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40 CFR Part 52

[CA 157-0022a; FRL-5669-1]

Clean Air Act Approval and Promulgation of Emission Reduction Credit Banking Provisions; Implementation Plan for California State Mojave Desert 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 (SIP). The revisions concern rules from the Mojave Desert Air Quality Management District (MDAQMD or the District). This approval action will incorporate these rules into the federally approved SIP. The intended effect of approving these rules is to control air pollution in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act) with regard to new source review (NSR) in areas of MDAQMD that are not in attainment of the national ambient air quality standards (NAAQS). Thus, EPA is finalizing the approval of these revisions 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 March 24, 1997 unless adverse or critical comments are received by February 21, 1997. If the effective date is delayed, a timely notice will be published in the Federal Register.

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

Permitting Office (A-5-1), 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 95814
 Mojave Desert AQMD, 15428 Civic Drive, Suite 200, Victorville, CA 92392-2383.

FOR FURTHER INFORMATION CONTACT: Steve Ringer, Permitting Office (A-5-1), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105, Telephone: (415) 744-1260.

SUPPLEMENTARY INFORMATION:**Applicability**

The rules being approved into the California SIP include: rule 1400, General; rule 1401, Definitions; rule 1402, Emission Reduction Credit Registry; and rule 1404, Emission Reduction Credit Calculation. These rules were adopted on June 28, 1995, and were submitted by the State of California to EPA on August 10, 1995 (rules 1400, 1401, 1402, and 1404 will hereafter be referred to as the "submitted rules").

This document promulgates EPA's direct-final action for the submitted rules. These submitted rules were found to be complete on October 4, 1995, pursuant to EPA's completeness criteria that are set forth in 40 CFR part 51 Appendix V¹ and are being finalized for approval into the SIP. The submitted rules establish a system by which the District will calculate and bank reductions in emissions prior to use as offsets for future increases in emissions.

Background

The air quality planning requirements for nonattainment areas are set out in 40 CFR 51.165. The general requirements for the use of emission reductions are set out in EPA's Emissions Trading Policy Statement (ETPS), at 51 FR 43814, December 4, 1986.

Section 173 of the Clean Air Act requires that major new sources and major modifications in nonattainment areas obtain offsetting emission reductions as a part of the preconstruction permitting process. The submitted rules create a system to provide for the banking and transfer of such reductions. As detailed in 40 CFR 51.165 and EPA's ETPS, offsets must reflect reductions in actual emissions, and they must be enforceable, permanent, quantifiable, and surplus of other regulatory requirements. For a description of how the submitted rules ensure that emission reductions meet these requirements, please refer to EPA's Technical Support Document (TSD) for this action.

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).

EPA Evaluation and Action

EPA has evaluated the submitted rules and has determined that they are consistent with the CAA, EPA regulations, and EPA policy. Therefore, MDAQMD rules 1400, 1401, 1402, and 1404 are being approved under section 110(k)(3) of the CAA as meeting the requirements of section 110(a) and part D.

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 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 March 24, 1997, unless, by February 21, 1997, 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 March 24, 1997.

Regulatory Process

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 a population of less than 50,000.

SIP approvals under sections 110 and 301(a) 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 regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of State action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co. v. U.S. E.P.A.*, 427 U.S. 246, 256-66 (S. Ct. 1976); 42 U.S.C. 7410 (a)(2).

Unfunded Mandates

Under Sections 202, 203, and 205 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must undertake various actions in association with proposed or final rules that include a Federal mandate that may result in estimated costs of \$100 million or more to the private sector or to State, local, or tribal governments in the aggregate.

Through submission of this State implementation plan or plan revision, the State and any affected local or tribal governments have elected to adopt the program provided for under Part D of the Clean Air Act. These rules may bind State, local, and tribal governments to perform certain actions and also require the private sector to perform certain duties. The rules being approved by this action will impose no new requirements because affected sources are already subject to these regulations under State law. Therefore, no additional costs to State, local, or tribal governments or to the private sector result from this action. EPA has also determined that this final action does not include a mandate that may result in estimated costs of \$100 million or more to State, local, or tribal governments in the aggregate or to the private sector.

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).

This action has been classified as a Table 3 action for signature by the Regional Administrator under the procedures published in the Federal Register on January 19, 1989 (54 FR 2214-2225), as revised by a July 10, 1995 memorandum from Mary Nichols, Assistant Administrator for Air and

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

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: December 8, 1996.

Felicia Marcus,

Regional Administrator.

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. 7401-7671q.

Subpart F—California

2. Section 52.220 is amended by adding paragraph (c)(224)(i)(C) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(224) * * *

(i) * * *

(C) Mojave Desert Air Quality Management District.

(1) Rules 1400, 1401, 1402, 1404.

Adopted on June 28, 1995.

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[FR Doc. 97-1421 Filed 1-21-97; 8:45 am]

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40 CFR Part 52

[IN70-1a; FRL-5675-2]

Approval and Promulgation of Implementation Plans; Indiana

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: On February 13, 1996, and June 27, 1996, the State of Indiana submitted, as a requested revision to the State Implementation Plan (SIP) for ozone, 326 IAC 8-12, a rule controlling volatile organic compound (VOC) emissions from shipbuilding and ship repair coating operations in Clark, Floyd, Lake, and Porter Counties. This

rule is part of the State's 15% Rate-of-Progress (ROP) plan for reducing VOC emissions in Clark and Floyd Counties. VOCs are air pollutants which combine with oxides of nitrogen to form ground-level ozone, a pollutant which can damage lung tissue and cause serious respiratory illness. ROP plans are intended to help areas with ozone problems attain the public health based Federal ozone air quality standard. Indiana expects that the control measures required by this requested SIP revision will reduce VOC emissions by 1,164 pounds per day in Clark and Floyd Counties. In this action, EPA is approving the requested SIP revision through a "direct final" rulemaking; the rationale for this approval is set forth in the SUPPLEMENTARY INFORMATION section of this rulemaking. Elsewhere in this Federal Register, EPA is proposing approval and soliciting comment on this direct final action; if adverse comments are received, EPA will withdraw the direct final and address the comments received in a new final rule; otherwise, no further rulemaking will occur on this requested SIP revision.

DATES: This final rule is effective March 24, 1997 unless adverse comments are received by February 21, 1997. If the effective date is delayed, timely notice will be published in the Federal Register.

ADDRESSES: Written comments can be mailed to: J. Elmer Bortzer, Chief, Regulation Development Section, Air Programs Branch (AR-18J), Air and Radiation Division, U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Copies of the SIP revision request are available for inspection at the following address: (It is recommended that you telephone Mark J. Palermo at (312) 886-6082, before visiting the Region 5 office.) U.S. Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Mark J. Palermo, Air Programs Branch (AR-18J), (312) 886-6082.

SUPPLEMENTARY INFORMATION:

I. Background

Section 182(b)(1) of the Act, as amended in 1990, requires all moderate and above ozone nonattainment areas to achieve a 15% reduction of 1990 emissions of VOC by November 15, 1996. In Indiana, Lake and Porter Counties are classified as "severe" nonattainment for ozone, while Clark and Floyd Counties are classified as "moderate" nonattainment. As such, these counties are subject to the 15%