

1113, Architectural Coatings is being proposed for approval under section 110(k)(3) of the CAA in light of EPA's authority pursuant to section 301(a) to adopt regulations necessary to further air quality by strengthening the SIP. The submitted version of Rule 1113 strengthens the SIP by updating a portion of the SIP for the Los Angeles Air Basin that has not been revised since 1985. EPA notes, however, that the submitted rule does not fulfill SCAQMD's SIP-approved commitment in CTS-07 to reduce VOCs from architectural coatings by 75%. Air quality progress and attainment of the public health-based ozone standard both require that the District pursue expeditiously further emission reductions from this large segment of the South Coast VOC emissions inventory.

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 Executive Order (E.O.) 12866 review.

The proposed rule is not subject to E.O. 13045, entitled "Protection of Children from Environmental Health Risks and Safety Risks," because it is not an "economically significant" action under E.O. 12866.

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 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 *et seq.*

Dated: June 7, 1998.

Felicia Marcus,

Regional Administrator, Region IX.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[OH116-1; FRL-6112-8]

Approval and Promulgation of Maintenance Plan Revisions; Ohio

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The United States Environmental Protection Agency (EPA) is proposing to approve an April 27, 1998, request from Ohio, for State Implementation Plan (SIP) maintenance plan revision for the Dayton-Springfield (Montgomery, Clark, Greene and Miami Counties) ozone maintenance area. The revision would remove the air quality triggers from the area's contingency plan. The contingency plans were included in the areas' maintenance plan to correct violations of the one hour ozone National Ambient Air Quality Standard (NAAQS), which has been proposed to be revoked for this area.

DATES: Written comments on this proposal must be received on or before July 20, 1998.

ADDRESSES: Copies of the documents relevant to this action are available for inspection during normal business hours at the following location: Regulation Development Section, Air Programs Branch, (AR-18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Please contact Scott Hamilton at (312) 353-4775 before visiting the Region 5 office.

Written comments should be sent to: J. Elmer Bortzer, Chief, Regulation Development Section, Air Programs Branch, (AR-18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Scott Hamilton, Environmental Scientist, Regulation Development Section, Air Programs Branch (AR-18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353-4775.

SUPPLEMENTARY INFORMATION:

I. Attainment Areas in Ohio

Since the initial Clean Air Act (CAA) attainment status designations were made, the Dayton area has attained the one hour ozone standard and has been redesignated to attainment status for ozone. As a requirement to being redesignated to attainment status, the

area developed a maintenance plan. The purpose of the maintenance plan is to assure maintenance of the one hour ozone NAAQS for at least ten years.

The maintenance plan included contingency provisions. The purpose of the contingency provisions are to identify and correct any violation of the one hour ozone NAAQS in a timely fashion. Triggers are included in the contingency provisions to identify the need to implement measures and correct air quality problems until such time as a revised maintenance or attainment plan could be developed to address the level of the air quality problem. Triggering events in the contingency plans could be linked to ozone air quality and/or an emission level of ozone precursors.

Dayton's maintenance plan was finalized by EPA and published in the **Federal Register** on May 5, 1995 (60 FR 22289).

II. One Hour Ozone Standard Revocation

On July 18, 1997, EPA finalized a revision to the NAAQS for ozone which changed the standard from 0.12 parts per million (ppm) averaged over one hour, to 0.08 ppm, averaged over eight hours. The EPA is revoking the one hour standard in separate rulemakings based on an area's attainment of the one hour ozone standard. The first round of revocations will be for areas attaining the one hour standard based on quality assured air monitoring data for the years 1994–1996. The second round of one hour ozone standard revocations will be for areas attaining the one hour standard based on quality assured air monitoring data for the years 1995–1997. After these two rulemakings are finalized, EPA intends to publish rulemakings on an annual basis revoking the one hour ozone standard for additional areas that come into attainment of the one hour standard.

On May 18, 1998, EPA published a proposed rule (63 FR 27247) in the **Federal Register** proposing to revoke the one hour ozone standard in areas attaining the one hour standard based on quality assured air monitoring data for the years 1995–1997. In that proposal, EPA proposed to revoke the one hour ozone standard in the Dayton, Ohio ozone maintenance area.

On July 16, 1997, President Clinton issued a directive to Administrator Browner on implementation of the new ozone standard, as well as the current one hour ozone standard (62 FR 38421). In that directive the President laid out a plan on how the new ozone and particulate matter standards, as well as the current one hour standard, are to be

implemented. A December 29, 1997, memorandum entitled "Guidance for Implementing the 1-Hour and Pre-Existing PM10 NAAQS," signed by Richard D. Wilson, EPA's Acting Assistant Administrator for Air and Radiation, reflected that directive. The purpose of the guidance reflected in the memorandum is to ensure that the momentum gained by States to attain the one hour ozone NAAQS was not lost when moving toward implementing the eight hour ozone NAAQS.

The guidance document explains that maintenance plans will remain in effect for areas where the one hour standard is revoked; however, those maintenance plans may be revised to withdraw certain contingency measure provisions that have not been triggered or implemented prior to EPA's determination of attainment and revocation. Where the contingency measure is linked to the one hour ozone standard or air quality ozone concentrations, the measures may be removed from the maintenance plan. Measures linked to non-air quality elements, such as emissions increases or vehicle miles traveled, may be removed if the State demonstrates that removing the measure will not affect an area's ability to attain the eight hour ozone standard.

In other words, after the one hour standard is revoked for an area, EPA believes it is permissible to withdraw contingency measures designed to correct violations of that standard. Since such measures were designed to address future violations of a standard that no longer exists, it is no longer necessary to retain them. Furthermore, EPA believes that future attainment and maintenance planning efforts should be directed toward attaining the eight hour ozone NAAQS. As part of the implementation of the eight hour ozone standard, the State's ozone air quality will be evaluated and eight hour attainment and nonattainment designations will be made.

III. Review of the State Submittal

In a letter from Donald R. Schregardus, Director, Ohio Environmental Protection Agency (OEPA) received by EPA on April 27, 1998, OEPA officially requested that all air quality triggers be deleted from the maintenance plans for the areas in Ohio now attaining the one hour ozone standard and where EPA has proposed to revoke the one hour standard. On May 18, 1998, EPA proposed to revoke the one hour ozone standard in the Dayton area. Therefore, in this **Federal Register** document, EPA is proposing to delete the air quality trigger in the

Dayton area's maintenance plan. In a previous Notice of Proposed Rulemaking, EPA proposed the deletion of air quality triggers in maintenance plans for other Ohio areas (where the one hour standard was proposed to be revoked) (see 63 FR 27895).

The OEPA has officially announced a public hearing on this matter to be held on June 1, 1998.

EPA believes that Ohio's request is consistent with the December 29, 1997 guidance document and the July 16, 1997 Presidential Directive, and that the request is approvable.

This revision approval is being proposed under a procedure called parallel processing, whereby EPA proposes rulemaking action concurrently with the State's procedures for amending its regulations. If the proposed revision is substantially changed, EPA will evaluate those changes and may publish another notice of proposed rulemaking. If no substantial changes are made other than any consistent with this document, the EPA will publish a final rulemaking on the revisions. The final rulemaking action by EPA on Ohio's request to revise the maintenance plan to remove the air quality trigger will occur only after the one hour ozone standard has been revoked in final and Ohio's public hearing documentation is submitted to the EPA.

IV. EPA Proposed Action

The EPA is proposing to approve the requested revision to the Dayton area's maintenance plan. The EPA is parallel processing this request concurrent with State proceedings on the affected provision. Written comments must be received by EPA on or by July 20, 1998.

V. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget has exempted this regulatory action from Executive Order 12866 review.

B. Executive Order 13045

The proposed rule is not subject to Executive Order 13045, titled "Protection of Children's Health from Environmental Health Risks and Safety Risks," because it is not an "economically significant" action under Executive Order 12866.

C. Future Requests

Nothing in this action should be construed as permitting, allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to the SIP shall be considered separately in light of specific technical, economic, and environmental

factors and in relation to relevant statutory and regulatory requirements.

D. Regulatory Flexibility

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 government entities with jurisdiction. This proposed 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 a flexibility analysis would constitute Federal inquiry into the economic

reasonableness of the 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, 256–66 (1976) 42 U.S.C. 7410(a)(2).

E. Unfunded Mandates

Under Section 202 of the Unfunded Mandates Reform Act of 1995, signed into law on March 22, 1995, EPA must undertake various actions in association with 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. 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 the private sector, result from this action.

F. Audit Privilege and Immunity Law

Nothing in this action should be construed as making any determination or expressing any position regarding Ohio's audit privilege and immunity law (sections 3745.70—3745.73 of the Ohio Revised Code). EPA will be reviewing the effect of the Ohio audit privilege and immunity law on various

Ohio environmental programs, including those under the Clean Air Act, and taking appropriate action(s), if any, after thorough analysis and opportunity for Ohio to state and explain its views and positions on the issues raised by the law. The action taken herein does not express or imply any viewpoint on the question of whether there are legal deficiencies in this or any Ohio Clean Air Act program resulting from the effect of the audit privilege and immunity law. As a consequence of the review process, the regulations subject to the action taken herein may be disapproved, federal approval for the Clean Air Act program under which they are implemented may be withdrawn, or other appropriate action may be taken, as necessary.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Intergovernmental relations, Nitrogen oxides, Ozone.

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

Dated: June 2, 1998.

David A. Ullrich,

Acting Regional Administrator.

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