

Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM-113.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM-113.

(e) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on November 1, 1996.

Darrell M. Pederson,

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[CA 181-0021; FRL-5642-9]

### Approval and Promulgation of Implementation Plans; California State Implementation Plan Revision, South Coast Air Quality Management District

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to approve revisions to the California State Implementation Plan (SIP) for ozone. The revision concerns the control of oxides of nitrogen (NO<sub>x</sub>) and oxides of sulfur (SO<sub>x</sub>) emissions using an emissions-limiting economic incentive program (EIP), the NO<sub>x</sub> and SO<sub>x</sub> Regional Clean Air Incentives Market (NO<sub>x</sub>/SO<sub>x</sub> RECLAIM). This program, which consists of twelve rules and associated appendices known as Regulation XX, applies to facilities in the South Coast Air Quality Management District (SCAQMD) with four or more tons of NO<sub>x</sub> or SO<sub>x</sub> emissions per year from permitted equipment. The subject facilities, in order to meet annual emission reduction requirements, will participate in an EIP in order to reduce emissions at a significantly lower cost. The intended effect of proposing approval of this rule is to regulate emissions of NO<sub>x</sub> in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). EPA's final action on this notice of proposed rulemaking will incorporate this rule into the federally approved SIP. EPA has evaluated this rule and is proposing to approve it

under provisions of the CAA regarding EPA actions on SIP submittals, SIPs for national primary and secondary ambient air quality standards (NAAQS), and plan requirements for nonattainment areas. Elsewhere in the Federal Register today, EPA is finalizing a limited approval/limited disapproval of an earlier version of the RECLAIM program (submitted to EPA for approval on March 21, 1994); when EPA publishes its final action approving the August 28, 1996 submittal, the possibility of sanctions mentioned in the final limited approval/limited disapproval of the earlier submittal will be removed.

**DATES:** Comments on this proposed action must be received in writing on or before December 9, 1996.

**ADDRESSES:** Comments may be mailed to: Daniel A. Meer, Rulemaking Section (A-5-3), Air and Toxics Division, U.S. Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco, CA 94105-3901.

Copies of the rule and EPA's evaluation report are available for public inspection at EPA's Region 9 office during normal business hours. Copies of the submitted rule are also available for inspection at the following locations:

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 "L" Street, Sacramento, CA 95812.  
South Coast Air Quality Management District, 21865 E. Copley Drive, Diamond Bar, CA 91765-4182.

**FOR FURTHER INFORMATION CONTACT:** Kenneth Israels, Rulemaking Section (A-5-3), Air and Toxics Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105-3901, Telephone: (415) 744-1194.

#### SUPPLEMENTARY INFORMATION:

##### Applicability

The rule being proposed for approval into the California SIP is: SCAQMD Regulation XX, NO<sub>x</sub>/SO<sub>x</sub> RECLAIM. This rule was submitted by the California Air Resources Board (CARB) to EPA on August 28, 1996 and found complete on September 17, 1996.

##### Background

On November 15, 1990, the Clean Air Act Amendments of 1990 (CAA) were enacted. Pub. L. 101-549, 104 Stat. 2399, codified at 42 U.S.C. 7401-7671q. The air quality planning requirements for the reduction of NO<sub>x</sub> emissions through reasonably available control technology (RACT) are set out in section 182(f) of the CAA. On November 25, 1992, EPA published a NPRM entitled

"State Implementation Plans; Nitrogen Oxides Supplement to the General Preamble; Clean Air Act Amendments of 1990 Implementation of Title I; Proposed Rule," (the NO<sub>x</sub> Supplement) which describes and provides preliminary guidance on the requirements of section 182(f). The November 25, 1992, notice should be referred to for further information on the NO<sub>x</sub> requirements and is incorporated into this document by reference.

Section 182(f) of the Clean Air Act requires States to apply the same requirements to major stationary sources of NO<sub>x</sub> ("major" as defined in section 302 and section 182(c), (d), and (e)) as are applied to major stationary sources of volatile organic compounds (VOCs), in moderate or above ozone nonattainment areas. The Los Angeles-South Coast Air Basin is classified as extreme;<sup>1</sup> therefore this area was subject to the RACT requirements of section 182(b)(2) and the November 15, 1992 deadline, cited below.

Section 182(b)(2) requires submittal of RACT rules for major stationary sources of VOC (and NO<sub>x</sub>) emissions (not covered by a pre-enactment control techniques guidelines (CTG) document or a post-enactment CTG document) by November 15, 1992. There were no NO<sub>x</sub> CTGs issued before enactment and EPA has not issued a CTG document for any NO<sub>x</sub> sources since enactment of the CAA. The RACT rules covering NO<sub>x</sub> sources and submitted as SIP revisions, are expected to require final installation of the actual NO<sub>x</sub> controls as expeditiously as practicable, but no later than May 31, 1995.

On April 7, 1994, EPA published a Notice of Final Rulemaking (NFRM) concerning EIPs entitled "Economic Incentive Program Rules," (EIP rules) in order to fulfill the requirements of section 182(g)(4)(A) of the Act (see 59 FR 16690). The EIP rules establish several requirements which State programs must meet. These requirements are:

- *Statement of goals and rationale.* This element shall include a clear statement as to the environmental problem being addressed, the intended environmental and economic goals of the program, and the rationale relating the incentive-based strategy to the program goals.

- *Program scope.* This element shall contain a clear definition of the sources affected by the program.

<sup>1</sup> The Los Angeles-South Coast Air Basin retained its designation of nonattainment and classified by operation of law pursuant to sections 107(d) and 181(a) upon the date of enactment of the CAA. See 55 FR 56694 (November 6, 1991).

- *Program baseline.* A program baseline shall be defined as a basis for projecting program results and, if applicable, for initializing the incentive mechanism (e.g., for marketable permits programs). The program baseline shall be consistent with, and adequately reflected in, the assumptions and inputs used to develop an area's reasonable further progress (RFP) plans and attainment and maintenance demonstrations, as applicable. The State shall provide sufficient supporting information from the areawide emissions inventory and other sources to justify the baseline used in the State or local EIP.

- *Replicable emission quantification methods.* This program element, for programs other than those which are categorized as directionally-sound, shall include credible, workable, and replicable methods for projecting program results from affected sources and, where necessary, for quantifying emissions from individual sources subject to the EIP. Such methods, if used to determine credit taken in attainment, RFP, and maintenance demonstrations, as applicable, shall yield results which can be shown to have a level of certainty comparable to that for source-specific standards and traditional methods of control strategy development.

- *Source requirements.* This program element shall include all source-specific requirements that constitute compliance with the program. Such requirements shall be appropriate, readily ascertainable, and State and federally enforceable.

- *Projected results and audit/reconciliation procedures.* This program element includes a commitment to ensure the timely implementation of programmatic revisions or other measures which the State, in response to the audit, deems necessary for the successful operation of the program in the context of overall RFP and attainment requirements. (see 40 CFR 51.493(f)(3)(i))

- *Implementation schedule.* The program shall contain a schedule for the adoption and implementation of all State commitments and source requirements included in the program design.

- *Administrative procedures.* The program shall contain a description of State commitments which are integral to the implementation of the program, and the administrative system to be used to implement the program, addressing the adequacy of the personnel, funding, and legislative authority.

- *Enforcement mechanisms.* The program shall contain a compliance

instrument(s) for all program requirements, which is legally binding and enforceable by both the State and EPA. This program element shall also include a State enforcement program which defines violations, and specifies auditing and inspections plans and provisions for enforcement actions. The program shall contain effective penalties for noncompliance which preserve the level of deterrence in traditional programs. For all such programs, the manner of collection of penalties must be specified.

The EIP rule should be referred to for further information on the EIP requirements and is incorporated into this proposal by reference.

This document addresses EPA's proposed action for SCAQMD Regulation XX—NO<sub>x</sub>/SO<sub>x</sub> RECLAIM. The rule was adopted by the SCAQMD on December 7, 1995 and May 10, 1996, and submitted by the CARB on August 28, 1996. Regulation XX was found to be complete on September 17, 1996 pursuant to EPA's completeness criteria that are set forth in 40 CFR Part 51 Appendix V<sup>2</sup> and is being proposed for approval into the SIP. Elsewhere in the Federal Register today, EPA is finalizing a limited approval/limited disapproval of an earlier version of the RECLAIM program (submitted to EPA for approval on March 21, 1994); when EPA publishes its final action approving the August 28, 1996 submittal, the possibility of sanctions mentioned in the final limited approval/limited disapproval of the earlier submittal will be removed.

NO<sub>x</sub> emissions contribute to the production of ground level ozone and smog. The revision concerns the control of oxides of nitrogen (NO<sub>x</sub>) and oxides of sulfur (SO<sub>x</sub>) emissions using an emissions-limiting EIP, NO<sub>x</sub>/SO<sub>x</sub> RECLAIM. This program, which consists of twelve rules and associated appendices known as Regulation XX, applies to facilities in the SCAQMD with four or more tons of NO<sub>x</sub> or SO<sub>x</sub> emissions per year from permitted equipment. The subject facilities, in order to meet annual emission reduction requirements, will participate in an EIP in order to reduce emissions at a significantly lower cost. The regulation was adopted as part of SCAQMD's efforts to achieve the NAAQS for ozone and in response to the CAA requirements cited above. The following is EPA's evaluation and proposed action for Regulation XX.

<sup>2</sup> 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 Proposed Action

In determining the approvability of a NO<sub>x</sub> rule, EPA must evaluate the rule for consistency with the requirements of the CAA and EPA regulations, as found in section 110 and part D of the CAA and 40 CFR part 51 (Requirements for Preparation, Adoption and Submittal of Implementation Plans). EPA's interpretation of these requirements, which forms the basis for this action, appears in the NO<sub>x</sub> Supplement (57 FR 55620) and various other EPA policy guidance documents.<sup>3</sup> Among these provisions is the requirement that a NO<sub>x</sub> rule must, at a minimum, provide for the implementation of RACT for stationary sources of NO<sub>x</sub> emissions.

For the purposes of assisting state and local agencies in developing NO<sub>x</sub> RACT rules, EPA prepared the NO<sub>x</sub> Supplement to the General Preamble. In the NO<sub>x</sub> supplement, EPA provides preliminary guidance on how RACT will be determined for stationary sources of NO<sub>x</sub> emissions. While most of the guidance issued by EPA on what constitutes RACT for stationary sources has been directed towards application for VOC sources, much of the guidance is also applicable to RACT for stationary sources of NO<sub>x</sub> (see section 4.5 of the NO<sub>x</sub> Supplement). In addition, pursuant to section 183(c), EPA has issued alternative control technique documents (ACTs) that identify alternative controls for all categories of stationary sources of NO<sub>x</sub>. The ACT documents provide information on control technology for stationary sources that emit or have the potential to emit 25 tons per year or more of NO<sub>x</sub>. However, the ACTs do not establish a presumptive norm for what is considered RACT for stationary sources of NO<sub>x</sub>. In general, the guidance documents cited above, as well as other relevant and applicable guidance documents, have been set forth to ensure that submitted NO<sub>x</sub> RACT rules meet Federal RACT requirements and are fully enforceable and strengthen or maintain the SIP.

In evaluating the rule, EPA must also determine whether the section 182(b) requirement for RACT implementation by May 31, 1995 is met. The NO<sub>x</sub>/SO<sub>x</sub> RECLAIM program meets this requirement by establishing baseline emissions in January 1994 and July 1994 in the market which are below RACT

<sup>3</sup> Among other things, the pre-amendment guidance consists of those portions of the proposed Post-1987 ozone and carbon monoxide policy that concern RACT, 52 FR 45044 (November 24, 1987); "Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations, Clarification to Appendix D of November 24, 1987 Federal Register Notice" (Blue Book) (notice of availability was published in the Federal Register on May 25, 1988).

and are annually reduced further below this level.

In determining the approvability of an EIP, EPA must evaluate the regulation for consistency with the requirements of the CAA and EPA regulations, as found in section 110 and Part D of the CAA and 40 CFR Part 51 (Requirements for Preparation, Adoption, and Submittal of Implementation Plans). The EPA interpretation of these requirements, which forms the basis for today's action, appears in the various EPA policy guidance documents listed in footnote 4 of this notice. Among these provisions is the requirement that an EIP rule must, at a minimum, be consistent with attainment and RFP requirements found in the CAA.

For the purpose of assisting state and local agencies in developing rules which incorporate economic incentive strategies, EPA prepared the EIP rules, cited above (59 FR 16690). In the EIP rules, EPA provides guidance on how EIPs can be designed to be consistent with the attainment and RFP requirements of the CAA. In general, the guidance documents cited above, as well as other relevant and applicable guidance documents, have been set forth to ensure that submitted EIPs meet federal requirements and are fully enforceable and strengthen or maintain the SIP.

A more detailed discussion of the sources controlled, the controls required, and justification for why these controls represent RACT can be found in the Technical Support Document (TSD), dated August, 1996.

The revised RECLAIM program rule (Regulation XX) contains significant changes which address the deficiencies identified in the original NPRM, dated February 28, 1995<sup>4</sup> in the following ways:

- The program no longer allows the use of variances to avoid compliance with program requirements; the program now meets the requirements of Section 110(i) of the Act,
- The SCAQMD revised the program so that it meets certain new source review requirements of the Act and Part D, which were listed as deficiencies in the February 28, 1995 NPRM,
- The program no longer allows the use of Executive Officer discretion in the implementation of certain emissions monitoring provision, which were listed as deficiencies in the February 28, 1995 NPRM,
- The EPA and SCAQMD have agreed upon a permit mechanism to address

the program's references to other programs, notably those involving the use of mobile source emission reduction credits (MERCs) to ensure that the program is consistent with Section 110(i) of the Act, and

- The SCAQMD, with the August 28, 1996 submittal, provided all of the necessary demonstrations to ensure that the requirements of the EIP rules are being met.

A detailed discussion of the rule provisions and evaluations has been provided in the TSD available at EPA's Region 9 office (TSD dated August, 1996).

EPA has evaluated the submitted rule and has determined that it is consistent with the CAA, EPA regulations and EPA policy. Therefore, SCAQMD's Regulation XX—NO<sub>x</sub>/SO<sub>x</sub> RECLAIM is being proposed for approval under section 110(k)(3) of the CAA as meeting the requirements of section 110(a), section 182(b)(2), section 182(f), the NO<sub>x</sub> Supplement to the General Preamble, and the EIP rules.

EPA is seeking comment in this NPRM on whether the deficiencies cited in the final limited approval/limited disapproval of NO<sub>x</sub>/SO<sub>x</sub> RECLAIM found elsewhere in the Federal Register today have been addressed. EPA believes that the cited deficiencies have been addressed with the August 28, 1996 submittal of revisions to Regulation XX.

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.

#### Administrative Requirements

##### A. Executive Order 12866

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 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, 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 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).

##### 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 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 Federal requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, will result from this action.

<sup>4</sup>For more information on how these deficiencies were addressed, please see the TSD which accompanies this rulemaking, available from EPA Region 9.

#### *D. Submission to Congress and the General Accounting Office*

Under section 801(a)(1)(A) of the Administrative Procedures Act (APA) as amended 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 section 804(2) of the APA as amended.

#### *E. Petitions for Judicial Review*

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by January 7, 1997. 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, Incorporation by reference, Intergovernmental relations, Nitrogen oxides, Ozone, Reporting and recordkeeping requirements, Volatile organic compound.

Authority: 42 U.S.C. 7401-7671q.

Dated: October 6, 1996.

Felicia Marcus,

*Regional Administrator.*

[FR Doc. 96-28595 Filed 11-7-96; 8:45 am]

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## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

#### 43 CFR Part 3820

[WO-320-1990-01-24 1A]

RIN 1004-AC60

#### **Surface Management of Mineral Activities Within the Bodie Bowl Under the Bodie Protection Act of 1994**

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Proposed rule.

**SUMMARY:** The Bureau of Land Management (BLM) proposes to amend

its regulations to carry out the Bodie Protection Act of 1994 (the Act). The Act withdrew Federal lands located around the historic former gold mining town of Bodie, California from availability under the mineral laws of the United States. The Act directs the Secretary of the Interior (Secretary) to determine the validity of and establish surface management requirements for all mining claims and sites within the Bodie Bowl.

**DATES:** Submit comments by January 7, 1997.

**ADDRESSES:** Submit comments or suggestions to: Director (420), Bureau of Land Management, Room 401 L, 1849 C Street, N.W., Washington, DC 20240. You may also send comments by Internet to [WOCComment@wo.blm.gov](mailto:WOCComment@wo.blm.gov). Please include "attn: AC60" and your name and address in your Internet message. Comments will be available for public review at Room 401, 1620 L Street, N.W., Washington, DC, during regular business hours (7:45 a.m. to 4:15 p.m.), Monday through Friday.

**FOR FURTHER INFORMATION CONTACT:** Bob Barbour, (202) 452-7784, or Roger Haskins (202) 452-0355.

#### **SUPPLEMENTARY INFORMATION:**

##### **I. Public Comment Procedures**

Written comments on the proposed rule should be specific, confined to issues pertinent to the proposed rule, and should explain the reason for any recommended change. If possible, please reference the specific section or paragraph of the proposal that you are addressing. BLM may not consider or include in the Administrative Record for the final rule comments received after the close of the comment period (see **DATES**) or comments delivered to an address other than those listed above (see **ADDRESSES**).

##### **II. Background**

The Bureau of Land Management (BLM) is adding this subpart to carry out Title X of the Act of October 31, 1994, The Bodie Protection Act of 1994 (108 Stat. 4471, 4509). This Act withdrew Federal lands in Mono County, California located around the historic gold mining town of Bodie from location, leasing and disposal of minerals and mineral materials under the mining, mineral leasing, and mineral material laws of the United States. The Bodie Protection Act designated this area as the Bodie Bowl and references a map dated June 12, 1992. This map is available at the Bakersfield District Office, 3801 Pegasus Avenue, Bakersfield, California 93308 and is included in the Administrative

Record for this proposed rule at the address listed above (see **ADDRESSES**). The Act provides that:

(a) The Secretary of the Interior, in consultation with the Governor of the State of California, must promulgate rules for management of mineral activities within the Bodie Bowl that are no less stringent than the rules promulgated by the National Park Service under the Mining in the Parks Act (16 U.S.C. 1901 *et seq.*), now codified at 36 CFR part 9. The BLM has consulted with the Governor of the State of California, acting by and through the State Department of Parks and Recreation, which administers the Bodie Historic Park. The Department of Parks assisted in the creation of this rule and will assist the BLM in the formulation of the final rule.

(b) The Secretary of the Interior must determine the validity of all mining claims and sites within the Bodie Bowl.

(c) Mineral patents will only be issued within the Bodie Bowl if the Secretary determines that for the claim concerned, a patent application was filed, and all requirements fully complied with, on or before January 11, 1993.

(d) Mining claims within the Bodie Bowl are prohibited from the performance of annual assessment work and must instead file an annual notice of intent to hold with the BLM.

(e) Mineral activities must be conducted so as to avoid adverse effects on historic, cultural, recreational and natural resource values of the Bodie Bowl.

#### **III. Discussion of the Proposed Rule**

The following section-by-section discussion of the proposed rule explains the requirements of the proposed rule.

##### **Part 3820—Areas Subject to Special Mining Laws**

##### **Subpart 3826—Bodie Bowl California: Surface Management**

The proposed subpart is designed as the primary mechanism for obtaining approval to conduct mineral activities within the Bodie Bowl on claims or sites determined by the Secretary to have a valid existing right. To avoid a duplication of plan of operations requirements, BLM will use this subpart in conjunction with the National Park Services (NPS) Minerals Management regulations at 36 Code of Federal Regulations (CFR) part 9, subpart A. BLM will use the procedures, standards and requirements of 36 CFR part 9, which would be incorporated by reference, to process and approve plans of operations. Where provisions of part 9 are not intended to apply, exceptions