ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2011–0537; FRL–9489–2]

Revisions to the California State Implementation Plan, South Coast Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is finalizing approval of revisions to the South Coast Air Quality Management District (SCAQMD) portion of the California State Implementation Plan (SIP). These revisions were proposed in the **Federal Register** on July 15, 2011 and concern volatile organic compound (VOC) emissions from paint thinners and multi-purpose solvents and from metalworking fluids and direct-contact lubricants. We are approving local rules that regulate these emission sources under the Clean Air Act as amended in 1990 (CAA or the Act).

DATES: *Effective Date:* This rule is effective on December 16, 2011.

ADDRESSES: EPA has established docket number EPA–R09–OAR–2011–0537 for this action. Generally, documents in the docket for this action are available electronically at *http://www.regulations.gov* or in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California. While all documents in the docket are listed at *http://www.regulations.gov*, some information may be publicly available only at the hard copy location (*e.g.,* copyrighted material, large maps, multi-volume reports), and some may not be available in either location (*e.g.,* confidential business information (CBI)). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Adrianne Borgia EPA Region IX, (415) 972–3576, *borgia.adrianne@epa.gov*.

SUPPLEMENTARY INFORMATION: Throughout this document, ''we,'' ''us'' and ''our'' refer to EPA.

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I. Proposed Action

On July 15, 2011 (76 FR 41744), EPA proposed to approve the following rules into the California SIP.

Local agency	Rule No.	Rule title	Amended	Submitted
SCAQMD	1143	Consumer Paint and Multi-purpose Solvents	12/03/10	04/05/11
SCAQMD	1144	Metalworking Fluids and Direct-Contact Lubricants	07/09/10	04/05/11

We proposed to approve these rules because we determined that they complied with the relevant CAA requirements. Our proposed action contains more information on the rules and our evaluation. On July 15, 2011 (76 FR 41717), EPA also published a direct final approval of these rules. Because we received timely public comments, we withdrew this direct final approval on September 1, 2011 (76 FR 54384).

II. Public Comments and EPA Responses

EPA's proposed action provided a 30-day public comment period. During this period, we received comments from the following parties.

1. Michael S. Colley, W.M. Barr & Company; letter dated August 15, 2011 and received August 15, 2011 (W.M. Barr).

2. Pete Founger, WD–40 Company; letter dated August 12, 2011 and received August 12, 2011 (WD–40).

The comments and our responses are summarized below.

Comment #1: W.M. Barr states that rule 1143 effectively requires reformulation to acetone-based products which are extremely flammable, creating unnecessary fire risks for consumers and potential liability for manufacturers.

Response #1: The District analyzed this issue during local development of this rule, and determined that, Rule 1143 includes rule requirements designed to alert the consumer that new formulations may be more flammable than their conventional solvent counterpart. Further, the rule 1143 labeling requirement is identical to the labeling language recommended in CARB's consumer products regulation, which was supported as an acceptable remedy to address the safety concerns initially expressed by fire authorities. Rule 1143 also includes additional language that goes beyond CARB's requirements and commits the SCAQMD to continue conducting ongoing public education and outreach activities in conjunction with the local fire departments to alert the public of the dangers of reformulated solvents with flammable or extremely flammable chemicals. SCAQMD staff met with local fire departments and related fire agencies and developed educational brochures and public service announcements to further alert the public of a potential change in formulations of paint thinners and multi-purpose solvents. This outreach effort was designed to further alert the public about the need to review labels for products that may contain flammable or extremely flammable solvents. Based upon these considerations, the existing rule was found to have less than significant fire hazard impacts in the June 2010 Final EA for PAR 1143.[1]

We also note that this issue has already been resolved in court. Specifically, the Superior Court of California, County of Los Angeles denied the petition for writ of mandate by the commenter, which contended that SCAQMD's Supplemental Environmental Assessment (SEA) did not comply with CEQA, was inconsistent with the court's prior decision, and was preempted by State and Federal Law. The court also subsequently found that there was substantial evidence in the record to support SCAQMD's conclusion of no significant fire hazard.[2] EPA has reviewed the SCAQMD's analysis and the court decision, and does not find basis in the comment to disapprove rule 1143 for this issue. See also response to comment 6.

Comment #2: W.M. Barr states that they will not distribute certain acetone-based products in SCAQMD to avoid the increased fire hazard caused by rule 1143 as discussed in comment 1. W.M. Barr claims this will result in the loss of several million dollars in annual sales to their company and possible inadequate supplies of consumer paint thinners and multi-purpose solvents in SCAQMD.

Response #2: As discussed in response to comment 1, we concur with SCAQMD and court determinations that the rule does not create a significant new fire hazard. The District further provided a detailed Final

[1] Initial Study for Proposed Amended Rule 1143, SCAQMD, August 2010, pages 2–19 to 2–20 (Initial Study).

[2] Superior Court of California, County of Los Angeles Ruling on Submitted Matter March 29, 2011 Writ of Mandamus, May 16, 2011, page 2 (Superior Court ruling, May 16, 2011).

Socioeconomic Assessment [3] for rule 1143 showing that cost-effective controls are available. W.M. Barr has provided no new information to undermine this analysis, but merely stated that they will choose not to provide certain products subject to the rule. Since controls are cost-effective, we assume other companies will provide them, and we cannot disapprove the rule merely to protect the commenter's market share. Lastly, we note that, ''(m)any of the solvent technologies certified under the District's Clean Air Solvent (CAS) program have utility as consumer paint thinners and multi-purpose solvents. The most common and effective cleaners that meet this criteria are water-based or aqueous cleaners that contain little or no VOCs.'' [4] Additionally, based on 2008 data, the District concluded that 92.7% of all architectural coatings sold were of waterborne chemistry, while coatings that required thinning with solvents accounted for only 0.28% of the total inventory.[5] District data shows that the trend continues to favor waterborne coatings as the 2010 data indicates that 93.2% of the coatings sold were of waterborne chemistry.[6] Therefore, the need for commercial high-VOC solvents and thinners is relatively small and continues to decrease.

Comment #3: W.M. Barr comments that EPA should conduct further independent evaluation of whether rule 1143 constitutes reasonably available control technology (RACT).

Response #3: CAA Section 182(b)(2) requires RACT for all major VOC sources. However, States are not limited, in the CAA, to implementing RACT and may, particularly for extreme Ozone nonattainment areas like South Coast, need more stringent requirements to fulfill attainment and other requirements of CAA Sections 110 and part D. Rule 1143 is intended to exceed RACT requirements because the rule largely applies to consumer product distributors and users who fall below the major source threshold and therefore do not require RACT. In addition, EPA approved South Coast's demonstration of RACT in 2007,[7] which did not rely on rule 1143 controls. See also response to comments 4 and 5.

Comment #4: W.M. Barr states that rule 1143 is not RACT because it: (a) Does not exempt low vapor pressure VOCs as does CARB; and (b) phases in the 25 grams/liter VOC standard more quickly and without the qualifications that are allowed by CARB.

Response #4: The District has concluded ''that ample technology and over 150 compliant products are available,'' [8] so a low vapor pressure exemption and slower phase-in of the 25 grams/liter limit are not needed. Nonetheless, even if we agreed with the comment that the lack of low vapor pressure exemption and the accelerated phase-in of the 25 g/l standard are not reasonably available, nothing in section 182(b)(2) or elsewhere in the CAA prohibits States from incorporating into the SIP provisions more stringent than RACT. See also response to comments 3 and 5.

Comment #5: W.M. Barr comments that technology is only ''reasonably available'' where it would expedite attainment, which is not necessarily the case for rule 1143.

Response #5: Here and elsewhere, the commenter confuses CAA RACT requirements as a control ceiling instead of a floor. For purposes of CAA Section 172(c)(1), for example, EPA may only require States to include Reasonably Available Control Measures (RACM) that will accelerate attainment. However, nothing in section 172(c)(1) or elsewhere in the Act prohibits States from incorporating more stringent requirements in SIPs. We also note that, based on the Draft Supplemental Environmental Assessment, [9] consumer products with VOC limits meeting rule 1143 are available. In addition, we note that the District believes the amended rule will result in a total reduction of 9.75 tons/day by January 1, 2012, which contributes towards the District's progress to attainment.[10] See also response to comments 3 and 4.

Comment #6: W.M. Barr does not believe that CARB's submittal to EPA of rule 1143 fulfilled the CAA requirement for State authority to adopt and implement the rule. W.M. Barr has filed legal action challenging rule 1143 and, until this action is resolved, it is unclear whether California has authority to adopt and implement this rule.

Response #6: A summary of W.M Barr's legal action against SCAQMD regarding rule 1143 is outlined in the July 2010 Final Staff Report for Proposed Amended rule 1143.[11] On April 1, 2009, W.M. Barr filed a challenge to rule 1143, alleging violations of California Environmental Quality Act (CEQA) and of the District's certified regulatory program codified in rule 110. On April 1, 2010, SCAQMD's motion to dismiss was granted in part, but the judgment and writ required SCAQMD to vacate the final VOC limits of 25 g/l and prepare a CEQA document to address the potential fire hazard issue.[12] On March 29, 2011, SCAQMD submitted documentation for the remedial actions and on May 16 2011, the court ruled in favor of the District noting:

> The SEA described the conventional solvents used in paint thinners and multi-purpose solvents and likely replacement solvents. The SEA also described the relative flammability of each product * * * The OSFM and Chief Bunting provided detailed comments * * * Experts agreed that the consumer warning programs established by CARB and SCAQMD will avoid any potentially significant fire hazards. There is now substantial evidence in record to support SCAQMD conclusion of no significant fire hazard.[13]

The comment has not described any additional legal challenge to justify EPA delaying SIP action on SIP submittal of this rule.

Comment #7: WD–40 states that rule 1144 is ambiguous and unenforceable because it is not clear whether the rule applies to direct-contact lubricants used on all substrates or only metal.

Response #7: We agree that the rule could be clearer in this regard. However, the plain reading of both the rule title and the applicability section suggest that the rule is focused only on metal substrates. SCAQMD staff support material and response to this comment similarly clarify SCAQMD's intent to regulate only metal substrates.[14] We expect that this clarification somewhat addresses any compliance concerns for the commenter. While we recommend that SCAQMD further clarify this rule in the future, this minor ambiguity does

[3] Final Socioeconomic Assessment for Proposed Rule 1143—Consumer Paint Thinners and Multi-purpose Solvents, SCAQMD, February 2009, pages 3 and 10 (Socioeconomic Assessment).

[4] SCAQMD Final Staff Report of Rule 1143—Consumer Paint Thinners and Multi-Purpose Solvents, March 6 2010 (Staff Report, March 6 2010), page 4.

[5] SCAQMD Final Staff Report for Proposed Rule 1143—Consumer Paint Thinners and Multi-Purpose Solvents, July 2010 (Staff Report, July 2010), page 27.

[6] 2008 Annual quantity and emissions reports submitted by the Architectural Coatings Manufacturers pursuant to SCAQMD rule 314, Fees for Architectural Coatings, amended May 16, 2011 (2008 Architectural Coating sales data).

[7] 40 CFR 52.220(c)(358).

[8] Staff Report, March 6 2010, page 29.

[9] June 2010 Final Supplemental Environmental Assessment for Proposed Amended Rule 1143—Consumer Paint Thinners and Multi-Purpose Solvents, page 9 (Final SEA June 2010).

[10] December 2010 Staff Report for PAR 1143, SCAQMD, page 1 (December 2010 Staff Report).

[11] December 2010 Staff Report, page 1.

[12] Superior Court of California for the County of Los Angeles Transcript of Proceedings of Case BS 119869, pages 4–7 (April 2010 Court ruling).

[13] April 2010 Court ruling, page 2.

[14] Email from Michael Morris (SCAQMD) to Adrianne Borgia (EPA) regarding, ''Comment Letter from WD–40,'' August 25, 2011.

not justify less than full SIP approval of the rule at this time.

Comment #8: WD–40 commented that the SIP emission credits associated with this rule are based on outdated data and are significantly low if the rule covers more than just metal working facilities.

Response #8: The rule specifically states that it covers all VOC containing fluids used for metalworking and for metal protection. The exact amount of emission credit associated with this rule is not relevant to the action on whether to approve the rule into the federally-enforceable SIP.

Comment #9: WD–40 further stated that rule 1144 does not meet RACT because it: (a) does not exempt small containers; and (b) does not allow low vapor pressure VOCs as do other EPA and CARB regulations.

Response #9: States are not limited to implementing RACT and may, particularly for extreme Ozone nonattainment areas like South Coast, need more stringent requirements to fulfill attainment and other requirements of CAA Sections 110 and part D. See also response to comments 3, 4 and 5.

III. EPA Action

No comments were submitted that change our assessment that the submitted rules comply with the relevant CAA requirements. Therefore, as authorized in section 110(k)(3) of the Act, EPA is fully approving these rules into the California SIP.

IV. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve State choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely approves State law as meeting Federal requirements and does not impose additional requirements beyond those imposed by State law. For that reason, this action:

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Does not provide EPA with the discretionary authority to address disproportionate human health or environmental effects with practical, appropriate, and legally permissible methods under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have Tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the State, and EPA notes that it will not impose substantial direct costs on Tribal governments or preempt Tribal law.

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 action 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**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 52

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

Dated: October 21, 2011.

Jared Blumenfeld,

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)(388)(i)(A) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(388) New and amended regulations for the following APCD were submitted on April 5, 2011 by the Governor's Designee.

(i) Incorporation by reference.

(A) South Coast Air Quality Management District—SCAQMD)

(*1*) Rule 1143, ''Consumer Paint Thinners & Multi-purpose Solvents,'' adopted on March 6, 2009 and amended December 3, 2010.

(*2*) Rule 1144, ''Metal Working Fluids and Direct-Contact Lubricants,'' adopted on March 6, 2009, and amended July 9, 2010.

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[FR Doc. 2011–29459 Filed 11–15–11; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2010–0866; FRL–9325–4]

Fenamidone; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for inadvertent residues of fenamidone in or on the cereal grains crop group 15, except rice and the forage, fodder, and straw of cereal grains crop group 16, except rice. Bayer Crop Science requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA).

DATES: This regulation is effective November 16, 2011. Objections and requests for hearings must be received on or before January 17, 2012, and must be filed in accordance with the instructions provided in 40 CFR part