Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[NH–042–7169b; A–1–FRL–6871–1]

Approval and Promulgation of Air Quality Implementation Plans; New Hampshire, New Hampshire—Nitrogen Oxides Budget and Allowance Trading Program

AGENCY: Environmental Protection Agency (EPA)

ACTION: Proposed rule.

SUMMARY: The EPA is proposing to approve State Implementation Plan (SIP) revisions submitted by the State of New Hampshire (NH). The revisions consists of adding CHAPTER Env–A 3200 NO_X BUDGET TRADING PROGRAM, NO_X RACT Order 98–001, and two emission quantification protocols to the NH SIP. The regulations and source specific order in NH are part of a regional nitrogen oxides (NO_X) emissions budget and allowance trading program designed to reduce stationary source NO_X emissions during the ozone season in the Ozone Transport Region of the northeastern United States. These SIP revisions were submitted pursuant to section 110 of the Clean Air Act. In the Final Rules section of this **Federal Register** EPA is approving the State's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this action, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time.

DATES: Written comments must be received on or before December 14, 2000.

ADDRESSES: Comments may be mailed to David Conroy, Unit Manager, Air Quality Planning, Office of Ecosystem protection (mail code CAQ), U.S. Environmental Protection Agency, EPA-New England, One Congress Street, Suite 1100, Boston, MA 02114–2023. Copies of the State submittal and EPA's technical support document are available for public inspection during normal business hours, by appointment at the Office of Ecosystem Protection, U.S. Environmental Protection Agency, Region I, One Congress Street, 11th floor, Boston, MA, and at the New Hampshire Air Resources Division, Department of Environmental Services, 6 Hazen Drive, P.O. Box 95, Concord, NH 03301.

FOR FURTHER INFORMATION CONTACT: Dan Brown, (617) 918–1532 or at brown.dan@epa.gov.

SUPPLEMENTARY INFORMATION: For additional information, see the direct final rule which is located in the Rules section of this **Federal Register**.

Dated: September 6, 2000.

Mindy S. Lubber,

Regional Administrator, EPA-New England.

[FR Doc. 00–28708 Filed 11–13–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 226–0240; FRL–6897–2]

Disapproval of Implementations Plans; Revision to the California State Implementation Plan, Antelope Valley Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to disapprove a revision to the Antelope Valley Air Pollution Control District (AVAPCD) portion of the California State Implementation Plan (SIP). This revision concerns volatile organic compound (VOC) emissions from the transfer of gasoline to storage tanks or to vehicle fuel tanks. We are proposing action on a local rule that regulates 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.

DATES: Any comments must arrive by December 14, 2000.

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.

You can inspect copies of the submitted rule 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 rule revisions at the following locations:

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 ''L'' Street, Sacramento, CA 95812.

Antelope Valley Air Pollution Control District, 43301 Division Street, Suite 206, (P.O. Box 4038), Lancaster, CA 93539.

FOR FURTHER INFORMATION CONTACT: Al Petersen, Rulemaking Office (AIR–4), U.S. Environmental Protection Agency, Region IX, (415) 744–1135.

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

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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 No.	Rule Title	Adopted	Submitted
Antelope Valley APCD	461	Gasoline Transfer and Dispensing	09/15/98	05/13/99

On June 10, 1999, this rule submittal was found to meet the completeness criteria in 40 CFR Part 51 Appendix V, which must be met before formal EPA review.

B. Are There Other Versions of This Rule?

We approved a version of AVAPCD Rule 461 into the SIP on October 6, 1996 (61 FR 52297). There are no other submittals on which we have not acted.

C. What Are the Changes in the Submitted Rule?

The changes are as follows:

• Section (c)(5) of the SIP rule, along with the related attachments (C) and (D), is deleted. This section and the attachments concern the Self-Compliance Program (SCP), which requires daily inspection to ensure proper operating conditions of all components of the vapor recovery systems and annual inspections to verify compliance with applicable rules and regulations.

• Section (c)(6) of the SIP rule is deleted. This section concerns the training by a District-approved program of a person to perform the inspections and maintenance required in section (c)(5).

• Section (e)(3) of the submitted rule extends the exemption from the rule for mobile fuellers until 12 months after CARB certifies vapor recovery equipment for mobile fuellers.

The TSD has more information about this rule.

II. EPA's Evaluation and Action

A. How is EPA Evaluating the Rule?

Generally, SIP rules must be enforceable (see section 110(a) of the Act), must require Reasonably Available Control Technology (RACT) for major sources in nonattainment areas (see section 182(a)(2)(A)), and must not relax existing requirements (see sections 110(l) and 193). The AVAPCD regulates a severe ozone nonattainment area (see 40 CFR 81), so AVAPCD Rule 461 must meet the requirements of RACT.

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

• Portions of the proposed post-1987 ozone and carbon monoxide policy that concern RACT, 52 FR 45044 (November 24, 1987).

• *Model Volatile Organic Compound Rule for Reasonably Available Control Technology (RACT),*'' Office of Air Quality Planning and Standards (June 1992).

• *Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations, Clarification to Appendix D* (The Blue Book), 52 FR 45105 (November 24, 1987).

For the purpose of assisting state and local agencies in developing RACT rules for nonattainment areas, EPA prepared a series of Control Technique Guideline (CTG) documents which specify the minimum requirements that a rule must contain in order to be approved into the SIP. The CTGs are based on the underlying requirements of the Act and specify the presumptive norms for what is RACT for specific source categories. Under the CAA, Congress ratified EPA's use of these documents, as well as other Agency policy, for requiring States to ''fix-up'' their RACT rules. See section 182(a)(2)(A). There is no applicable CTG for transfer of gasoline into vehicle fuel tanks. However, EPA issued the following for gasoline vapor recovery guidance:

• Draft *Model Rule, Gasoline Dispensing facility—Stage II Vapor Recovery*, (August 17, 1992).

In evaluating RACT, EPA also considered information published since the 1992 Draft *Model Rule*, including documents associated with development of CARB's *Enhanced Vapor Recovery Guidelines* (March 23, 2000) and South Coast Air Quality Management District's Draft Rule 461, Gasoline Transfer and Dispensing (December 15, 1999). EPA, Region IX, has summarized RACT requirements in the Draft *Gasoline Vapor Recovery Guidelines* (April 24, 2000). In general, these guidance documents have been set forth to ensure that VOC rules are fully enforceable, meet the requirements of RACT, and maintain or strengthen the SIP.

B. Does the Rule Meet the Evaluation Criteria?

This rule is not consistent with the relevant policy and guidance regarding enforceability, RACT, and SIP relaxations. Rule provisions which do not meet the evaluation criteria are summarized below and discussed further in the TSD.

C. What are the Rule Deficiencies?

These provisions conflict with section 110 and part D of the CAA and prevent full approval of the SIP revision:

• The enforceablility is limited, because paragraph (c)(3)(B) references AVAPCD Rule 430. The reference must be removed, because AVAPCD Rule 430 is not in the SIP and is not appropriate as a SIP rule.

• The change of removing the required daily and annual inspections of the SCP without replacement provisions is a SIP relaxation. This change is claimed by AVAPCD to be justified because the program is ineffective and is overly burdensome to the industry, citing studies conducted by the South Coast Air Quality Management District (SCAQMD), which developed the SCP. In 1996 and 1997 SCAQMD conducted reverification of original compliance tests that revealed a high rate of non-compliance in vapor recovery equipment. AVAPCDs conclusion from these tests was that the SCP is ineffective in reducing excess emissions of VOC. Although EPA concurs that there are high non-compliance rates for vapor recovery equipment, we believe that this fact justifies an increased emphasis in an inspection program, and that removal of the SCP requirement will increase VOC emissions. Therefore, removal of the SCP without a replacement program is a SIP relaxation and does not meet the requirements of section 110(l) of the CAA or of RACT.

EPA requires a reasonably available replacement to the inspections of the SCP. EPA recommends that the inspection program contain the following features:

• Require that reverification of the performance tests originally required by the CARB Executive Order be performed once every six months or, for gasoline dispensing facilities with In-Station Diagnostics, once every two years.

• Require that a written inspection be performed once every week for vapor recovery equipment defects listed in AVAPCD Rule 461, attachment A, or in California Code of Regulations (CCR), title 17, section 94006.

The removal of the District-approved training program for inspection and maintenance of vapor recovery equipment program is not inherently a SIP relaxation that leads to an increase in emissions. Gasoline dispensing

equipment owners must still comply with all provisions of the rule and they would still have to provide sufficient non-District-approved training in the inspection and operation of vapor recovery equipment in order to do so. Furthermore, vapor recovery equipment is complex and is usually maintained by outside contractors, who must provide their own training in maintenance of the equipment. Therefore, EPA has determined that removal of the District-approved training requirement from the rule does not violate section 110(l) of the CAA.

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 consideration 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 disapproval of the submitted rule. If finalized, this action would retain the present SIP rule, which fulfills RACT requirements, in the SIP. No sanctions under section 179 or federal implementation plan (FIP) requirement under section 110(c) of the CAA are associated with this action.

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

III. Background Information

A. Why Were These Rules Submitted?

VOCs help produce ground-level ozone and smog, which harm human health and the environment. Section 110(a) of the CAA requires states to submit regulations that control VOC emissions. Table 2 lists some of the national milestones leading to the submittal of these local agency VOC rules.

TABLE 1.—OZONE NONATTAINMENT MILESTONES

Date	Event
March 3, 1978	EPA promulgated a list of ozone nonattainment areas under the Clean Air Act as amended in 1977. 43 FR 8964; 40 CFR 81.305.
May 26, 1988	EPA notified Governors that parts of their SIPs were inadequate to attain and maintain the ozone standard and requested that they correct the deficiencies (EPA's SIP–Call). See section 110(a)(2)(H) of the pre-amended Act.
November 15, 1990	Clean Air Act Amendments of 1990 were enacted. Pub. L. 101–549, 104 Stat. 2399, codified at 42 U.S.C. 7401–7671*q*.
May 15, 1991	Section 182(a)(2)(A) requires that ozone nonattainment areas correct deficient RACT rules by this date.

IV. Administrative Requirements

A. Executive Order 12866

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

B. 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 E.O. 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 E.O. 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

C. Executive Order 13084

Under Executive Order 13084, Consultation and Coordination with Indian Tribal Governments, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, E.O. 13084 requires EPA to provide to the OMB in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, E.O. 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments ''to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities.''

Today's proposed rule does not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of E.O. 13084 do not apply to this proposed rule.

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. E.O. 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 E.O. 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 E.O. 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. 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 actions 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 action 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.

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).

F. 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 annual 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 annual 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.

G. 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, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

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

Dated: October 20, 2000.

Felicia Marcus,

Regional Administrator, Region IX.

[FR Doc. 00–29064 Filed 11–13–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 210–0173; FRL–6897–1]

Approval and Promulgation of Implementation Plans; California State Implementation Plan Revision, Lake County Air Quality Management District, Monterey Bay Unified Air Pollution Control District, Bay Area Air Quality Management District, Sacramento Metropolitan Air Quality Management District, San Joaquin Valley Unified 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 California State Implementation Plan (SIP) which concern the control of volatile organic compound (VOC) emissions from the transfer of gasoline to storage tanks or to vehicle tanks. EPA is proposing a limited approval and limited disapproval without potential sanctions of Lake County Air Quality Management District (LCAQMD) Section (Rule) 439.5 and Monterey Bay Unified Air Pollution Control District (MBUAPCD) Rule 1002. EPA is also proposing a limited approval and limited disapproval with potential sanctions of Bay Area Air Quality Management District (BAAQMD) Rule 8–7, Sacramento Metropolitan Air Quality Management District (SMAQMD) Rule 449, and San Joaquin Valley Unified Air Pollution Control District (SJVUAPCD) Rule 4622. The intended effect of the limited approvals and limited disapprovals is to regulate emissions of VOCs in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). EPA's final action on this proposed rule will incorporate these rules into the federally approved SIP.

DATES: Comments must be received in writing on or before December 14, 2000.

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

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