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.

Dated: September 17, 2001.

Jane Diamond,

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 D—Arizona

2. Section 52.120 is amended by adding paragraph (c)(46)(i)(D) to read as follows:

§ 52.120 Identification of plan.

* * * * *

(c) * * *

(46) * * *

(i) * * *

(D) Previously approved on April 12, 1982 in paragraph (c)(46)(i)(A) of this section and now deleted without replacement with respect to Pinal County only Rule 7–3–3.4.

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[FR Doc. 01–24196 Filed 9–26–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA242–0294; FRL–7066–8]

Revisions to the California State Implementation Plan, Imperial County Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is finalizing a disapproval of revisions to the Imperial County Air Pollution Control District's (ICAPCD) portion of the California State Implementation Plan (SIP). These revisions concern visible emissions (VE) from different sources of air pollution. We are taking final action on Rule 401—Opacity of Emissions, a local rule regulating these different emission sources. Under authority of the Clean Air Act as amended in 1990 (CAA or the Act) Act, our action maintains the existing version of this rule within the SIP.

EFFECTIVE DATE: This rule is effective on October 29, 2001.

ADDRESSES: You can inspect copies of the administrative record for this action at EPA's Region IX office during normal business hours. You can inspect copies of the submitted SIP revisions at the following locations:

California Air Resources Board (CARB), Stationary Source Division, Rule Evaluation Section, 1001 ''I'' Street, Sacramento, CA 95814; and

Imperial County Air Pollution Control District, 150 South 9th Street, El Centro, CA 92243.

FOR FURTHER INFORMATION CONTACT: Jerald S. Wamsley, Rulemaking Office (AIR–4), U.S. Environmental Protection Agency, Region IX, (415) 744–1226.

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

I. Proposed Action

On June 26, 2001 (6 FR 33930), EPA proposed a disapproval of the following rule submitted by CARB for incorporation into the SIP.

TABLE 1.—SUBMITTED RULES

Local agency	Rule #	Rule title	Adopted	Submitted
ICAPCD	401	Opacity of Emissions	09/14/99	05/26/00

We proposed a disapproval of Rule 401 because provisions of Rule 401 conflict with section 110 and part D of the Act and prevent full approval of this SIP revision. First, given the section 189 RACM requirement, Rule 401 should not grandfather existing sources as it does at section B.3. Second, California has not submitted the sections of the Health and Safety Code (HSC) cited in section C for SIP inclusion. Consequently, EPA can neither review, nor act on these incorporations by reference. While one remedy would be to include the full text of the desired exemptions within the rule, they would be subject to EPA review and approval. Finally, section 42350 of the HSC allows for variances to a district's opacity limits. We object to these variance provisions because they provide broad discretion to modify the SIP in violation of CAA sections 110(i), 110(l), and 193.

II. Public Comments and EPA Responses

EPA's proposed action provided a 30-day public comment period. During this period, we received no comments concerning our proposed disapproval of Rule 401.

III. EPA Action

No comments were submitted in response to our proposed action on Rule 401 and our assessment of the rule remains unchanged. Therefore, as authorized in sections 110(k)(3) and 301(a) of the Act, EPA is finalizing this disapproval of Rule 401. Our action preserves the versions of Rule 401 & 402 approved in 1989 within the federally approved SIP. These rules remain federally enforceable. As a result, this disapproval action does not trigger sanctions or Federal Implementation Plan time clocks under section 179 of the CAA.

IV. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget has exempted this regulatory action from Executive Order 12866, entitled ''Regulatory Planning and Review.''

B. Executive Order 13211

This rule is not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355 (May 22, 2001)) because it is not a significant regulatory action under Executive Order 12866.

C. Executive Order 13045

Executive Order 13045, entitled Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that

EPA has reason to believe may have a disproportionate effect on children. If the 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 Executive Order 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

D. Executive Order 13132

Executive Order 13132, entitled Federalism (64 FR 43255, August 10, 1999) revokes and replaces Executive Orders 12612, Federalism and 12875, Enhancing the Intergovernmental Partnership. Executive Order 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, because it merely acts on a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

E. Executive Order 13175

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 6, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes.''

This final rule does not have tribal implications. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

F. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

EPA's disapproval of the state request under section 110 and subchapter I, part D of the Clean Air Act does not affect any existing requirements applicable to small entities. Any pre-existing federal requirements remain in place after this disapproval. Federal disapproval of the state submittal does not affect state enforceability. Moreover, EPA's disapproval of the submittal does not impose any new Federal requirements. Therefore, I certify that this action will not have a significant economic impact on a substantial number of small entities.

Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of 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).

G. 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 acts on 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.

H. National Technology Transfer and Advancement Act

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires Federal agencies to evaluate existing technical standards when developing a new regulation. To comply with NTTAA, EPA must consider and use ''voluntary consensus standards'' (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical.

EPA believes that VCS are inapplicable to today's action because it does not require the public to perform activities conducive to the use of VCS.

I. Submission to Congress and the Comptroller General

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

J. 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 26, 2001. 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, Hydrocarbons, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Volatile organic compound.

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

Dated: August 24, 2001.

Sally Seymour,

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 52.242 is amended by adding paragraph (a)(3) to read as follows:

§ 52.242 Disapproved rules and regulations.

(a) * * *

(3) Imperial County Air Pollution Control District.

(i) Rule 401, Opacity of Emissions submitted on May 26, 2000. Rule 401 submitted on June 9, 1987, is retained.

[FR Doc. 01–24217 Filed 9–26–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[IN138–2; FRL–7056–2]

Approval and Promulgation of Implementation Plans; IN

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: In this final rule, the EPA is announcing approval of a State Implementation Plan (SIP) revision submitted by the Indiana Department of Environmental Management (IDEM) on June 8, 2000. The revised SIP pertains to the Indiana motor vehicle inspection and maintenance (I/M) program. The purpose of this action is to approve certain amendments to the Indiana program, which EPA originally approved on March 19, 1996 (61 FR 11142). EPA proposed approval of the June 8, 2000 SIP revision submittal in the **Federal Register** on June 28, 2001 (66 FR 34391). Because EPA did not receive any public comments in response to its proposed approval, we are approving Indiana's submission.

DATES: This rule is effective on October 29, 2001.

ADDRESSES: Copies of this SIP revision request are available for public inspection during normal business hours at the following address: U.S. Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. (It is recommended that you telephone Francisco J. Acevedo at (312) 886–6061 before visiting the Region 5 Office.)

FOR FURTHER INFORMATION CONTACT: Francisco J. Acevedo, Regulation Development Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, Telephone: (312) 886–6061, e-mail: acevedo.francisco@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document, the terms ''you'' and ''me'' refer to the reader of this proposed rulemaking and to sources subject to the State rule addressed by this proposed rulemaking, and the terms ''we,'' ''us,'' or ''our'' refer to the EPA.

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A. What Is a State Implementation Plan (SIP)?

Section 110 of the Clean Air Act (Act or CAA) requires states to develop air pollution control regulations and strategies to ensure that state air quality meets the national ambient air quality standards established by the EPA. Each state must submit the regulations and emission control strategies to the EPA for approval and promulgation into the federally enforceable SIP.

Each federally approved SIP protects air quality primarily by addressing air pollution at its points of origin. The SIPs can be and generally are extensive, containing many state regulations or other enforceable documents and supporting information, such as emission inventories, monitoring documentation, and modeling (attainment) demonstrations.

B. What Is the Federal Approval Process for a SIP?

In order for state regulations to be incorporated into the federally enforceable SIP, states must formally adopt the regulations and emission control strategies consistent with state and federal requirements. This process generally includes public notice, public hearings, public comment periods, and formal adoption by state-authorized rulemaking bodies.

Once a state has adopted a rule, regulation, or emissions control strategy it submits it to us for inclusion into the SIP. We must provide public notice and seek additional public comment regarding the proposed federal action on the state submission. If we receive adverse comments we address them prior to any final federal action (we generally address them in a final rulemaking action).

The EPA incorporates into the federally approved SIP all state regulations and supporting information it has approved under section 110 of the Act. Records of such SIP actions are maintained in the Code of Federal Regulations (CFR) at title 40, part 52, titled ''Approval and Promulgation of Implementation Plans.'' The actual state regulations the EPA has approved are not reproduced in their entirety in the CFR, but are ''incorporated by reference,'' which means that EPA has approved a given state regulation (or rule) with a specific effective date.