



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R05-OAR-2010-0394; FRL-9663-1]

**Approval and Promulgation of Air Quality Implementation Plans;
Illinois; Consumer Products and AIM Rules**

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving the addition of a new rule to the Illinois State Implementation Plan (SIP) submitted by the Illinois Environmental Protection Agency (IEPA) on April 7, 2010. The rule being approved into the SIP is Title 35 Illinois Administrative Code (IAC) Part 223, "Standards and Limitations for Organic Material Emissions for Area Sources." The rule is approvable because it is at least as stringent, and in some cases more stringent than, EPA's national consumer products and architectural and industrial maintenance (AIM) coatings rules. However, EPA is conditionally approving four specific paragraphs in the rule, based on a September 2, 2011, letter from IEPA committing to correct the noted deficiencies in these paragraphs within one year of [insert date 30 days after publication in the Federal Register].

DATES: This final rule is effective on [insert date 30 days after publication in the Federal Register].

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA-R05-OAR-2010-0394. All documents in the docket are listed on the www.regulations.gov web site. Although listed in the index, some information is not publicly available, i.e., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through www.regulations.gov or in hard copy at the Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This facility is open from 8:30 AM to 4:30 PM, Monday through Friday, excluding Federal holidays. We recommend that you telephone Anthony Maietta, Environmental Protection Specialist, at (312) 353-8777 before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT: Anthony Maietta, Environmental Protection Specialist, Control Strategies Section, Air Programs Branch (AR-18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312)353-8777, maietta.anthony@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document whenever "we," "us," or "our" is used, we mean EPA. This supplementary information section is arranged as follows:

- I. Background.
- II. Did EPA Receive Any Comments on Our Proposed Rulemaking?
- III. What Action Is EPA Taking?
- IV. Statutory and Executive Order Reviews.

I. Background.

On April 7, 2010, IEPA submitted a request for EPA to approve 35 IAC Part 223, titled, "Standards and Limitations for Organic Material Emissions for Area Sources," into the Illinois SIP. This Part includes measures to limit volatile organic compounds (VOC) emissions by requiring reductions in the VOC content of consumer products and AIM coatings. Consumer products are a wide array of sprays, gels, cleaners, adhesives, and other chemically formulated products that are purchased for personal or institutional use and that emit VOC through their consumption, storage, disposal, destruction, or decomposition. AIM coatings are paints, varnishes, and other similar coatings that are meant for use on external surfaces of buildings or other outside structures and that emit VOC through similar means to consumer products. See EPA's October 27, 2011, proposed

approval at 76 FR 66663 for discussion of the provisions in this rule.

The VOC limits for consumer products and AIM coatings in 35 IAC Part 223 are based on existing California Air Resources Board (CARB) regulations and model rules developed by the Ozone Transport Commission (OTC) for consumer products and AIM coatings. The VOC limits that Illinois adopted for consumer products are at least as stringent, and in some cases more stringent than EPA's national consumer products rule, "National Volatile Organic Compound Emission Limits for Consumer Products," 40 CFR part 59, Subpart C. The VOC limits that Illinois adopted for AIM coatings are at least as stringent, and in some cases more stringent than EPA's national AIM rule, "National Volatile Organic Compound Emission Standards for Architectural Coatings," 40 CFR part 59, Subpart D. Because the consumer products and AIM limits Illinois adopted are at least as stringent, and in some cases are more stringent than EPA's VOC limits for these product categories, the new Part 223 is approvable into the Illinois SIP. It should be noted that, while Illinois is not an OTC member state, they have voluntarily chosen to adopt these VOC limits to create more consistency in regional and national markets for consumer products and AIM coatings.

During our rule-by-rule review of Illinois' submittal, we identified four paragraphs within 35 IAC Part 223 that contained errors. Under section 110(k)(4) of the Clean Air Act (CAA), EPA may conditionally approve a portion of a SIP revision based on a commitment from a state to adopt specific enforceable measures by a date certain that is no more than one year from the date of conditional approval. We notified IEPA about these errors, and on September 2, 2011, Illinois sent EPA a letter committing to amend these paragraphs to display the correct limits and limit categories and submit the revised paragraphs to EPA within one year of our final approval. The four provisions containing errors are 35 IAC 223.205(6)(A), 35 IAC 223.205(6)(B), 35 IAC 223.205(17)(A), and 35 IAC 223.205(17)(B). The errors involved incorrect high volatility organic material and medium volatility organic material limits.

On October 27, 2011, we proposed to approve 35 IAC Part 223 into the Illinois SIP (76 FR 66663). We also proposed to conditionally approve the four erroneously labeled paragraphs within the State's submittal of 35 IAC Part 223 based on the September 2, 2011, commitment from Illinois to amend these paragraphs to display the correct limits and limit categories and submit the revised paragraphs to EPA within one year of our final approval.

II. Did EPA Receive Any Comments on Our Proposed Rulemaking?

EPA did not receive any comments on our proposed rulemaking. Therefore, EPA is making its approval final.

III. What Action Is EPA Taking?

EPA is approving into the Illinois SIP 35 IAC Part 223, "Standards and Limitations for Organic Material Emissions for Area Sources," except that EPA is conditionally approving paragraphs (6) (A), (6) (B), (17) (A), and (17) (B) of 35 IAC Part 223.205. This conditional approval is based on a commitment from the State sent on September 2, 2011, to correct these paragraphs within one year of [insert date 30 days after publication in the Federal Register]. If this condition is not fulfilled within one year of the effective date of final rulemaking, the conditional approval will automatically revert to disapproval, as of the deadline for meeting the conditions, without further action from EPA. EPA will subsequently publish a notice in the Federal Register informing the public of a disapproval. If Illinois submits final and effective rule revisions correcting the deficiencies within one year from the effective date of this conditional approval, EPA will publish a subsequent notice in the Federal Register to acknowledge conversion of the conditional approval to a full approval.

IV. Statutory and Executive Order Reviews.

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);

- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

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 action 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 CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[FEDERAL REGISTER OFFICE: insert date 60 days from date of publication of this document in the Federal Register]**. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action 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,
Volatile organic compounds.

Dated: April 9, 2012.

Susan Hedman,
Regional Administrator, Region 5.

40 CFR part 52 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 O - Illinois

2. Section 52.719 is added to read as follows:

§ 52.719 Identification of plan - Conditional approval.

On April 7, 2010, Illinois submitted an amendment to its State Implementation Plan to add a new rule that limits the amount of volatile organic compounds (VOCs) from consumer products and architectural and industrial maintenance coatings at Part 223 of Title 35 of the Illinois Administrative Code (35 IAC 223). Paragraphs (a)(6) and (a)(17), of 35 IAC 223.205 contain errors in the VOC limits listed for aerosol- and non aerosol-based antiperspirants and deodorants. 35 IAC 233.205(a)(6)(A) erroneously provides two high-volatility VOC limits for aerosol-based antiperspirants when there should be both a high- and medium-volatility limit for this category. 35 IAC 233.205(a)(6)(B) erroneously provides two medium-volatility VOC limits for non aerosol-based antiperspirants when there should be both a high- and medium-volatility limit for this category. 35 IAC 233.205(a)(17)(A) erroneously provides two

high-volatility VOC limits for aerosol-based deodorants when there should be both a high- and medium-volatility limit for this category. 35 IAC 233.205(a)(17)(B) erroneously provides two medium-volatility VOC limits for non aerosol-based deodorants when there should be both a high- and medium-volatility limit for this category. The paragraphs are conditionally approved contingent on Illinois submitting to EPA revised provisions correcting these errors by July 8, 2013.

(i) Incorporation by reference. Illinois Administrative Code; Title 35: Environmental Protection; Subtitle B: Air Pollution; Chapter I: Pollution Control Board; Subchapter c: Emission Standards and Limitation for Stationary Sources; Part 223: Standards and Limitations for Organic material Emissions for Area Sources; Section 205: Standards; paragraphs (a)(6) and (a)(17), effective on June 8, 2009.

(ii) [Reserved]

3. Section 52.720 is amended by adding paragraph (c)(191) to read as follows:

§ 52.720 Identification of plan.

* * * * *

(c) * * *

(191) On April 7, 2010, Illinois submitted an amendment to its State Implementation Plan to add a new rule at 35 Illinois

Administrative Code Part 223 that limits the amount of volatile organic compounds from consumer products and architectural and industrial maintenance coatings.

(i) Incorporation by reference. (A) Illinois Administrative Code; Title 35: Environmental Protection; Subtitle B: Air Pollution; Chapter I: Pollution Control Board; Subchapter c: Emission Standards and Limitation for Stationary Sources; Part 223: Standards and Limitations for Organic material Emissions for Area Sources, except for 223.205 (a) (6) and (a) (17), effective June 8, 2009.

(B) [Reserved]