

ENVIRONMENTAL PROTECTION AGENCY**40 CFR Part 52**

[OR-69-7284a; FRL-5984-7]

Approval and Promulgation of Implementation Plans: Oregon**AGENCY:** Environmental Protection Agency.**ACTION:** Direct final rule.

SUMMARY: Environmental Protection Agency (EPA) approves a revision to the Oregon State Implementation Plan. This revision establishes a source specific Reasonable Available Control Technology (RACT) determination for Dura Industries, Inc. at 4466 NW Yeon, Portland, Oregon 97210. This action is taken under Part D of Title I of the Clean Air Act (Act).

DATES: This action is effective on June 1, 1998 unless adverse or critical comments are received by April 30, 1998. If the effective date is delayed, timely notice will be published in the **Federal Register**.

ADDRESSES: Written comments should be addressed to: Montel Livingston, SIP Manager, Office of Air Quality (OAQ-107), EPA, 1200 Sixth Avenue, Seattle, Washington 98101.

Documents which are incorporated by reference are available for public inspection at the Air and Radiation Docket and Information Center, Environmental Protection Agency, 401 M Street, SW, Washington, D.C. 20460. Copies of material submitted to EPA may be examined during normal business hours at the following locations: EPA, Region 10, Office of Air Quality, 1200 Sixth Avenue (OAQ-107), Seattle, Washington 98101, and Oregon Department of Environmental Quality (ODEQ) 811 SW Sixth Ave, Portland, Oregon 97204-1390.

FOR FURTHER INFORMATION CONTACT: Tracy Oliver, Office of Air Quality (OAQ-107), EPA, Seattle, Washington 98101, (206) 553-1388.

SUPPLEMENTARY INFORMATION:**I. Background**

Section 172(a)(2) and (b)(3) of the Act, as amended in 1977, requires sources of volatile organic compounds (VOC) to install, at a minimum, RACT in order to reduce emissions of ozone precursors. EPA has defined RACT as the lowest emission limitation a source is capable of meeting with control technology that is reasonably available, considering technological and economic feasibility (44 FR 53762).

EPA develops Control Technology Guidelines (CTG) to advise state and

local agencies of available air pollution control techniques for reducing emissions from various source categories. CTGs establish "presumptive norm" emission levels based on EPA's evaluation of the capabilities and problems associated with control technologies. EPA has recommended that states adopt RACT requirements consistent with these presumptive norm levels.

In Section 182(a)(2)(A), Congress statutorily adopted the requirement that ozone nonattainment areas improve their deficient RACT rules for ozone precursors. Areas designated nonattainment before the effective date of the 1990 amendments which retained that designation with a marginal or worse classification were subject to RACT "fix-up." States were mandated to correct their RACT requirements by May 15, 1991. The corrected requirements were to be in compliance with section 172(b), as it existed before the 1990 amendments and as interpreted in the pre-amendment guidance. Oregon was subject to this requirement.

On May 13, 1991, the State of Oregon submitted OAR 340-22-100 through OAR 340-22-220, General Emission Standards for Volatile Organic Compounds, as an amendment to the Oregon SIP. On September 29, 1993, EPA approved these revisions and incorporated the rules by reference into the Oregon SIP (58 FR 50848).

The Portland-Vancouver Air Quality Maintenance Area was designated as a non attainment area for ozone in 1978. On October 7, 1982, EPA approved the Portland-Vancouver area ozone attainment plan, including an extended attainment date of December 31, 1987 (47 FR 44262). On November 15, 1990, the area was redesignated to marginal non-attainment under section 181(a)(1) of the 1990 Act for failing to attain the standard. An attainment deadline of November 15, 1993 was established. Ambient air monitoring data from 1991 through 1997 showed no violations of the ozone standard. On May 19, 1997, EPA redesignated the Portland-Vancouver area to attainment for ozone and approved its maintenance plan.

Section 4.50.3.2.3.4 Industrial Emission Strategies of the approved maintenance plan includes RACT requirements for VOC sources. This includes implementing: (1) Oregon Administrative Rule (OAR) 340-022-0104 which requires VOC emission limits for new and existing sources located within the Portland-Vancouver area; and (2) OAR 340-022-0170 which defines the VOC emission limits for surface coating in manufacturing,

consistent with EPA's 1976 CTGs for this source category.

On October 30, 1997, Oregon submitted an alternative RACT determination for Dura Industries, Inc., a high performance architectural coating operation in Portland, Oregon. The alternative RACT determination modifies Dura Industries' Air Contaminant Discharge Permit to allow 6.5 lbs/gal VOC instead of 3.5 lbs/gal VOC, the standard RACT for this source category. The higher VOC content is accompanied by additional requirements on the source to develop compliant coatings. This submission is subject to OAR 340-022-0104 and OAR 340-022-0170.

This **Federal Register** document approves the rule revision as an amendment to the Oregon SIP.

II. Summary of Action

EPA is approving the revision to the Oregon State Implementation Plan submitted on October 30, 1997, as source specific amendment for Dura Industries, Inc. EPA finds the alternative RACT determination meets all of the applicable requirements of the Act and the Oregon SIP.

EPA is not taking action on the entire Air Contaminant Discharge Permit for Dura Industries, Inc., but only the conditions necessary for implementation and enforcement of the RACT requirement in OAR 340-022-0104(4). Because the RACT requirements are contained in the approved SIP, the source specific RACT limits will remain in effect as a matter of state law, even if the Oregon permit expires.

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.

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 become effective without further notice unless the Agency receives relevant adverse comment on the parallel notice of

proposed rulemaking on or before April 30, 1998.

Should the Agency receive such comments, it will publish a document withdrawing this rule. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period on the proposed rule. Any parties interested in commenting on the proposed rule should do so at this time. If no such comments are received, the public is advised that this rule will be effective on June 1, 1998 and no further action will be taken on the proposed rule.

III. 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 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. E.P.A.*, 427 U.S. 246, 256-66 (S.Ct. 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 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 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 Comptroller General

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 June 1, 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), 42 U.S.C. 7607(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Note: Incorporation by reference of the Implementation Plan for the State of Oregon

was approved by the Director of the Office of Federal Register on July 1, 1982.

Dated: March 6, 1998.

Chuck Findley,

Acting Regional Administrator, Region X.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

1. The authority citation for part 52 continues to read as follows:

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

Subpart MM—Oregon

2. Section 52.1970 is amended by adding paragraph (c) (124) to read as follows:

§ 52.1970 Identification of plan.

* * * * *

(c) * * *

(124) On October 30, 1997 the director of the Oregon Department of Environmental Quality (ODEQ) submitted a source specific Reasonable Available Control Technology (RACT) determination as a SIP revision for VOC emissions and standards.

(i) Incorporation by reference.

(A) Letter dated October 30, 1997 from the Director of ODEQ submitting a SIP revision for Dura Industries, Inc., an architectural surface coating operation in Portland, Oregon—permit #26-3112 dated September 14, 1995.

[FR Doc. 98-8057 Filed 3-30-98; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CO-001-0022 and CO-001-0023; FRL-5981-4]

Approval and Promulgation of Air Quality Implementation Plan; Colorado; PM₁₀ and NO_x Mobile Source Emission Budget Plans for Denver, CO

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving the State Implementation Plan (SIP) revisions submitted by the Governor of Colorado on July 18, 1995 and April 22, 1996. The PM₁₀ and NO_x emissions budgets contained in these SIP revisions are used to assess the conformity of transportation plans, transportation improvement programs and, where appropriate, federally funded projects for the applicable periods required by EPA's conformity rules. EPA originally proposed approval of the two emissions