

Proposed Rules

Federal Register

Vol. 63, No. 101

Wednesday, May 27, 1998

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG-119449-97]

RIN 1545-AV75

Qualified Zone Academy Bonds; Hearing Cancellation

AGENCY: Internal Revenue Service, Treasury.

ACTION: Cancellation of notice of public hearing on proposed regulations.

SUMMARY: This document provides notice of cancellation of a public hearing on proposed regulations under section 7805(f) providing guidance to holders and issuers of qualified zone academy bonds.

DATES: The public hearing originally scheduled for Wednesday, May 27, 1998, beginning at 10:00 a.m. is cancelled.

FOR FURTHER INFORMATION CONTACT: LaNita Van Dyke of the Regulations Unit, Assistant Chief Counsel (Corporate), (202) 622-7190, (not a toll free number).

SUPPLEMENTARY INFORMATION: The subject of the public hearing is proposed regulations under section 7805(f) of the Internal Revenue Code. A notice of proposed rulemaking and notice of public hearing appearing in the **Federal Register** on Wednesday, January 7, 1998 (63 FR 707), announced that the public hearing on proposed regulations under section 7805(f) of the Internal Revenue Code would be held on Wednesday, May 27, 1998, beginning at 10:00 a.m., in room 2615, Internal Revenue Building, 1111 Constitution Avenue, NW, Washington DC. The public hearing scheduled for Wednesday, May 27, 1998, is cancelled.

Cynthia E. Grigsby,

Chief, Regulations Unit, Assistant Chief Counsel, (Corporate).

[FR Doc. 98-13925 Filed 5-26-98; 8:45 am]

BILLING CODE 4830-01-U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 013-0073; FRL-6102-1]

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

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing a limited approval and limited disapproval of a revision to the California State Implementation Plan (SIP). This revision concerns the general provisions and definitions that are applicable to all regulations in the Bay Area Air Quality Management District.

The intended effect of proposing a limited approval and limited disapproval of this rule is to clarify the general provisions and definitions that apply to the regulation of emissions of volatile organic compounds (VOCs), oxides of nitrogen (NO_x), and other pollutants in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). EPA's final action on this proposed rule will incorporate this rule into the federally approved SIP. EPA has evaluated the rule and is proposing a simultaneous limited approval and limited disapproval under provisions of the CAA regarding EPA action on SIP submittals and general rulemaking authority. While strengthening the SIP, this revision contains a public nuisance provision and references to a Manual of Procedures that are inappropriate for incorporation into the SIP. The limited disapproval portion of this proposed rulemaking will exclude elements that are not required by the Act.

DATES: Comments must be received on or before June 26, 1998.

ADDRESSES: Comments may be mailed to: Andrew Steckel, Rulemaking Office [AIR-4], Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105-3901.

Copies of the rule are available for public inspection at EPA's Region IX office during normal business hours and at the following locations:

Bay Area Air Quality Management District, 939 Ellis Street, San Francisco, CA 94109
California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 "L" Street, Sacramento, CA 95812

FOR FURTHER INFORMATION CONTACT: Yvonne Fong, Rulemaking Office, [AIR-4], Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105-3901, Telephone: (415) 744-1199.

SUPPLEMENTARY INFORMATION:

I. Applicability

The rule being proposed for approval into the California SIP is Bay Area Air Quality Management District, BAAQMD, Regulation 1, General Provisions and Definitions. This rule was submitted by the California Air Resources Board to EPA on May 13, 1991.

II. Background

On March 3, 1978, EPA promulgated a list of ozone nonattainment areas under the provisions of the 1977 Clean Air Act (1977 CAA or pre-amended Act), that included the San Francisco Bay Area. 43 FR 8964. On May 26, 1988, EPA notified the Governor of California, pursuant to section 110(a)(2)(H) of the pre-amended Act, that the Bay Area Air Quality Management District's portion of the 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, amendments to the 1977 CAA were enacted. Pub. L. 101-549, 104 Stat. 2399, codified at 42 U.S.C. 7401-7671q.

On November 12, 1993, BAAQMD submitted a request for redesignation to attainment of the ozone standard. Subsequently, EPA evaluated and approved BAAQMD's request and the San Francisco Bay Area was reclassified as an attainment area.¹ 40 CFR 81.305.

This document addresses EPA's proposed action for BAAQMD Regulation 1, General Provisions and Definitions. The BAAQMD adopted this

¹ The San Francisco Bay Area was redesignated to attainment. See 60 FR 98 (May 22, 1995). The EPA proposed to redesignate the San Francisco Bay Area back to nonattainment for ozone based on a number of violations of the National Ambient Air Quality Standards (NAAQS) on December 19, 1997. See 62 FR 66578.

rule on December 19, 1990. This submitted rule was found to be complete on July 10, 1991, pursuant to EPA's completeness criteria that are set forth in 40 CFR part 51, appendix V;² and is being proposed for limited approval and limited disapproval.

BAAQMD Regulation 1 clarifies the definitions and general provisions that apply to the regulation of emissions of VOCs, NO_x, and other pollutants. These pollutants contribute to the production of ground level ozone and smog. BAAQMD Regulation 1 was originally adopted as part of BAAQMD's effort to achieve the National Ambient Air Quality Standard (NAAQS) for ozone and has been revised in response to EPA's SIP-Call. The following is EPA's evaluation and proposed action for BAAQMD Regulation 1.

III. EPA Evaluation and Proposed Action

In determining the approvability of a rule, EPA must evaluate the rule for consistency with the requirements of the CAA and EPA regulations, as found in section 110 of the CAA and 40 CFR part 51 (Requirements for Preparation, Adoption, and Submittal of Implementation Plans).

In addition, this rule was evaluated against the SIP enforceability guidelines found in "Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations—Clarification to appendix D of November 24, 1987 **Federal Register**" (EPA's 'Blue Book') and the EPA Region IX—California Air Resources Board document entitled "Guidance Document for Correcting VOC Rule Deficiencies" (April, 1991), and against other EPA policies. In general, these guidance documents have been set forth to ensure that VOC and other rules are fully enforceable and strengthen or maintain the SIP.

EPA previously approved various portions of BAAQMD Regulation 1, General Provisions and Definitions, into the SIP on September 2, 1981, July 6, 1982, and November 10, 1982. These portions were originally adopted by BAAQMD on September 5, 1979, May 21, 1980, December 17, 1980, and March 17, 1982. EPA has evaluated BAAQMD Regulation 1, submitted May 13, 1991, and compared it to the rule currently incorporated in the SIP. BAAQMD's submitted Regulation 1 includes the following significant changes from the SIP:

- The scope of the exemption in section 110.5 has been narrowed to

prohibit the disposal of waste propellants, explosives, or pyrotechnics by manufacturing facilities in open outdoor fires, and

- Definitions for volatile organic compound and reduced sulfur compounds have been added in sections 236 and 237.

Although these changes will strengthen the SIP, this rule also contains elements that are not appropriate for incorporation into the SIP. Regulation 1 includes provisions in sections 600–604, which have been approved into the SIP, and section 605, which is a new portion of the rule, that reference the BAAQMD's Manual of Procedures (MOP). The MOP sets policy and procedures for permitting, CEQA review, sample and source testing, emission monitoring, and mobile source emission credits. Because the MOP contains policies which are regularly and often revised by the BAAQMD and because those policies are not always submitted to EPA for approval, the references to the MOP potentially provide for director's discretion which may alter the stringency of the federally approved SIP. While EPA previously approved some MOP references, we should not repeat or aggravate that error by approving sections 600–605 at this time.

Regulation 1, section 301 of the May 13, 1991 submittal contains a new provision that has not been previously incorporated into the SIP which prohibits sources from discharging quantities of air contaminants that cause a nuisance. EPA believes that nuisance provisions are inappropriate for inclusion in the SIP because they are not in any way required by the Act and do not specifically control criteria air pollutants. Nuisance provisions generally deal with complaints relating to odor or dust, problems which are appropriate for local air quality management district response. For these reasons, EPA believes it is inappropriate to incorporate nuisance provisions into the federally enforceable SIP. The removal of section 301 of Regulation 1 from the BAAQMD SIP submittal will have no effect on BAAQMD's ability to enforce its nuisance provision.

Because the elements described above are inappropriate for inclusion in the SIP, EPA cannot grant full approval of this rule under section 110(k)(3). Also, because the submitted rule is not composed of separable parts which meet all the applicable requirements of the CAA, EPA cannot grant partial approval of the rule under section 110(k)(3). However, EPA may grant a limited approval of the submitted rule under section 110(k)(3) in light of EPA's

authority pursuant to section 301(a) to adopt regulations necessary to further air quality by strengthening the SIP. The approval is limited because EPA's action also contains a simultaneous limited disapproval. In order to strengthen the SIP, EPA is proposing a limited approval of BAAQMD's submitted Regulation 1 under sections 110(k)(3) and 301(a) of the CAA.

It should be noted that the rule covered by this proposed rulemaking has been adopted by the BAAQMD and is currently in effect in the BAAQMD. EPA's final limited disapproval action will not prevent the BAAQMD or EPA from enforcing this rule.

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 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 sections 110 and 301 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, 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 action concerning SIPs on such grounds. *Union Electric Co. v. U.S. EPA*, 427 U.S.

² EPA adopted 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).

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.

D. Executive Order 13045

Protection of Children from Environmental Health Risks and Safety Risks. Executive Order 13045 (62 FR 19885, April 23, 1997), applies to any rule that is (1) likely to be "economically significant" as defined under Executive Order 12866, and (2) the Agency has reason to believe that the environmental health or safety risk addressed by the rule may have a disproportionate effect on children. If a regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to E.O. 13045, "Protection of Children from Environmental Health Risks and Safety Risks" because this is not an "economically significant" regulatory action as defined by E.O. 12866, and because it does not involve decisions on environmental health or safety risks that may disproportionately affect children.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

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

Dated: May 12, 1998.

Sally Seymour,

Acting Regional Administrator, Region IX.

[FR Doc. 98-13992 Filed 5-26-98; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FL-071-9810b; FRL-6015-5]

Approval and Promulgation of Implementation Plans; State of Florida

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA proposes to approve the State implementation plan (SIP) revision submitted by the Florida Department of Environmental Protection. In the final rules section of this **Federal Register**, the EPA is approving the State's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision amendment and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this proposed rule, no further activity is contemplated in relation to this proposed rule. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this document. Any parties interested in commenting on this document should do so at this time.

DATES: To be considered, comments must be received by June 26, 1998.

ADDRESSES: Written comments on this action should be addressed to Karla L. McCorkle at the Environmental Protection Agency, Region 4 Air Planning Branch, 61 Forsyth Street, SW, Atlanta, Georgia 30303. Copies of documents relative to this action are available for public inspection during normal business hours at the following locations. The interested persons

wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the visiting day. Reference file FL-071. The Region 4 office may have additional background documents not available at the other locations.

Air and Radiation Docket and Information Center (Air Docket 6102), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460.

Environmental Protection Agency, Region 4 Air Planning Branch, 61 Forsyth Street, SW, Atlanta, Georgia 30303. Florida Department of Environmental Protection, Air Resources Management Division, Twin Towers Office Building, 2600 Blair Stone Road, Tallahassee, Florida 32399-2400.

FOR FURTHER INFORMATION CONTACT: Karla L. McCorkle at 404/562-9043 (E-mail: mccorkle.karla@epamail.epa.gov).

SUPPLEMENTARY INFORMATION: For additional information see the direct final rule which is published in the rules section of this **Federal Register**.

Dated: May 10, 1998.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

[FR Doc. 98-13988 Filed 5-26-98; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[FRL-6014-6]

Delegation of National Emission Standards for Hazardous Air Pollutants for Source Categories; State of Nevada; Nevada Division of Environmental Protection; Washoe County District Health Department

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: Pursuant to section 112(l) of the 1990 Clean Air Act (CAA), the Nevada Division of Environmental Protection (NDEP) and the Washoe County District Health Department (WCDHD) requested delegation of specific national emission standards for hazardous air pollutants (NESHAPs). WCDHD also requested approval for its program for receiving delegation of unchanged NESHAPs applicable to sources not subject to Title V of the CAA. In the Rules section of this **Federal Register**, EPA is granting NDEP and WCDHD the authority to implement and enforce specified NESHAPs, and is