ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA242–0334; FRL–7255–9]

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

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing a limited approval and limited disapproval of revisions to the Imperial County Air Pollution Control District (ICAPCD) portion of the California State Implementation Plan (SIP). These revisions concern volatile organic compound (VOC) emissions from aerospace manufacturing and rework coating operations. We are proposing action on ICAPCD Rule 425; a rule regulating these emission sources under the Clean Air Act as amended in 1990 (CAA or the Act). We are taking comments on this proposal and plan to follow with a final action.

DATE: Any comments must arrive by September 5, 2002.

ADDRESSES: Mail comments to Andy Steckel, Rulemaking Office Chief (AIR–4), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

You can inspect copies of the submitted SIP revisions and EPA's technical support document (TSD) at our Region IX office during normal business hours. You may also see copies of the submitted SIP revisions at the following locations:

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

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) 947–4111.

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

Table of Contents

I. The State's Submittal
A. What rule did the State submit?
B. Are there other versions of this rule?
C. What is the purpose of the submitted rule?
II. EPA's Evaluation and Action
A. How is EPA evaluating the rule?
B. Does the rule meet the evaluation criteria?
C. What are the rule's deficiencies?
D. EPA recommendations to further improve the rule
E. Proposed action and public comment
III. Background Information
A. Why was this rule submitted?
IV. Administrative Requirements

I. The State's Submittal

A. What Rule Did the State Submit?

Table 1 lists the rule addressed by this proposal with the dates that it was adopted by the local air agency and submitted by the California Air Resources Board (CARB).

TABLE 1—SUBMITTED RULE

Local agency	Rule #	Rule title	Adopted	Submitted
ICAPCD	425	Aerospace Coating Operations	09/14/99	05/26/00

On October 6, 2000, EPA found that the Rule 425 submittal met the completeness criteria in 40 CFR Part 51 Appendix V. These criteria must be met before formal EPA review begins.

B. Are There Other Versions of This Rule?

There are no previous versions of Rule 425 in the SIP.

C. What is the Purpose of the Submitted Rule?

Imperial County Air Pollution Control District Rule 425, Aerospace Coating Operations, is a rule designed to reduce volatile organic compound (VOC) emissions at industrial sites engaged in coating airplanes, space craft and their component parts. VOCs are emitted during the preparation and coating of the parts, as well as the drying phase of the coating process. Rule 425 establishes general emission limits in units of grams of Reactive Organic Compound (ROC) per litre (gr/l) of coating, less water and exempt compounds as applied. It also allows for the use of add-on emission controls whose combined capture and control efficiency must be 85.5 percent or better and specifies certain operating equipment. The rule also contains provisions for appropriate methods of analysis, exemptions, and record keeping. Rule 425 includes the following provisions:

1. applicability of and exemptions from the rule;
2. emission reduction requirements and prohibitions of the rule;
3. record keeping to demonstrate compliance with the rule; and,
4. test methods for determining compliance with the rule.

The TSD has more information about this rule.

II. EPA's Evaluation and Action

A. How is EPA Evaluating the Rule?

Imperial County is classified as a transitional area for ozone (*see* section 185(A) of the Act). In general, SIP rules in transitional areas must be enforceable (*see* section 110(a) of the Act), must not interfere with any applicable requirement concerning attainment and reasonable further progress (*see* section 110(l)), and must not relax existing requirements (*see* section 193).

Guidance and policy documents that we used to define enforceability and other requirements include the following:

1. Portions of the proposed post-1987 ozone and carbon monoxide policy that concern RACT, 52 FR 45044, November 24, 1987.
2. ''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 published in the May 25, 1988 **Federal Register**.
3. ''General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990,'' 57 FR 13498, April 16, 1992.
4. ''Control of Volatile Organic Emissions from Coating Operations at Aerospace Manufacturing and Rework Operations,'' USEPA, 1997, EPA–453/R–97–004.

B. Does the rule meet the evaluation criteria?

Rule 425 improves the SIP by establishing VOC emissions limitations for certain sources in Imperial County that are not otherwise covered by a SIP rule. Such limitations reduce emissions of a precursor of a pollutant (ozone) for which the county was designated ''transitional'' nonattainment under the Act and for which the county continues to experience NAAQS exceedances. Transitional areas (*see* section 185A of the Act) must ensure, at a minimum, that any deficiencies regarding

enforceability of an existing rule implementing Reasonably Available Control Technology (RACT) (*i.e.,* pre-CAAA enactment RACT rule) are corrected. Transitional areas were exempt from all subpart 2 requirements (of part D, title I of the Act) until December 31, 1991, and this exemption continues until we redesignate the area as attainment or designate the area as nonattainment under section 107(d)(4) of the Act. *See* 57 FR 13498, 13523–13527 (April 16, 1992).

In 1992, EPA determined that Imperial County had not violated the ozone NAAQS from January 1, 1987 through December 31, 1991. (*See* letter from Daniel McGovern, Regional Administrator, U.S. EPA—Region 9, to James Boyd, Executive Director, CARB, dated August 3, 1992.) Our 1992 determination does not constitute a redesignation to attainment, and Imperial County has never been redesignated as an ozone attainment area under section 107(d)(3), nor has it been designated as nonattainment under section 107(d)(4) in light of post-1991 ozone NAAQS violations. Therefore, only the general requirement to correct deficiencies in enforceability of pre-1990 RACT rules applies for ozone planning purposes within Imperial County. Also, ICAPCD rule 425 would not supercede any existing SIP rule; thus, the requirement to correct deficiencies in enforceability in pre-1990 RACT rules does not apply.

However, ICAPCD Rule 425 does contain enforceability deficiencies that preclude our full approval of the rule. However, if finalized, our proposed limited disapproval action would not trigger a sanctions timeclock under Section 179 because the rule does not represent a required submittal under the Act.

Section 110(l) of the Act prohibits EPA from approving any revision of a SIP if the revision would interfere with any applicable requirement concerning attainment and reasonable further progress, or any other applicable requirement of the Act. In nonattainment areas, our evaluation extends beyond the issue of whether the submitted SIP revision is as stringent as the existing SIP provision that it would supercede and considers the submitted SIP revision in light of current ambient air quality and nonattainment planing requirements within the applicable nonattainment area. *See Hall* v. *EPA, 263 F.3d 926 (9th Cir.), amended 273 F.3d 1146 (2001).*

Based on ozone monitoring data in EPA's AIRS database, exceedances of the one-hour ozone NAAQS have been recorded each year since 1991 in Imperial County. However, the issue of classifying Imperial County under subpart B (of part D, title I of the Act) is complicated by its location next to a heavily populated area within Mexico. The population of the entire county is approximately 140,000; far less than the single Mexican city of Mexicali (approximately 660,000), which lies immediately across the border from the Imperial County city of Calexico. Given this situation, we have not determined, under section 185A of the Act, whether or not Imperial County attained the ozone NAAQS by December 31, 1991. Consequently, the planning requirements for Imperial County have not been determined. Also, while the State has not provided a demonstration under section 179B of the Act that Imperial County would have attained the standard by December 31, 1991 but for emissions emanating from outside the United States, we are aware of a CARB study showing that under certain circumstances, Mexicali's emissions do overwhelmingly impact air quality in Calexico. See California Air Resources Board, *Ozone Transport: 2001 Review,* April 2001.

Given the difficulty of establishing the root cause of historic and continuing ozone NAAQS exceedances in Imperial County and the ensuing uncertainty with respect to future ozone planning requirements, we have concluded that approval of ICAPCD Rule 425 will not interfere with any applicable requirement concerning attainment and reasonable further progress or any other applicable requirement of the Act; thus, it will comply with section 110(l). With the proposed approval, we recognize that the VOC emissions limitations and the enforceability provisions in this rule could conceivably be revisited if we were to classify the area under subpart 2 or require preparation of a maintenance plan.

Section 193 of the Act prohibits modifications to pre-1990 SIP control requirements in any nonattainment area for any nonattainment pollutant unless such modification insures equivalent or greater emission reductions of such air pollutant. ICAPCD Rule 425 would not replace pre-1990 SIP control requirements because EPA has not approved a previous version of this rule into the SIP. Consequently, Section 193 does not apply to our proposed action.

C. What Are the Rule's Deficiencies?

The provisions listed below conflict with section 110 and part D of the Act and prevent full approval of the SIP revision. There are two cases of unlimited ''director's discretion'' that are deficiencies under EPA's review criteria.

1. Paragraph A.3.c contains ''director's discretion'' in providing a specialty coatings exemption from the requirements of the rule.

2. Paragraph C.4 contains ''director's discretion'' in providing for an ''alternative recordkeeping plan'' as a means to meet the rule's recordkeeping provisions.

These ''director's discretion'' provisions allow for a variance from SIP requirements, which is not allowed under section 110(i) of the Act and the requirement that SIP provisions may only be modified by SIP revisions approved by EPA.

D. EPA Recommendations To Further Improve the Rule

The TSD describes additional rule revisions that do not affect EPA's current action but are recommended for the next time the local agency modifies the rule.

E. Proposed Action and Public Comment

As authorized in sections 110(k)(3) and 301(a) of the Act, EPA is proposing a limited approval of the submitted rule to improve the SIP. If finalized, this action would incorporate the submitted rule into the SIP, including those provisions identified as deficient. This approval is limited because EPA is simultaneously proposing a limited disapproval of the rule under section 110(k)(3). No Section 179 sanctions are associated with this disapproval action. Given Imperial County's classification as a transitional area, this submittal is not required under the CAA. Sanction clocks are not started for a disapproval of a submittal not mandated by the CAA. Note that the submitted rule has been adopted by the ICAPCD, and EPA's final limited disapproval would not prevent the local agency from enforcing it.

We will accept comments from the public on the proposed limited approval and limited disapproval for the next 30 days.

III. Background Information

A. Why Was This Rule Submitted?

VOCs help produce ground-level ozone and smog, which harm human health and the environment. Section 110(a) of the CAA requires each State to adopt and submit to EPA a plan which provides for implementation, maintenance and enforcement of the NAAQS. With respect to the ozone NAAQS, each State is required to submit regulations that control

emissions of ozone precursors, including VOC, along with other requirements. Table 2 lists some of the national milestones leading to the submittal of this local agency VOC rule.

TABLE 2—OZONE NONATTAINMENT MILESTONES

Date	Event
November 15, 1990.	Clean Air Act Amendments of 1990 were enacted. Pub. L. 101–549, 104 Stat. 2399, codified at 42 U.S.C. 7401–7671q.
April 16, 1992	EPA publishes ''General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990'' (57 FR 13498), which provides EPA's interpretation of the requirements under the Act for transitional (ozone) nonattainment areas.

IV. Administrative Requirements

A. Executive Order 12866

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

B. Executive Order 13211

This proposed 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 proposed 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 proposed 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 proposed 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. In the spirit of Executive Order 13175, and consistent with EPA policy to promote communications between EPA and tribal governments, EPA specifically solicits additional comment on this proposed rule from tribal officials.

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.

This proposed rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply act on requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities.

EPA's proposed 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 proposed action 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 proposed 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 proposed action because it does not require the public to perform activities conducive to the use of VCS.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compound.

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

Dated: July 16, 2002.

Keith Takata,

Associate Regional Administrator, Region IX.

[FR Doc. 02–19794 Filed 8–5–02; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 02–1620, MB Docket No. 10463, RM–10463]

Radio Broadcasting Services; Balmorhea, TX

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Linda Crawford proposing the allotment of Channel 283C at Balmorhea, Texas, as that community's first local FM service. The coordinates for Channel 283C at Balmorhea are 31–08–42 and 103–36–54. There is a site restriction 21.7 kilometers (13.5 miles) northeast of the community. Since Balmorhea is located within 320 kilometers of the U.S.-Mexican border, concurrence of the Mexican Government will be requested for the allotment at Balmorhea.

DATES: Comments must be filed on or before September 9, 2002, and reply comments on or before September 24, 2002.

ADDRESSES: Federal Communications Commission, 445 Twelfth Street, SW., Washington, DC. 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, as follows: Linda Crawford, 3500 Maple Avenue, #1320, Dallas, Texas 75219.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MB Docket No. 02–185, adopted July 3, 2002 and released July 19, 2002. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center 445 Twelfth Street, SW., Washington, DC 20554. The complete text of this decision may also be purchased from the Commission's duplicating contractor, Qualex International Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC, 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com.*

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. *See* 47 CFR 1.1204(b) for rules governing permissible ex parte contact.

For information regarding proper filing procedures for comments, *see* 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Texas, is amended by adding Balmorhea, Channel 283C.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 02–19731 Filed 8–5–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 02–1730, MB Docket No. 02–192, RM–10507]

Radio Broadcasting Services; Albany, VT

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Lutterloh Community Broadcasters proposing the allotment of Channel 233A at Albany, Vermont, as that community's first local broadcast service. The coordinates for Channel 233A at Albany are 44–45–26 and 72–