

Therefore, pursuant to 5 U.S.C. 605(b), this rule is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

#### Catalog of Federal Domestic Assistance

There are no applicable Catalog of Federal Domestic Assistance program numbers.

#### List of Subjects in 38 CFR Part 17

Administrative practice and procedure, Alcohol abuse, Alcoholism, Claims, Day care, Dental health, Drug abuse, Foreign relations, Government contracts, Grant programs-health, Grant programs-veterans, Health care, Health facilities, Health professions, Health records, Homeless, Medical and dental schools, Medical devices, Medical research, Mental health programs, Nursing homes, Philippines, Reporting and recordkeeping requirements, Scholarships and fellowships, Travel and transportation expenses, Veterans.

Approved: July 15, 2005.

**R. James Nicholson,**

*Secretary of Veterans Affairs.*

■ For the reasons set out above, 38 CFR part 17 is amended to read as follows:

#### PART 17—MEDICAL

■ 1. The authority citation for part 17 is revised to read as follows:

**Authority:** 38 U.S.C. 501, 1721, and as stated in specific sections.

■ 2. Section 17.32 is amended by:

■ a. Revising the section heading and authority citation.

■ b. In paragraph (a), adding a new definition in alphabetical order.

■ c. Adding paragraph (h) immediately following paragraph (g)(4).

The revisions and additions read as follows:

#### § 17.32 Informed consent and advance health care planning.

(a) \* \* \*

**Advance Directive.** Specific written statements made by a patient who has decision-making capacity regarding future health care decisions in any of the following:

(i) **VA Living Will.** A written statement made by a patient on an authorized VA form which sets forth the patient's wishes regarding the patient's health care treatment preferences including the withholding and withdrawal of life-sustaining treatment.

(ii) **VA Durable Power of Attorney for Health Care.** A written instruction on a VA form which designates the patient's choice of health care agent.

(iii) **State-Authorized Advance Directive.** A non-VA living will, durable

power of attorney for health care, or other advance health care planning document, the validity of which is determined pursuant to applicable State law. For the purposes of this paragraph and paragraph (h) of this section, "applicable State law" means the law of the State where the advance directive was signed, the State where the patient resided when the advance directive was signed, the State where the patient now resides, or the State where the patient is receiving treatment. VA will resolve any conflict between those State laws regarding the validity of the advance directive by following the law of the State that gives effect to the expressed wishes in the advance directive.

\* \* \* \* \*

(h) **Advance health care planning.** Subject to the provisions of paragraphs (h)(1) through (h)(4) of this section, VA will follow the wishes of a patient expressed in an Advance Directive when the attending physician determines and documents in the patient's medical record that the patient lacks decision-making capacity and is not expected to regain it. An advance directive that is valid in one or more States under applicable State law, as defined in paragraph (a) of this section, will be recognized throughout the VA health care system.

(1) **Witnesses.** A VA Advance Directive: Living Will and Durable Power of Attorney for Health Care must be signed by the patient in the presence of two witnesses. Neither witness may to the witness' knowledge be named in the patient's will, appointed as health care agent in the advance directive, or financially responsible for the patient's care. VA employees of the Chaplain Service, Psychology Service, Social Work Service, or nonclinical employees (e.g., Medical Administration Service, Voluntary Service, or Environmental Management Service) may serve as witnesses. Other individuals employed by the VA facility in which the patient is being treated may not sign as witnesses to the advance directive. Witnesses are attesting only to the fact that they saw the patient sign the form.

(2) **Instructions in critical situations.** VA will follow the unambiguous verbal or non-verbal instructions regarding future health care decisions of a patient who has decision-making capacity when the patient is admitted to care when critically ill and loss of capacity may be imminent and the patient is not physically able to sign an advance directive form, or the appropriate form is not readily available. The patient's instructions must have been expressed to at least two members of the health

care team. The substance of the patient's instructions must be recorded in a progress note in the patient's medical record and must be co-signed by at least two members of the health care team who were present and can attest to the wishes expressed by the patient. These instructions will be given effect only if the patient loses decision-making capacity during the presenting situation.

(3) **Revocation.** A patient who has decision-making capacity may revoke an advance directive or instructions in a critical situation at any time by using any means expressing the intent to revoke.

(4) **VA policy and disputes.** Neither the treatment team nor surrogate may override a patient's clear instructions in an Advance Directive or in instructions in critical situations, except that those portions of an Advance Directive or instructions given in a critical situation that are not consistent with VA policy will not be given effect.

\* \* \* \* \*

(Authority: 38 U.S.C. 7331 through 7334)

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#### ENVIRONMENTAL PROTECTION AGENCY

#### 40 CFR Part 52

[Region 2 Docket No. R02-OAR-2005-NJ-0002, FRL-7999-8]

#### Approval and Promulgation of Implementation Plans; New Jersey Architectural Coatings Rule

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

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is approving a revision to the New Jersey State Implementation Plan (SIP) for ozone concerning the control of volatile organic compounds. The SIP revision consists of amendments to Subchapter 23 "Prevention of Air Pollution From Architectural Coatings" of 7:27 of the New Jersey Administrative Code, which are needed to meet the shortfall in emissions reduction identified by EPA in New Jersey's 1-hour ozone attainment demonstration SIP. The intended effect of this action is to approve a control strategy required by the Clean Air Act, which will result in emission reductions that will help achieve attainment of the national ambient air quality standard for ozone.

**DATES:** *Effective Date:* This rule will be effective December 30, 2005.

**ADDRESSES:** EPA has established a docket for this action under Regional Material in EDocket (RME) Docket ID Number R02-OAR-2005-NJ-0002. All documents in the docket are listed in the Regional Material in EDocket (RME) index at <http://docket.epa.gov/rmepub/>, once in the system, select "quick search," then key in the appropriate RME Docket identification number. Publicly available docket materials are available either electronically in Regional Material in EDocket or in hard copy at the Environmental Protection Agency, Region II Office, Air Programs Branch, 290 Broadway, 25th Floor, New York, New York 10007-1866. Copies of the documents relevant to this action are also available for public inspection during normal business hours, by appointment at the Air and Radiation Docket and Information Center, Environmental Protection Agency, Room B-108, 1301 Constitution Avenue, NW., Washington, DC; and the New Jersey Department of Environmental Protection, Office of Air Quality Management, Bureau of Air Pollution Control, 401 East State Street, CN027, Trenton, New Jersey 08625.

**FOR FURTHER INFORMATION CONTACT:** Paul Truchan, Air Programs Branch, Environmental Protection Agency, 290 Broadway, 25th Floor, New York, New York 10278, (212) 637-3711.

#### **SUPPLEMENTARY INFORMATION:**

##### **I. What Action Is EPA Taking Today?**

EPA is approving a revision to New Jersey's ozone State Implementation Plan (SIP) submitted on July 28, 2004. This SIP incorporates adopted rule amendments to Title 7, Chapter 27, Subchapter 23 "Prevention of Air Pollution from Architectural Coatings" which was adopted on May 21, 2004. This adoption was published in the New Jersey Register on June 21, 2004 and became effective on July 20, 2004. The Subchapter 23 amendments are applicable to the entire State of New Jersey. The reader is referred to the proposed rulemaking (July 21, 2005, 70 FR 42019) for additional details.

Subchapter 23 contains provisions allowing for limited exemptions and variances where such exemptions and variances have been approved by other states with equivalent regulations. While these provisions are acceptable, each specific application of those provisions will only be recognized as meeting Federal requirements after the specific exemption or variance is approved by EPA as a SIP revision. Therefore, EPA is approving the regulation as part of the New Jersey SIP with the exception that any specific

application of provisions associated with variances or exemptions, must be submitted as SIP revisions.

##### **II. What Comments Were Received and How Has EPA Responded to Them?**

EPA received no comments on the proposal.

##### **III. What Role Does This Rule Play in the Ozone SIP?**

When EPA evaluated New Jersey's 1-hour ozone attainment demonstrations, EPA determined that additional emission reductions were needed for the State's two severe nonattainment areas in order for the State to attain the 1-hour ozone standard with sufficient surety (December 16, 1999, 64 FR 70380). EPA provided that the states in the Ozone Transport Region could achieve these emission reductions through local or regional control programs. New Jersey decided to participate with the other states in the Northeast in an Ozone Transport Commission (OTC) regulatory development effort which developed six model control measures. This rulemaking incorporates one of the OTC model control measures into the New Jersey ozone SIP: architectural coatings. The emission reductions from this control measure will provide a portion of the additional emission reductions needed to attain the 1-hour ozone standard. The emission reductions from this measure will also help to attain the 8-hour ozone standard.

##### **IV. What Are EPA's Conclusions?**

EPA has evaluated the submitted Subchapter 23 submission for consistency with EPA regulations, policy and guidance. Consistent with EPA policy and guidance, EPA is approving the rule submitted as part of the New Jersey SIP with the exception that any specific application of provisions associated with variances or exemptions, must be submitted as SIP revisions for EPA approval. This rule will strengthen the SIP by providing for additional VOC reductions. Accordingly, EPA is approving the Subchapter 23 revisions as adopted on May 21, 2004 and effective on July 20, 2004 with the limitation identified above.

##### **V. Statutory and Executive Order Reviews**

Statutory and Executive Order Reviews Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order

13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4). This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, 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 by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have federalism implications because it does 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 (64 FR 43255, August 10, 1999), because it merely approves 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. This rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant. In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology

Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2). 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 January 30, 2006. 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, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: November 8, 2005.

Alan J. Steinberg,

Regional Administrator, Region 2.

■ Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

#### PART 52—[AMENDED]

■ 1. The authority citation for part 52 continues to read as follows:

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

#### Subpart FF—New Jersey

■ 2. Section 52.1570 is amended by adding new paragraph (c)(78) to read as follows:

#### § 52.1570 Identification of plan.

\* \* \* \* \*

(c) \* \* \*

\* \* \* \* \*

(78) Revisions to the State Implementation Plan submitted on July 28, 2004 by the State of New Jersey Department of Environmental Protection that establishes an expanded control program for architectural coatings.

(i) Incorporation by reference:

(A) Regulation Subchapter 23 of Title 7, Chapter 27 of the New Jersey Administrative Code, entitled "Prevention of Air Pollution From Architectural Coatings," adopted on May 21, 2004 and effective on July 20, 2004.

(ii) Additional material:

(A) Letter from State of New Jersey Department of Environmental Protection dated July 28, 2004, requesting EPA approval of a revision to the Ozone SIP which contains amendments to the Subchapter 23 "Prevention of Air Pollution From Architectural Coatings."

\* \* \* \* \*

■ 3. Section 52.1605 is amended by revising the entry under Title 7, Chapter 27 for Subchapter 23 in the table to read as follows:

#### § 52.1605 EPA—approved New Jersey regulations.

State regulation	State effective date	EPA approved date	Comments
* * *	* * *	* * *	* * *
Title 7, Chapter 27.			
* * *	* * *	* * *	* * *
Subchapter 23, Prevention of Air Pollution From Architectural Coatings.	July 20, 2004 .....	November 30, 2005 ...	Variances or exemptions approved by the State pursuant to Subchapter 23.3(j) become applicable only if approved by EPA as a SIP revision.
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#### ENVIRONMENTAL PROTECTION AGENCY

#### 40 CFR Parts 52 and 81

[R09–OAR–2005–CA–0010; FRL–8002–4]

#### Approval and Promulgation of Implementation Plans and Designation of Areas for Air Quality Planning Purposes; California; Carbon Monoxide Maintenance Plan Update for Ten Planning Areas; Motor Vehicle Emissions Budgets; Technical Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

**SUMMARY:** The EPA is taking direct final action to approve a State Implementation Plan revision, submitted by the California Air Resources Board on November 8, 2004, that includes the *2004 Revision to the California State Implementation Plan for Carbon Monoxide, Updated Maintenance Plan for Ten Federal Planning Areas*. This revision will provide a ten-year update to the carbon monoxide maintenance plan, as well as replace existing and establish new carbon monoxide motor vehicle emissions budgets for the purposes of determining transportation conformity, for the following ten areas: Bakersfield Metropolitan Area, Chico Urbanized Area, Fresno Urbanized Area, Lake