

Accordingly, the Copyright Office and the Library of Congress adopts the following rules.

List of Subjects in 37 CFR Part 201

Cable compulsory license, Cable systems, Satellite master antenna television systems.

Final Regulations

In consideration of the foregoing, part 201 of 37 CFR, chapter II, is amended in the manner set forth below.

PART 201—GENERAL PROVISIONS

1. The authority citation for part 201 is revised to read as follows:

Authority: 17 U.S.C. 702.

§ 201.17 [Amended]

2. Section 201.17(b)(1) is amended by adding "In no case shall gross receipts be less than the cost of obtaining the signals of primary broadcast transmitters for subsequent retransmission." after the first sentence.

3. Section 201.17(b)(2) introductory text is amended by adding "The owner of each individual cable system on the last day of the accounting period covered by a Statement of Account is responsible for depositing the Statement of Account and remitting the copyright royalty fees." after the third sentence.

4. Section 201.17(e)(2)(i) is amended by adding "The "owner" of the cable system is the individual or entity that provides the retransmission service and collects payment from the end user either directly or indirectly through a third party." after the first sentence.

Dated: April 3, 1997.

Marybeth Peters,
Register of Copyrights.

Approved By:

James H. Billington,
The Librarian of Congress.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 179-0029a; FRL-5697-1]

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

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action on revisions to the California

State Implementation Plan. The revisions concern rules from the Bay Area Air Quality Management District (BAAQMD). This approval action will incorporate five rules into the Federally approved SIP. The intended effect of approving these rules is to regulate emissions of oxides of nitrogen (NO_x) in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). The rules control NO_x emissions from boilers, steam generators, process heaters, stationary internal combustion engines, stationary gas turbines, and glass melting furnaces in the San Francisco Bay area. EPA has evaluated the rules and is taking direct final action to approve them under provisions of the CAA regarding EPA actions on SIP submittals, and SIPs for national primary and secondary ambient air quality standards. The rules are being approved into the SIP in accordance with the area's ozone maintenance plan for redesignation to attainment.

DATES: This action is effective on June 16, 1997 unless adverse or critical comments are received by May 19, 1997. If the effective date is delayed, a timely notice will be published in the **Federal Register**.

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

Rulemaking Office (AIR-4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

Environmental Protection Agency, Air Docket (6102), 401 "M" Street, S.W., Washington, D.C. 20460.

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 "L" Street, Sacramento, CA 95814.

Bay Area Air Quality Management District, Rule Development Section, 939 Ellis Street, San Francisco, CA 94109.

FOR FURTHER INFORMATION CONTACT:

Andrew Steckel, Rulemaking Office (AIR-4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105, Telephone: (415) 744-1185.

SUPPLEMENTARY INFORMATION:

Applicability

This document addresses EPA's direct final action for the following BAAQMD rules: Regulation 9, Rule 7, Nitrogen

Oxides and Carbon Monoxide from Industrial, Institutional, and Commercial Boilers, Steam Generators, and Process Heaters; Regulation 9, Rule 8, Nitrogen Oxides and Carbon Monoxide Emissions from Stationary Internal Combustion Engines; Regulation 9, Rule 9—Nitrogen Oxides from Stationary Gas Turbines; Regulation 9, Rule 11—Nitrogen Oxides and Carbon Monoxide from Utility Electric Power Generating Boilers; and Regulation 9, Rule 12, Nitrogen Oxides from Glass Melting Furnaces.

These BAAQMD rules were adopted on September 15, 1993, January 20, 1993, September 21, 1994, November 15, 1995 and January 19, 1994, respectively. They were submitted by the State of California on July 23, 1996. The rules were found to be complete on January 17, 1997, pursuant to EPA's completeness criteria that are set forth in 40 CFR part 51, Appendix V.¹ EPA is taking direct final action to approve all five rules into the SIP.

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_x emissions through reasonably available control technology (RACT) are set out in section 182(f) of the CAA. On November 25, 1992, EPA published a notice of proposed rulemaking 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_x Supplement) which describes the requirements of section 182(f). The November 25, 1992 document should be referred to for further information on the NO_x 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_x ("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.²

¹ 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).

² The San Francisco Bay Area was designated as a moderate nonattainment area for ozone, and classified by operation of law pursuant to sections 107(d) and 181(a) upon the date of enactment of the CAA. See 56 FR 56694 (November 6, 1991).

Section 182(b)(2) requires submittal of RACT rules for major stationary sources of VOC emissions (not covered by a pre-enactment control technique guidelines (CTG) document or a post-enactment CTG document) by November 15, 1992. There were no NO_x CTGs issued before enactment and EPA has not issued a CTG document for any NO_x category since enactment of the CAA. The RACT rules covering NO_x sources and submitted as SIP revisions are expected to require final installation of the actual NO_x controls by May 31, 1995 for those sources where installation by that date is practicable.

NO_x emissions contribute to the production of ground level ozone and smog. The five BAAQMD rules control emissions of NO_x from commercial and industrial boilers, steam generators, and process heaters; stationary internal combustion engines; stationary gas turbines; electric power generating boilers; and glass melting furnaces. The rules were adopted as part of the BAAQMD's efforts to achieve the National Ambient Air Quality Standard for ozone, as well as to satisfy the mandates of the California State Clean Air Act requirements. They were submitted in response to the CAA requirements cited above.

However, subsequent to the complete submittal of the BAAQMD NO_x rules pursuant to the CAA, the district applied for an exemption from the NO_x RACT requirements pursuant to section 182(f)(3). The BAAQMD's exemption request was submitted along with amendments to the BAAQMD's request for redesignation to attainment of the ozone standard. The basis for the BAAQMD's exemption request was that the area had achieved the ozone standard, as demonstrated by three years of monitoring data, without having implemented the NO_x measures. While the BAAQMD had adopted and submitted the measures in response to both the State and Federal requirements, the emission reductions obtained by the rules would not occur until full implementation in the future. The district was able to demonstrate with three years of monitoring data that the Federal ozone standard was reached without having implemented the NO_x control measures. Subsequently, EPA evaluated the exemption request and published an approval for the BAAQMD's petition for a NO_x RACT exemption on May 22, 1995 (60 FR 27028).

While the BAAQMD was no longer required to submit NO_x RACT rules pursuant to section 182(b)(2), the BAAQMD incorporated several of the previously submitted NO_x rules as

contingency measures in its ozone maintenance plan as a requirement for redesignation to attainment. Since being redesignated to attainment of the ozone standard,³ the Bay Area has recorded violations of the Federal ozone standard, therefore triggering the contingency measures of the maintenance plan. In accordance with the redesignation maintenance plan, and at the request of the BAAQMD, EPA is incorporating the NO_x measures into the SIP. The BAAQMD resubmitted the contingency measures being acted on in this document on July 23, 1996. This action encompasses part of the measures identified in the plan as contingency measures.

EPA Evaluation and Action

In determining the approvability of a NO_x 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). The EPA interpretation of these requirements, which forms the basis for this action, appears in the NO_x Supplement and various EPA policy guidance documents.⁴ Among these provisions is the requirement that a NO_x rule must, at a minimum, provide for the implementation of RACT for stationary sources of NO_x emissions. However, because these measures are being incorporated into the SIP as maintenance measures for the area's redesignation plan, the rules are not being evaluated for meeting the RACT emission limits pursuant to section 182(f) of the CAA. Rather, the rules are being incorporated into the SIP as attainment maintenance measures for ozone. They are therefore being evaluated against the emissions reductions committed to in the maintenance plan, and SIP enforceability guidelines.

EPA is approving these measures, although some areas for improvement have been identified. Refer to the technical support document, dated January 24, 1997, for further analysis of the rules and areas identified for improvement. The BAAQMD rules will strengthen and maintain the SIP and together are estimated to achieve 32.4–

34 tons per day of NO_x emissions upon full implementation. EPA has evaluated the submitted rules and has determined that they are consistent with the CAA, EPA regulations and EPA policy. Therefore, all five rules are being approved under section 110(k)(3) of the CAA as meeting the applicable requirements of section 110(a) and part D.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future 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 document without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in a separate document in this **Federal Register** publication, the EPA is proposing to approve the SIP revision should adverse or critical comments be filed. This action will be effective June 16, 1997, unless, by May 19, 1997, adverse or critical comments are received.

If the EPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on this action serving as a proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective June 16, 1997.

Regulatory Process

Unfunded Mandates

Under Sections 202, 203, and 205 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must undertake various actions in association with proposed or final rules that include a Federal mandate that may result in estimated costs of \$100 million or more to the private sector or to State, local, or tribal governments in the aggregate.

Through submission of this State implementation plan revision, the State and any affected local or tribal governments have elected to adopt the program provided for under part D of the Clean Air Act. These rules may bind State, local, and tribal governments to

³ See 60 FR 27028 (May 22, 1995).

⁴ 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); and "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).

perform certain actions and also require the private sector to perform certain duties. The rules being approved by this action will impose no new requirements because affected sources are already subject to these regulations under State law. Therefore, no additional costs to State, local, or tribal governments or to the private sector result from this action. EPA has also determined that this direct final action does not include a mandate that may result in estimated costs of \$100 million or more to State, local, or tribal governments in the aggregate or to the private sector.

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 economic 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 affected small entities. 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. U.S. E.P.A., 427 U.S. 246, 256–66 (S.Ct. 1976); 42 U.S.C. section 7410(a)(2).

Executive Order 12866

This action has been classified as a Table 3 action for signature by the Regional Administrator under 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 has exempted this regulatory action from review under Executive Order 12866.

Submission to Congress and the General Accounting Office

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).

List of Subjects in 40 CFR Part 52

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

Note: Incorporation by reference of the State Implementation Plan for the State of California was approved by the Director of the Federal Register on July 1, 1982.

Dated: February 6, 1997.

Felicia Marcus,
Regional Administrator.

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. 7401–7671q

Subpart F—California

2. Section 52.220 is amended by adding paragraph (c)(239)(i)(D) to read as follows:

§ 52.220 Identification of Plan.

* * * * *

(c) * * *

(239) * * *

(i) * * *

(D) Bay Area Air Quality Management District.

(1) Regulation 9, Rule 7, adopted on September 15, 1993; Regulation 9, Rule 8, adopted on January 20, 1993; Regulation 9, Rule 9, adopted on September 21, 1994; Regulation 9, Rule 11, adopted on November 15, 1995; Regulation 9, Rule 12, adopted on January 19, 1994.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[RI–6972a; FRL–5711–1]

Limited Approval and Limited Disapproval of Implementation Plans; Rhode Island

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The EPA is issuing a limited approval, limited disapproval action on State Implementation Plan (SIP) revisions submitted by the State of Rhode Island. The SIP revisions consist of the State's 15 Percent Rate of Progress (ROP) Plan and contingency plan. The 15 percent ROP and contingency plans were submitted to satisfy CAA provisions that require ozone nonattainment areas classified as moderate and above to devise plans to reduce volatile organic compound (VOC) emissions 15 percent by 1996 when compared to a 1990 baseline.

DATES: This rule is effective May 19, 1997.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal business hours, by appointment, at the Office of Ecosystem Protection, Environmental Protection Agency, Region I, One Congress Street, 11th Floor, Boston, Massachusetts, 02203, and at the Rhode Island Department of Environmental Management, Division of Air Resources, 291 Promenade Street, Providence, Rhode Island, 02908–5767. Persons interested in examining these documents should make an appointment with the appropriate office at least 24 hours before the visiting day.

FOR FURTHER INFORMATION CONTACT: Robert F. McConnell, Air Quality Planning Unit, EPA Region I, JFK Federal Building, Boston, Massachusetts, 02203; telephone (617) 565–9266.

SUPPLEMENTARY INFORMATION: On October 30, 1996 (61 FR 55943), EPA published a notice of proposed rulemaking (NPR) for the State of Rhode Island. One portion of the NPR consisted of a proposed limited approval, limited disapproval of a revision to the Rhode Island SIP establishing a 15 Percent VOC emission reduction plan and contingency plan. The formal SIP revision was submitted by Rhode Island on March 15, 1994 and updated on May 23, 1994.

The 15 Percent and Contingency plans submitted by Rhode Island outline