

and (d)(4) are amended by removing "2133(c)" and adding, in place thereof, "16133(c)" and the authority citation following paragraph (e)(2) is amended by removing "2131(c)(3)(A)" and adding, in place thereof, "16131(c)(3)(A)".

§ 21.7639 [Amended]

36. In § 21.7639, the authority citation following paragraph (b)(2) is amended by removing "2130(b)" and adding, in place thereof, "16136(b)".

§ 21.7644 [Amended]

37. In § 21.7644, the authority citation following paragraph (b)(2) is amended by removing "2135" and adding, in place thereof, "16135".

[FR Doc. 96-11419 Filed 5-7-96; 8:45 am]

BILLING CODE 8320-01-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[ID5-2-7505; FRL-5500-4]

Attainment Extensions for PM-10 Nonattainment Areas: Idaho

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: In the August 28, 1995 Federal Register, EPA identified two nonattainment areas in the State of Idaho which failed to attain the National Ambient Air Quality Standards (NAAQS) for particulate matter with an aerodynamic diameter of less than or equal to ten micrometers (PM-10) by the applicable attainment date of December 31, 1994: the Power-Bannock Counties PM-10 nonattainment area and the Sandpoint PM-10 nonattainment area. In that same Federal Register, EPA proposed to grant a one-year extension to the attainment date for those areas, from December 31, 1994 to December 31, 1995. EPA, by this document, grants the extensions.

EFFECTIVE DATE: This final rule is effective June 7, 1996.

ADDRESSES: Copies of the State's request and other information supporting this action are available for inspection during normal business hours at the following locations: EPA, Office of Air Quality, 1200 Sixth Avenue, Seattle, Washington 98101, and State of Idaho, Division of Environmental Quality, 1410 N. Hilton, Boise, Idaho 83710.

FOR FURTHER INFORMATION CONTACT: Steven K. Body, 206/553-0782, EPA, Office of Air Quality, Seattle, Washington.

SUPPLEMENTARY INFORMATION:

I. Background

Clean Air Act Requirements

Areas meeting the requirements of section 107(d)(4)(B) of the Act¹ were designated nonattainment for particulate matter with an aerodynamic diameter of less than or equal to ten micrometers by operation of law and classified "moderate" upon enactment of the 1990 Clean Air Act Amendments. See generally 42 U.S.C. section 7407(d)(4)(B). These areas included all former Group I PM-10 planning areas identified in 52 FR 29383 (August 7, 1987) as further clarified in 55 FR 45799 (October 31, 1990), and any other areas violating the National Ambient Air Quality Standards for PM-10 prior to January 1, 1989.² A Federal Register notice announcing the areas designated nonattainment for PM-10 upon enactment of the 1990 Amendments, known as "initial" PM-10 nonattainment areas, was published on March 15, 1991 (56 FR 11101) and a subsequent Federal Register notice correcting the description of some of these areas was published on August 8, 1991 (56 FR 37654). See 56 FR 56694 (November 6, 1991) and 40 CFR 81.313 (codified air quality designations and classifications for the State of Idaho). All initial moderate PM-10 nonattainment areas have the same applicable attainment date of December 31, 1994.

States containing initial moderate PM-10 nonattainment areas were required to develop and submit to EPA by November 15, 1991, a SIP revision providing for, among other things, implementation of reasonably available control measures (RACM), including reasonably available control technology (RACT), and a demonstration of whether attainment of the PM-10 NAAQS by the December 31, 1994 attainment date was practicable. See Section 189(a).

The Act provides the Administrator the discretion of granting a one-year extension to the attainment date for a moderate PM-10 nonattainment area provided certain criteria are met. See Section 188(d). The statute sets forth two criteria a moderate nonattainment area must satisfy in order to obtain an extension: (1) the State has complied with all the requirements and commitments pertaining to the area in

¹The 1990 Amendments to the Clean Air Act made significant changes to the Act. See Public Law No. 101-549, 104 Stat. 2399. References herein are to the Clean Air Act as amended ("Act" or "CAA"), which is codified at 42 U.S.C. § 7401 *et seq.*

²Many of these other areas were identified in footnote 4 of the October 31, 1990 Federal Register notice.

the applicable implementation plan; and (2) the area has no more than one exceedance of the 24-hour PM-10 standard in the year preceding the extension year, and the annual mean concentration of PM-10 in the area for the year preceding the extension year is less than or equal to the standard. See Section 188(d). As discussed in the August 28, 1995 Federal Register document (60 FR 44452), in exercising its discretion to grant extensions for PM-10 nonattainment areas, EPA will examine the air quality planning progress made in the moderate area. EPA will be disinclined to grant an attainment date extension unless a State has, in substantial part, addressed its moderate PM-10 nonattainment area planning obligations as evidenced by whether the State has: (1) adopted and substantially implemented control measures that represent RACM/RACT in the moderate nonattainment area; and (2) demonstrated that the area has made emission reductions amounting to reasonable further progress toward attainment of the PM-10 NAAQS as defined in section 171(1) of the Act. See 60 FR 44453.

If the State does not have the requisite number of years of clean air quality data to show attainment and does not apply or qualify for an attainment date extension, the area will be reclassified to serious by operation of law under section 188(b)(2) of the Act. If an extension to the attainment date is granted, at the end of the extension year EPA will again determine whether the area has attained the PM-10 NAAQS. If the requisite three consecutive years of clean air quality data needed to determine attainment are not met for the area, the State may apply for a second one-year extension of the attainment date. In order to qualify for the second one-year extension of the attainment date, the State must satisfy the same requirements listed above for the first extension. EPA will also consider the State's PM-10 planning progress for the area in the year for which the first extension was granted. If a second extension is granted and the area does not have the requisite three consecutive years of clean air quality data needed to demonstrate attainment at the end of the second extension, no further extensions of the attainment date can be granted and the area will be reclassified serious by operation of law. See section 188(d).

On August 28, 1995, EPA determined, based on air quality data showing violations of the PM-10 NAAQS during the period from 1992 through 1994, that the Power-Bannock Counties PM-10 nonattainment area and Sandpoint PM-10 nonattainment area have each failed

to attain the PM-10 NAAQS by the applicable attainment date of December 31, 1994. See 60 FR 44454. In that action, EPA also proposed to grant the State of Idaho's request for a one-year extension of the PM-10 attainment date for these nonattainment areas based on the supporting information provided by the State.

EPA received two comments on the proposal, both of which supported EPA's proposal to grant the one-year extension, but one of which disagreed with EPA's characterization of two underlying issues. In this notice, EPA is taking final action on its proposal to extend the PM-10 attainment date for the Power-Bannock Counties PM-10 nonattainment area and the Sandpoint PM-10 nonattainment area from December 31, 1994 to December 31, 1995.

II. Final Action and Implications

A. Response to Public Comments

EPA received comments from the State of Idaho, Division of Environmental Quality, North Idaho Regional Office (IDEQ-NIRO) and from FMC Corporation (FMC), which owns and operates a facility in the Power-Bannock Counties PM-10 nonattainment area. IDEQ-NIRO strongly endorsed EPA's proposal to grant a one-year extension to the attainment date for the Sandpoint PM-10 nonattainment area.

FMC supported EPA's proposal to grant a one-year extension of the PM-10 attainment date for the Power-Bannock Counties PM-10 nonattainment area, but felt that EPA could have "more appropriately characterized" two issues discussed in the proposal. First, FMC objected to EPA's failure to acknowledge that FMC has undertaken efforts to voluntarily reduce particulate emissions from certain sources within its facility which FMC believes has in turn contributed to recent indications that the area is approaching attainment of the standard. Second, FMC stated that EPA should discount the importance of the Eastern Michaud Flats superfund monitoring Site #2 (EMF Site #2) monitoring data because FMC asserts that siting considerations and exceptional events substantially diminish the significance and accuracy of its measurements. EPA has serious concerns regarding the sufficiency, and in some cases, the accuracy of the information provided by FMC in support of its concerns. For example, although EPA fully supports the voluntary efforts FMC has undertaken to implement PM-10 reductions at its elemental phosphorus facility, FMC has

not provided documentation to support the claimed emission reductions or to show that the voluntary improvements meet the RACM/RACT requirement. Moreover, voluntary actions are not sufficient to meet Clean Air Act planning requirements for PM-10 nonattainment areas. See sections 110(a)(2)(A) and 172(c)(6) of the Act. Even if accurate and fully supportable, however, the information provided by FMC in its comments would not change EPA's decision to grant the Power-Bannock Counties PM-10 nonattainment area a one-year extension of the attainment date. Indeed, FMC fully supports the granting of such an extension. The information provided by FMC, if fully accepted by EPA, would only strengthen the basis for EPA's decision.

As EPA stated in the proposal, EPA is currently working on a proposed rule that would implement a control strategy for sources located within the Tribal portion of the nonattainment area. It is through this process that the control measures that have been voluntarily undertaken by FMC can be, if appropriate, made federally enforceable and their adequacy in context of the RACM/RACT requirement can be more appropriately evaluated. Similarly, if EPA proposes to rely on the data from EMF Site #2 to support its proposed control strategy, the public comment period on EPA's proposed strategy would be an appropriate time for FMC to present more information to support its claim that EMF Site #2 does not meet EPA siting criteria and to request that specifically identified events should be deemed exceptional and their effects on the monitoring site discounted.

B. Final Action

EPA is granting the State of Idaho's request for a one-year extension of the PM-10 attainment date for both the Power-Bannock Counties PM-10 nonattainment area and the Sandpoint PM-10 nonattainment area. This determination is based upon available air quality data and a review of the State's progress in implementing the planning requirements that apply to moderate PM-10 nonattainment areas. For a thorough discussion of the basis for EPA's determination, please refer to the proposal for this action at 60 FR 44452. This action extends the PM-10 nonattainment date for both the Power-Bannock Counties PM-10 nonattainment area and the Sandpoint PM-10 nonattainment area from December 31, 1994 to December 31, 1995.

III. Administrative Requirements

A. Docket

Copies of the State's request and all other information relied on by EPA in granting one-year extension, including public comments on the proposal received and reviewed by EPA, are maintained in the docket at the EPA Regional Office. The docket is an organized and complete file of information submitted to or otherwise considered by EPA in making this decision. The docket is available for public inspection at the location listed under the ADDRESSES section of this document.

B. Executive Order 12866

The Office of Management and Budget has exempted this action from Executive Order 12866.

C. Regulatory Flexibility

Extensions under Section 188(d) of the Clean Air Act do not create any new requirements, but merely extend the potential date for the imposition of new requirements. Because this action does not impose any new requirements, it does not have a significant impact on a substantial number of small entities.

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 the 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, result from this action.

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 July 8, 1996. 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), 42 U.S.C. 7607(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental Protection, Air pollution control, Particulate matter, Intergovernmental relations, Reporting and recordkeeping requirements.

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

Dated: April 25, 1996.

Chuck Clarke,

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: 52 U.S.C. 7401–7671q.

Subpart N—Idaho

2. Section 52.691 is added to read as follows:

§ 52.691 Extensions.

The Administrator, by authority delegated under section 188(d) of the Clean Air Act, as amended in 1990, hereby extends for one year (until December 31, 1995) the attainment date for the Power-Bannock Counties PM-10 nonattainment area and the Sandpoint PM-10 nonattainment area.

[FR Doc. 96–11344 Filed 5–7–96; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 52

[TX–10–1–7025; FRL–5468–2]

Approval and Promulgation of Air Quality Implementation Plans; Texas; Revision to the State Implementation Plan (SIP) Addressing Visible Emissions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: On April 3, 1995 the EPA simultaneously published a direct final

rule and notice of proposed rulemaking in which EPA published its decision to approve a revision to the Texas SIP addressing visible emissions. During the 30-day comment period, the EPA received three comment letters in response to the April 3, 1995, rulemaking. This final rule summarizes comments and EPA's responses, and finalizes the EPA's decision to approve the revisions to the visible emissions regulations for Texas.

EFFECTIVE DATE: June 7, 1996.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal business hours at the addresses listed below. The interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the visiting day.

U.S. Environmental Protection Agency, Region 6, Air Planning Section (6PD-L), 1445 Ross Avenue, Dallas, Texas 75202–2733.

U.S. Environmental Protection Agency, Air and Radiation Docket and Information Center, 401 M Street, SW., Washington, DC 20460.

Texas Natural Resource Conservation Commission, 12124 Park 35 Circle, Austin, Texas 78753.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas H. Diggs, Chief, Air Planning Section (6PD-L), USEPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, telephone (214) 665–7214.

SUPPLEMENTARY INFORMATION:

Background

On April 3, 1995, the EPA published a direct final rulemaking approving a revision to the existing Texas regulation concerning the control of visible emissions (60 FR 16806). At the same time that the EPA published the direct final rule, a separate notice of proposed rulemaking was published in the Federal Register (60 FR 16829). This proposed rulemaking specified that EPA would withdraw the direct final rule if adverse or critical comments were filed on the rulemaking. The EPA received three letters containing adverse comments regarding the direct final rule within 30 days of publication of the proposed rule and withdrew the direct final rule on June 5, 1995 (60 FR 29484).

The specific rationale EPA used to approve the revision to the Texas visible emissions regulations is explained in the direct final rule and will not be restated here. This final rule contained in this Federal Register addresses the comments received during the public comment period and announces EPA's

final action regarding approval of the visible emissions revisions.

Response to Public Comments

In the April 3, 1995, Federal Register, the EPA requested public comments on the proposed/direct final rules (please reference 60 FR 16806–16808 and 60 FR 16829). The EPA received three adverse comment letters dated May 3, 1995, and thus proceeded to withdraw the direct final rule and adequately address each comment letter. The EPA's response to each comment letter is detailed below.

1. A letter was received from Larry Feldcamp, Baker & Botts, LLP, representing the Texas Industry Project (TIP). The TIP believed that the Texas Regulation I provisions for visible emissions were unwarranted, and that the EPA exceeded its statutory authority under title I of the Clean Air Act as amended in 1990 (CAA) in proposing to approve those provisions into the Texas SIP. The TIP believes that the visible emissions provisions are not necessary for the attainment or maintenance of any National Ambient Air Quality Standard (NAAQS) in Texas. Further, the TIP is concerned that some visible emissions provisions in Regulation I will cause more burdensome monitoring, recordkeeping, reporting, and compliance certification requirements for subject sources, since title V of the CAA incorporates SIP requirements. Finally, the TIP expressed concern about federal suits being available to enforce the visible emissions provisions, provisions which the TIP believes should not be in the Texas SIP.

EPA's response to letter #1: Section 110(a)(1) of the CAA requires States to provide plans for the implementation and maintenance, and enforcement of primary and secondary criteria pollutant standards, and for these plans to be submitted to EPA as part of the SIP. The visible emissions revisions provide for maintenance of the particulate standard statewide, and thus meet the intent of section 110(a)(1). Since EPA believes that the visible emissions regulations provide for maintenance of the particulate standard and strengthen the SIP as a whole, incorporation of these revisions into the SIP is required under section 110. The EPA must take action on state SIP submittals to either approve or disapprove the submittals. The EPA believes that the revised visible emissions provisions in Texas Regulation I are approvable (note—the existing Texas SIP contains visible emissions provisions in Texas Regulation I). This approval will strengthen the Texas SIP by updating the regulation. The EPA believes that