List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone.

Dated: August 12, 1998.

W. Michael McCabe,

Regional Administrator, Region III.

40 CFR part 52 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 V—Maryland

2. Section 52.1070 is amended by adding paragraphs (c) (133), (134), and (135) to read as follows:

§ 52.1070 Identification of plan.

* * * * *

(c) * * *

(133) Limited approval of revisions to the Maryland State Implementation Plan submitted on April 5, 1991 by the Maryland Department of the Environment:

(i) Incorporation by reference.

(A) Letter of April 5, 1991 from the Maryland Department of the Environment transmitting additions to Maryland's State Implementation Plan, pertaining to volatile organic compound regulations in Maryland's air quality regulations, Code of Maryland Administrative Regulations (COMAR) 26.11.

(B) Addition of COMAR 26.11.19.02G, Control of Major Sources of Volatile Organic Compounds, pertaining to major VOC source RACT requirements, adopted by the Secretary of the Environment on March 9, 1991 and effective on May 8, 1991.

(ii) Additional Material.

(A) Remainder of the April 5, 1991 Maryland State submittal pertaining to COMAR 26.11.19.02G.

(134) Limited approval of revisions to the Maryland State Implementation Plan submitted on June 8, 1993 by the Maryland Department of the Environment:

(i) Incorporation by reference.

(A) Letter of June 8, 1993 from the Maryland Department of the Environment transmitting additions and deletions to Maryland's State Implementation Plan, pertaining to volatile organic compound regulations in Maryland's air quality regulations, Code of Maryland Administrative Regulations (COMAR) 26.11.

(B) Revisions to COMAR 26.11.06.06, Volatile Organic Compounds, pertaining to minor source VOC requirements, adopted by the Secretary of the Environment on March 26, 1993, and effective on April 26, 1993.

(1) Amendments to COMAR 26.11.06.06A, Applicability.

(2) Amendments to COMAR 26.11.06.06B, Control of VOC from Installations.

(C) Revisions to COMAR 26.11.19.02G, Control of Major Stationary Sources of Volatile Organic Compounds, pertaining to major VOC source RACT requirements, adopted by the Secretary of the Environment on March 26, 1993, and effective on April 26, 1993.

(ii) Additional Material.

(A) Remainder of the June 8, 1993 Maryland State submittal pertaining to COMAR 26.11.06.06A, COMAR 26.11.06.06B, and COMAR 26.11.19.02G.

(135) Limited approval of revisions to the Maryland State Implementation Plan submitted on July 12, 1995 by the Maryland Department of the Environment:

(i) Incorporation by reference.

(A) Letter of July 12, 1995 from the Maryland Department of the Environment transmitting additions and deletions to Maryland's State Implementation Plan, pertaining to volatile organic compound regulations in Maryland's air quality regulations, Code of Maryland Administrative Regulations (COMAR) 26.11.

(B) Revisions to COMAR 26.11.19.02G, Control of Major Stationary Sources of Volatile Organic Compounds, pertaining to major VOC source RACT requirements, adopted by the Secretary of the Environment on April 13, 1995, and effective on May 8, 1995.

(ii) Additional Material.

(A) Remainder of the July 12, 1995 Maryland State submittal pertaining to COMAR 26.11.19.02G.

3. Section 52.1073 is amended by adding paragraph (e) to read as follows:

§ 52.1073 Approval status.

* * * * *

(e) Conditional limited approval of revisions to the Maryland State Implementation Plan, pertaining to Maryland's major VOC source RACT and minor VOC source requirements, COMAR 26.11.19.02G and COMAR 26.11.06.06, submitted on April 5, 1991, June 8, 1993, and July 12, 1995 by the Maryland Department of the Environment.

4. Section 52.1072 is amended by adding paragraph (d) to read as follows:

§ 52.1072 Conditional approval.

* * * * *

(d) Revisions to the Maryland State Implementation Plan pertaining to Maryland's major VOC source RACT and minor VOC source requirements, COMAR 26.11.19.02G and COMAR 26.11.06.06, submitted on April 5, 1991, June 8, 1993, and July 12, 1995 by the Maryland Department of the Environment are conditionally approved. Maryland must meet the following conditions by no later than 12 months after the publication of the final conditional rulemaking. These conditions are: Maryland certify that it has submitted case-by-case RACT proposals for all sources subject to the RACT requirements; or demonstrate that the emissions from any remaining subject sources represent a de minimis level of emissions, as defined in the final rulemaking notice.

(i) Additional Material.

(A) Letter of February 7, 1996 from the Maryland Department of the Environment agreeing to meet certain conditions by no later than 12 months after the publication of the final conditional rulemaking. These conditions are: Maryland submit case-by-case RACT proposals for all sources subject to the RACT requirements; Maryland certify that, to the best of its knowledge, there are no other sources subject to the RACT requirements.

[FR Doc. 98–23504 Filed 9–3–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 20–7–0084a FRL–6138–8]

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

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action on revisions to the California State Implementation Plan. The revisions concern rules from the Bay Area Air Quality Management District (BAAQMD). The rules control particulate matter (PM) emissions from sources of open burning and visible emissions. This approval action will incorporate these rules into the federally approved SIP. The intended effect of approving these rules is to regulate emissions of PM in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). Thus, EPA is finalizing the approval of

these revisions into the California SIP under provisions of the CAA regarding EPA action on SIP submittals and SIPs for national primary and secondary ambient air quality standards.

DATES: This rule is effective on November 3, 1998 without further notice, unless EPA receives relevant adverse comments by October 5, 1998. If EPA receives such comments, then it will publish a timely withdrawal in the **Federal Register** informing the public that this rule did take effect.

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, SW, Washington, DC 20460

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: Karen Irwin, Rulemaking Office, AIR–4, Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105, Telephone: (415) 744–1903

SUPPLEMENTARY INFORMATION:

I. Applicability

The rules being approved into the California SIP include: BAAQMD Regulation 5, Open Burning, and Regulation 6, Visible Emissions. These rules were submitted by the California Air Resources Board to EPA on March 10, 1998 and May 13, 1991, respectively.

II. Background

On March 3, 1978, EPA promulgated a list of total suspended particulate (TSP) nonattainment areas under the provisions of the 1977 Clean Air Act (1977 CAA or pre-amended Act, 43 FR 8964; 40 CFR Part 81). On July 1, 1987 (52 FR 24672) EPA replaced the TSP standards with new PM standards applying only to PM up to 10 microns in diameter (PM–10).[1] On November 15, 1990, amendments to the 1977 CAA were enacted. Pub. L. 101–549, 104 Stat. 2399, codified at 42 U.S.C. 7401–7671q. On the date of enactment of the 1990 CAA Amendments, PM–10 areas meeting the qualifications of section 107(d)(4)(B) of the Act were designated nonattainment by operation of law and classified as moderate pursuant to section 188(a). The San Francisco Bay Area Air Basin was not among the areas designated nonattainment for TSP or PM–10.

As part of updating the California SIP, the State of California submitted many PM–10 rules for incorporation into the California SIP on March 10, 1998 and May 13, 1991, including the rules being acted on in this document. This document addresses EPA's direct-final action for BAAQMD Regulation 5, Open Burning, and Regulation 6, Visible Emissions. BAAQMD adopted Regulation 5 on November 11, 1994 and Regulation 6 on December 19, 1990. These submitted rules were found to be complete on May 21, 1998 and July 10, 1991, respectively, pursuant to EPA's completeness criteria that are set forth in 40 CFR part 51, Appendix V[2] and are being finalized for approval into the SIP.

Regulation 5 controls emissions from open burning and Regulation 6 is a generally applicable rule that controls visible emissions from a variety of sources. PM emissions can harm human health and the environment. This rule was originally adopted as part of BAAQMD's effort to maintain the National Ambient Air Quality Standard (NAAQS) for PM–10. The following is EPA's evaluation and final action for these rules.

III. EPA Evaluation and Action

In determining the approvability of a PM–10 rule, EPA must evaluate the rule for consistency with the requirements of the CAA and EPA regulations, as found in section 110 and 40 CFR part 51 (Requirements for Preparation, Adoption, and Submittal of Implementation Plans). EPA must also ensure that rules are enforceable and strengthen or maintain the SIP's control strategy.

On September 2, 1981, EPA approved into the SIP a version of Regulation 5, Open Burning and a version of Regulation 6, Visible Emissions, that had been adopted by BAAQMD on September 5, 1979. BAAQMD's submitted Regulation 5, Open Burning, includes the following significant changes from the current SIP:

- Modifies the definition of ''permissive burn day'' to exclude days when open burning is estimated to adversely affect ambient air quality or downwind population. This language replaces the SIP-approved rule's more vague language that a permissive burn is declared when air pollution caused by open burning may be minimized.
- Modifies the definition of hazardous material to include natural vegetation or native growth cleared to maintain a firebreak around any building to reduce risk of wildfire.
- Adds new requirements for agricultural fires set for the purpose of disposing grain stubble where both grain and vegetable crops are harvested during the same calendar year.
- Adds acreage burning allotment limitations on a daily basis for stubble fires and prohibits fires prior to 10:00 AM. Limits fire ignition techniques (to relatively clean techniques) unless field conditions do not lend themselves to these techniques. Adds a crackle moisture test requirement following rain. Requires a prior acreage burning allocation from the APCO before a stubble burn occurs. Adds a ''crackle'' test procedure for appraisal of field crop fuel moisture of stubble or straw.
- Allows fires for disposal of hazardous materials in compliance with Section 4291 of the Public Resources Code provided all of a series of additional conditions are satisfied.
- Limits the time of day wildlife management fires can be set and establishes acreage limitations for burning.
- Adds provisions to limit the amount of waste propellants, explosives and pyrotechnics that can be burned per facility, requires documentation of burns and requires installation of permitted on-site and off-site waste treatment systems by January 1, 1997. The submitted rule prohibits burning of waste propellants after January 1997.
- Adds a provision for burning to dispose of contraband requiring prior notification to the BAAQMD.
- Adds provisions for wildland vegetation management burning, filmmaking burning and civic event burning. The submitted rule requires prior approval of burn plans by the BAAQMD for these types of fires.
- Eliminates a reporting requirement to the District following a burn for written records indicating the location

[1] On July 18, 1997 EPA promulgated revised and new standards for PM–10 and PM–2.5 (62 FR 38651). EPA has not yet established specific plan and control requirements for the revised and new standards.

[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).

of the fire, type of material burned and quantity burned.

- Adds a provision specifying prior notification requirements for the types of burns where notification is required (per the SIP-approved rule).

BAAQMD's submitted Regulation 6, Visible Emissions, includes the following significant changes from the current SIP:

- Adds exemptions for open outdoor fires (subject to BAAQMD Regulation 5) and temporary sandblasting operations (subject to BAAQMD Regulation 12, Rule 4).
- Adds a provision for diesel pile-driving hammers to require that a Ringlemann 1 (20% opacity) standard cannot be exceeded for more than four minutes during the driving of a single pile unless the operator uses kerosene, smoke suppressing fuel additives and synthetic lubricating oil. If these cleaner products are used, a Ringlemann 2 (40% opacity) limit applies which cannot be exceeded for more than four minutes during the driving of a single pile. Also, records must be maintained demonstrating use of the cleaner products. In reference to SIP-approved Regulation 6, diesel pile-driving hammers are included under a Ringlemann 2 standard which cannot be exceeded for more than three minutes an hour.

EPA has evaluated the submitted rules and has determined that they are consistent with the CAA, EPA regulations, and EPA policy. Therefore, BAAQMD Regulation 5, Open Burning, and Regulation 6, Visible Emissions, are being approved under section 110(k)(3) of the CAA as meeting the requirements of section 110(a).

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

EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should relevant adverse comments be filed. This rule will be effective November 3, 1998 without further notice unless the Agency receives relevant adverse comments by October 5, 1998.

If the EPA received such comments, then EPA will publish a timely withdrawal of the direct final rule and inform the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on proposed rule. The EPA will not institute a second comment period on this rule. Any parties interested in commenting on this rule should do so at this time. If no such comments are received, the public is advised that this rule will be effective on November 3, 1998 and no further action will be taken on the proposed rule.

IV. Administrative Requirements

A. Executive Order 12866

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

The final 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 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

The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit 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 United States prior to publication of the rule in the **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 November 3, 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, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements, Particulate matter.

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: July 23, 1998.

Clyde Morris,

Acting 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 paragraphs (c)(184)(i)(C)(*2*) and (254)(i)(F) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(184) * * *

(i) * * *

(C) * * *

(*2*) Regulation 6, adopted on December 19, 1990.

* * * * *

(254) * * *

(i) * * *

(F) Bay Area Air Quality Management District.

(*1*) Regulation 5, adopted on November 2, 1994.

[FR Doc. 98–23817 Filed 9–3–98; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Part 220

[Docket No. RSOR–12; Notice No. 5]

RIN 2130–AB19

Railroad Communications

AGENCY: Federal Railroad Administration (FRA), DOT.

ACTION: Final rule.

SUMMARY: The Federal Railroad Administration (FRA) amends its radio standards and procedures to promote compliance by making the regulations more flexible; to require wireless communications devices, including radios, for specified classifications of railroad operations and roadway workers; and to retitle this part to reflect its coverage of other means of wireless communications such as cellular telephones, data radio terminals and other forms of wireless communications used to convey emergency and need to know information.

This final rule is based upon recommendations from a rail industry and labor working group convened by FRA and upon review of comments received in response to the June 26, 1997 notice of proposed rulemaking (62 FR 34544).

DATE: *Effective Date:* This rule is effective January 4, 1999. *Compliance Dates:* Sections 220.9 and 220.11 are effective July 1, 1999 for each railroad that:

(1) provides commuter service in a metropolitan or suburban area;

(2) provides intercity passenger service; or

(3) had 400,000 or more annual employee work hours in 1997.

Sections 220.9 and 220.11 are applicable July 1, 2000 for each railroad that had fewer than 400,000 annual employee work hours in 1997.

ADDRESSES: Any petition for reconsideration should be submitted in triplicate to Ms. Renee Bridgers, Docket Clerk, Office of Chief Counsel, Federal Railroad Administration, 400 Seventh Street, S.W., Washington, D.C. 20590.

FOR FURTHER INFORMATION CONTACT: Gene Cox, Operating Practices Specialist, Office of Safety, FRA, 400 Seventh Street S.W., Washington, D.C. 20590 (telephone: 202–493–6319); Dennis Yachechak, Operating Practices Specialist, Office of Safety, FRA, 400 Seventh Street S.W., Washington, D.C. 20590 (telephone: 202–493–6260); or Patricia V. Sun, Trial Attorney, Office of Chief Counsel, FRA, 400 Seventh Street S.W., Washington, D.C. 20590 (telephone: 202–493–6060).

SUPPLEMENTARY INFORMATION:

FRA's 1994 Report to Congress

FRA first issued railroad radio standards and procedures (49 CFR Part 220) in 1977. In 1992, in section 11 of the Rail Safety Enforcement and Review Act (RSERA), Pub. L. No. 102–365, 106 Stat. 972, Congress required the Secretary of Transportation to conduct an inquiry into Part 220 procedures. As part of its inquiry, FRA conducted a field investigation of current voice communications technology and practice, held three Roundtable discussions on advanced train control technologies, published a notice of special safety inquiry (59 FR 11847; March 11, 1994), conducted a public hearing on voice radio communications, contracted with the Department of Commerce's Institute for Telecommunications Sciences for a technical evaluation of advanced train control systems, and consulted with other agencies within DOT and with staff of the Federal Communications Commission.

In July 1994, FRA published its Report to Congress on Railroad Communications and Train Control. FRA concluded that railroad radio communications were generally good and had steadily improved since FRA's last major study in 1987. However, compliance with the standards and procedures in Part 220 was poor, and employees continued to report problems with radio equipment. (FRA's June 26, 1997 notice of proposed rulemaking, discussed below, details the technology application and utilization problems (62 FR 34544–45) uncovered during the inquiry.) Based on these findings, FRA committed to revising Part 220 to make the regulations more flexible.

Railroad Safety Advisory Committee's Review of Part 220

In 1996, FRA established the Railroad Safety Advisory Committee (RSAC or the Committee) to implement a more consensual approach to rulemaking. RSAC is comprised of 48 representatives from 27 member organizations, including railroads, labor groups, equipment manufacturers, state government groups, public associations, and two associate non-voting representatives from Canada and Mexico. To address specific tasks, such as railroad communications, RSAC formed standing or temporary subcommittees, or working groups, comprised of knowledgeable persons from the organizations represented on RSAC. The Railroad Communications Working Group (Working Group or Group) was comprised of representatives from the following organizations:

American Public Transit Association (APTA)
The American Short Line Railroad Association (ASLRRA)
Association of American Railroads (AAR)
Brotherhood of Locomotive Engineers, American Train Dispatchers Department (BLE)
Brotherhood of Maintenance of Way Employes (BMWE)
Brotherhood of Railroad Signalmen
Burlington Northern Santa Fe
Canadian Pacific Rail System
Consolidated Rail Corporation (Conrail)
CSX Transportation, Inc.