requirements; monitoring and records; and test methods for determining compliance with the rule.

EPA has evaluated the submitted rule and has determined that it is consistent with the CAA, EPA regulations, and EPA policy. Therefore, MDAQMD Rule 1115, Miscellaneous Metal Parts and

Products Coating Operations, is being approved under section 110(k)(3) of the CAA as meeting the requirements of section 110(a) and part D. For further information, EPA's review of the April 22, 1996 version of Rule 1115 can be found in the "Technical Support Document" for today's rulemaking action.

As discussed earlier, in response to EPA's January 5, 1993 proposed limited approval/disapproval action, the MDAQMD Board amended Rule 1115 on April 22, 1996. The MDAQMD Board responded to EPA's comments within the proposed limited approval/disapproval and subsequent correspondence by correcting the listed rule deficiencies and providing a rule consistent with EPA regulations and policy. Therefore, given today's approval action, EPA does not intend to finalize the January 5, 1993 proposal.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future implementation plan. Each request 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.

EPA is publishing this document without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in a separate document in this **Federal Register** publication, the EPA is proposing to approve the SIP revision should adverse or critical comments be filed. This action will be effective February 23, 1998, unless, within 30 days of its publication, adverse or critical comments are received.

If the EPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on this action serving as a proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective February 23, 1998.

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 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 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 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 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.

D. Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A) as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of the rule in today's **Federal Register**. This rule is not a "major" rule as defined by 5 U.S.C. 804(2).

E. 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 23, 1998. 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: September 27, 1997.

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 paragraph (c)(239)(i)(A)(2) to read as follows:

§ 52.220 Identification of plan.

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(c) * * *
(239) * * *
(i) * * *
(A) * * *

(2) Rule 1115, adopted on March 2, 1992 and amended on April 22, 1996.

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[FR Doc. 97-33321 Filed 12-22-97; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[Region II Docket No. NY10-2-174; FRL-5934-7]

Approval and Promulgation of Implementation Plans; Revisions to the New York State Implementation Plan for Ozone

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency is approving a revision to the New York State Implementation Plan (SIP) related to the control of volatile organic compounds. The SIP revision consists of amendments to Part 200, "General Provisions," Part 201, "Permits and Certificates," Part 228, "Surface Coating Processes," Part 229, "Petroleum and Volatile Organic Liquid Storage," Part 233, "Pharmaceutical and Cosmetic Manufacturing Processes," and Part 234, "Graphic Arts." The amendments extend reasonably available control technology rules to enlarged nonattainment areas and to all of New York State which is part of the Northeast Ozone Transport Region as required by the Clean Air Act. In addition, the amendments to Part 228 correct deficiencies in New York's existing SIP, as required by the Clean Air Act.

EFFECTIVE DATE: This rule is effective January 22, 1998.

ADDRESSES: Copies of the State submittal are available at the following addresses for inspection during normal business hours:

Environmental Protection Agency, Region II Office, Air Programs Branch, 290 Broadway, 25th Floor, New York, New York 10007-1866.

New York State Department of Environmental Conservation, Division of Air Resources, 50 Wolf Road, Albany, New York 12233.

Environmental Protection Agency, Air and Radiation Docket and Information Center, Air Docket (6102), 401 M Street, S.W., Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT: Paul R. Truchan, Air Programs Branch, Environmental Protection Agency, 290 Broadway, 25th Floor, New York, New York 10278, (212) 637-4249.

SUPPLEMENTARY INFORMATION: On May 24, 1995, the Environmental Protection Agency (EPA) published in the **Federal Register** (60 FR 27464) a Notice of Proposed Rulemaking (NPR) concerning a revision to the New York State Implementation Plan (SIP) for ozone. The State requested the SIP be revised to incorporate revised regulations contained in Title 6 of the New York Code of Rules and Regulations (NYCRR) Part 200, "General Provisions," Part 201 "Permits and Certificates," Part 228, "Surface Coating Processes," Part 229 "Petroleum and Volatile Organic Liquid Storage and Transfer," Part 233, "Pharmaceutical and Cosmetic Manufacturing Processes," and Part 234, "Graphic Arts." These regulations were adopted on February 26, 1993, and became effective on April 4, 1993.

Final Action

The revisions and the rationale for EPA's action were explained in EPA's May 24, 1995 NPR and will not be restated here since EPA's final action does not differ from that proposed in the NPR. No comments were received on EPA's proposed action. EPA is approving Parts 200, 201, 228, 229, 233 and 234 because they are consistent with EPA policy and guidance and also meet the requirements of sections 110, 182(a)(2)(A), 182(b)(2) and 184(b) of the Clean Air Act.

It should be noted that sections 228.3(e), 229.3(g) and (h), 233.3(h), and 234.3(f) permit the Commissioner of the New York State Department of Environmental Conservation (NYSDEC) to accept a lesser degree of control (alternative requirements) upon submission of satisfactory technical and/or economic evidence that the source has applied reasonably available control technology. These provisions also require that any lesser degree of control must be submitted to the EPA as a revision to the SIP. EPA views these provisions as giving the Commissioner the authority to permit alternative requirements once they have been submitted and approved by EPA as SIP revisions. EPA will not recognize any variance or alternate requirement as being federally enforceable until it is submitted to EPA by the State and is approved by EPA as a source specific SIP revision.

Sections 229.4(a)(4), 233.4(b)(4) and 234.4(b)(1)(iv) permits the Commissioner and EPA to accept