

**ENVIRONMENTAL PROTECTION AGENCY****40 CFR Part 52**

[CA 009-0028; FRL-5694-9]

**Approval and Promulgation of Implementation Plans; California State Implementation Plan Revision; South Coast Air Quality Management 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) for ozone. The revisions concern the control of oxides of nitrogen (NO<sub>x</sub>) from boilers, process heaters, and internal combustion engines. The intended effect of proposing limited approval and limited disapproval of these rules is to regulate emissions of NO<sub>x</sub> 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 rulemaking will incorporate these rules into the Federally approved SIP. EPA has evaluated these rules and is proposing a simultaneous limited approval and limited disapproval under provisions of the CAA regarding EPA actions on SIP submittals and general rulemaking authority because these revisions, while strengthening the SIP, also do not fully meet the CAA provisions regarding plan submissions and requirements for nonattainment areas.

**DATES:** Comments on this proposed action must be received in writing on or before March 31, 1997.

**ADDRESSES:** Comments may be mailed to: Andrew Steckel, Rulemaking Office (AIR-4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105-3901.

Copies of the rules and EPA's evaluation report of each rule are available for public inspection at EPA's Region IX office during normal business hours. Copies of the submitted rules are also available for inspection at the following locations:

South Coast Air Quality Management District, 21865 E. Copley Drive, Diamond Bar, CA 91765-4182.  
California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 "L" Street, Sacramento, CA 95814.

**FOR FURTHER INFORMATION CONTACT:** Mae Wang, Rulemaking Office (AIR-4), Air Division, U.S. Environmental Protection

Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105, Telephone: (415) 744-1200.

**SUPPLEMENTARY INFORMATION:****Applicability**

The rules being proposed for limited approval and limited disapproval are South Coast Air Quality Management District (SCAQMD) Rule 1109, Emissions of Oxides of Nitrogen from Boilers and Process Heaters in Petroleum Refineries, adopted by SCAQMD on August 5, 1988; and Rule 1110.2, Emissions from Gaseous- and Liquid-Fueled Internal Combustion Engines, adopted on December 9, 1994.

**Background**

On November 15, 1990, the Clean Air Act Amendments of 1990 (CAA) were enacted. Pub. L. 101-549, 104 Stat. 2399, codified at 42 U.S.C. 7401-7671q. The air quality planning requirements for the reduction of NO<sub>x</sub> emissions through reasonably available control technology (RACT) are set out in section 182(f) of the CAA. On November 25, 1992, EPA published a notice of proposed rulemaking (NPR) entitled "State Implementation Plans; Nitrogen Oxides Supplement to the General Preamble; Clean Air Act Amendments of 1990 Implementation of Title I; Proposed Rule," (the NO<sub>x</sub> Supplement) which describes the requirements of section 182(f). The NO<sub>x</sub> Supplement should be referred to for further information on the NO<sub>x</sub> requirements and is incorporated into this document by reference.

Section 182(f) of the CAA requires States to apply the same requirements to major stationary sources of NO<sub>x</sub> ("major" as defined in section 302 and sections 182 (c), (d), and (e)) as are applied to major stationary sources of volatile organic compounds (VOCs), in moderate or above ozone nonattainment areas. The Los Angeles-South Coast Air Basin is classified as extreme;<sup>1</sup> therefore this area was subject to the RACT requirements of section 182(f), section 182(b)(2), and the November 15, 1992 deadline, cited below.

Section 182(b)(2) requires submittal of RACT rules for major stationary sources of VOC emissions (not covered by a pre-enactment control technique guidelines (CTG) document or a post-enactment CTG document) by November 15, 1992. There were no NO<sub>x</sub> CTGs issued before enactment and EPA has not issued a

CTG document for any NO<sub>x</sub> sources since enactment of the CAA. The RACT rules covering NO<sub>x</sub> sources and submitted as SIP revisions are expected to require final installation of the actual NO<sub>x</sub> controls as expeditiously as practicable, but no later than May 31, 1995.

This document addresses EPA's proposed action for SCAQMD Rule 1109, Emissions of Oxides of Nitrogen from Boilers and Process Heaters in Petroleum Refineries, and Rule 1110.2, Emissions from Gaseous- and Liquid-Fueled Internal Combustion Engines. The SCAQMD adopted Rule 1109 on August 5, 1988, and the rule was submitted by the California Air Resources Board (CARB) to EPA on March 26, 1990. Rule 1110.2 was adopted on December 9, 1994, and submitted on April 13, 1995. The above rules were found to be complete on June 20, 1990, and May 2, 1995, respectively, pursuant to EPA's completeness criteria that are set forth in 40 CFR Part 51 Appendix V,<sup>2</sup> and are being proposed for limited approval and limited disapproval into the SIP.

Rule 1109 and Rule 1110.2 control NO<sub>x</sub> emissions from refinery boilers and process heaters, and internal combustion (I/C) engines. NO<sub>x</sub> emissions contribute to the production of ground level ozone and smog. These rules were adopted as part of SCAQMD's efforts to achieve the National Ambient Air Quality Standards for ozone and in response to the CAA requirements cited above. The following is EPA's evaluation and proposed action for these rules.

**EPA Evaluation and Proposed Action**

In determining the approvability of a NO<sub>x</sub> rule, EPA must evaluate the rule for consistency with the requirements of the CAA and EPA regulations, as found in section 110 and Part D of the CAA, and 40 CFR Part 51 (Requirements for Preparation, Adoption and Submittal of Implementation Plans). EPA's interpretation of these requirements, which forms the basis for this action, appears in the NO<sub>x</sub> Supplement and various other EPA policy guidance documents.<sup>3</sup> Among these provisions is

<sup>2</sup> EPA adopted the completeness criteria on February 16, 1990 (55 FR 5830) and, pursuant to section 110(k)(1)(A) of the CAA, revised the criteria on August 26, 1991 (56 FR 42216).

<sup>3</sup> Among other things, the pre-amendment guidance consists of those portions of the proposed post-1987 ozone and carbon monoxide policy that concern RACT, 52 FR 45044 (November 24, 1987); and "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 was published in the Federal Register on May 25, 1988).

<sup>1</sup> The Los Angeles-South Coast Air Basin Area retained its designation of nonattainment and was classified by operation of law pursuant to sections 107(d) and 181(a) upon the date of enactment of the CAA. See 55 FR 56694 (November 6, 1991).

the requirement that a NO<sub>x</sub> rule must, at a minimum, provide for the implementation of RACT for major stationary sources of NO<sub>x</sub> emissions.

For the purposes of assisting State and local agencies in developing NO<sub>x</sub> RACT rules, EPA prepared the NO<sub>x</sub> Supplement to the General Preamble, cited above (57 FR 55620). In the NO<sub>x</sub> Supplement, EPA provides guidance on how RACT will be determined for stationary sources of NO<sub>x</sub> emissions. While most of the guidance issued by EPA on what constitutes RACT for stationary sources has been directed towards application for VOC sources, much of the guidance is also applicable to RACT for stationary sources of NO<sub>x</sub> (see section 4.5 of the NO<sub>x</sub> Supplement). In addition, pursuant to section 183(c), EPA has issued alternative control technique documents (ACTs) that identify alternative controls for all categories of stationary sources of NO<sub>x</sub>. The ACT documents provide information on control technology for stationary sources that emit or have the potential to emit 25 tons per year or more of NO<sub>x</sub>. However, the ACTs will not establish a presumptive norm for what is considered RACT for stationary sources of NO<sub>x</sub>. In general, the guidance documents cited above, as well as other relevant and applicable guidance documents, have been set forth to ensure that submitted NO<sub>x</sub> RACT rules meet Federal RACT requirements and are fully enforceable and strengthen or maintain the SIP.

SCAQMD Rule 1109 controls emissions of nitrogen oxides from boilers and process heaters located in petroleum refineries with rated capacities greater than 40 MBtu per hour heat input. The rule requires units to meet a 0.03 pound per million Btu heat input limit in accordance with a phased time schedule. The emission limits will strengthen the SIP, but this rule contains deficiencies which must be corrected. Those deficiencies include Executive Officer discretion in approving continuous emission monitoring equipment and test methods, insufficient records to determine compliance, and an unapprovable provision for an alternative emission control plan.

Rule 1110.2 controls NO<sub>x</sub>, carbon monoxide (CO), and reactive organic gases (ROG) from I/C engines. The emission limits in this rule are 36 ppm for NO<sub>x</sub>, 2000 ppm for CO, and 250 ppm for ROG. Certain types of units specifically identified in the rule may have an allowable NO<sub>x</sub> emission limit of approximately 45 ppm. In setting these limits, the SCAQMD considered emission reductions, control

technologies, cost-effectiveness, and environmental impacts. EPA agrees that the limits incorporated into SCAQMD Rule 1110.2 are consistent with the Agency's guidance and policy for making RACT determinations, and that these limits satisfy the RACT requirement. The limits of Rule 1110.2 will strengthen the SIP, but this rule contains deficiencies with respect to the requirements of the CAA and EPA regulations as interpreted in the various policy guidance documents discussed earlier. Certain existing units are not required to be in compliance until the year 2004, which is well beyond the statutory May 31, 1995 deadline, and the rule allows for Executive Officer discretion in approving continuous emission monitoring equipment and test methods for determining compliance with emission limits.

EPA has evaluated the submitted rules described above for consistency with the CAA, EPA regulations, and EPA policy, and although these rules will strengthen the SIP, they still contain deficiencies which were required to be corrected pursuant to the section 182(a)(2)(A) requirement of Part D of the CAA. A more detailed discussion of the sources controlled, the limits required, justification for why these limits satisfy RACT, and the rule deficiencies can be found in the Technical Support Document (TSD) for each rule, available from the U.S. EPA Region IX office. Because of the deficiencies, these rules are not consistent with the interpretation of section 172 of the 1977 CAA as found in the Blue Book and may lead to rule enforceability problems. As a result, these rules are not approvable pursuant to section 182(a)(2), section 182(b)(2), section 182(f) and Part D of the CAA.

For the reasons mentioned above, EPA cannot grant full approval of these rules under section 110(k)(3) and Part D. Also, because the submitted rules are not composed of separable parts which meet all the applicable requirements of the CAA, EPA cannot grant partial approval of the rules under section 110(k)(3). However, EPA may grant a limited approval of the submitted rules under section 110(k)(3) in light of EPA's authority pursuant to section 301(a) to adopt regulations necessary to further air quality by strengthening the SIP. The approval is limited because EPA's action also contains a simultaneous limited disapproval. In order to strengthen the SIP, EPA is proposing a limited approval of the SCAQMD's submitted Rule 1109 and Rule 1110.2, under sections 110(k)(3) and 301(a) of the CAA as meeting the requirements of section 110(a) and Part D.

At the same time, EPA is also proposing a limited disapproval of these rules because they contain deficiencies which must be corrected in order to fully meet the requirements of section 182(a)(2), section 182(b)(2), section 182(f), and Part D of the Act. Under section 179(a)(2), if the Administrator disapproves a submission under section 110(k) for an area designated nonattainment, based on the submission's failure to meet one or more of the elements required by the Act, the Administrator must apply one of the sanctions set forth in section 179(b) unless the deficiency has been corrected within 18 months of such disapproval. Section 179(b) provides two sanctions available to the Administrator: highway funding and offsets. The 18 month period referred to in section 179(a) will begin on the effective date of EPA's final limited disapproval. Moreover, the final disapproval triggers the Federal Implementation Plan (FIP) requirement under section 110(c). It should be noted that the rules covered by this NPR have been adopted by the SCAQMD and are currently in effect in the SCAQMD. EPA's final limited disapproval action will not prevent the SCAQMD or EPA from enforcing these rules.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any State implementation plan. Each request for revision to the State implementation plan shall be considered separately in light of specific technical, economic and environmental factors and in relation to relevant statutory and regulatory requirements.

#### Regulatory Process

##### *Regulatory Flexibility Act*

Under the Regulatory Flexibility Act, 5 U.S.C. section 600 et seq., EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. sections 603 and 604. Alternatively, EPA may certify 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 government entities with jurisdiction over populations of less than 50,000.

Limited approvals under section 110 and 301 and subchapter I, Part D of the CAA do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP-approval does not impose any new requirements, it does not have a significant impact on affected small

entities. Moreover, due to the nature of the Federal/State relationship under the CAA, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of State action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co. v. U.S. E.P.A.*, 427 U.S. 246, 256-66 (S.Ct. 1976); 42 U.S.C. section 7410 (a)(2).

#### *Unfunded Mandates*

Under Sections 202, 203, and 205 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must undertake various actions in association with proposed or final rules that include a Federal mandate that may result in estimated costs of \$100 million or more to the private sector or to State, local, or tribal governments in the aggregate.

Through submission of this State implementation plan revision, the State and any affected local or tribal governments have elected to adopt the program provided for under Part D of the Clean Air Act. These rules may bind State, local, and tribal governments to perform certain actions and also require the private sector to perform certain duties. The rules being proposed for limited approval and limited disapproval by this action will impose no new requirements because affected sources are already subject to these regulations under State law. Therefore, no additional costs to State, local, or tribal governments or to the private sector result from this action. EPA has also determined that this proposed action does not include a mandate that may result in estimated costs of \$100 million or more to State, local, or tribal governments in the aggregate or to the private sector.

#### *Executive Order 12866*

This action has been classified as a Table 3 action for signature by the Regional Administrator under procedures published in the Federal Register on January 19, 1989 (54 FR 2214-2225), as revised by a July 10, 1995 memorandum from Mary Nichols, Assistant Administrator for Air and Radiation. The Office of Management and Budget has exempted this regulatory action from review under Executive Order 12866.

#### List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and

recordkeeping requirements, Volatile organic compounds.

Authority: 42 U.S.C. 7401-7671q.

Dated: February 12, 1997.

Felicia Marcus,

*Regional Administrator.*

[FR Doc. 97-4966 Filed 2-27-97; 8:45 am]

BILLING CODE 6560-50-P

#### **40 CFR Parts 52 and 81**

[ME47-1-6996b; A-1-FRL-5693-6]

#### **Approval, Maine Air Quality Implementation Plans; and Redesignation of Hancock and Waldo Counties; Maine**

**AGENCY:** Environmental Protection Agency (USEPA or Agency).

**ACTION:** Proposed rule.

**SUMMARY:** USEPA is proposing to approve under the Clean Air Act two requests from the State of Maine: approval of the Maine 1990 base year inventory into the Maine State Implementation Plan; and a redesignation request by the State of Maine. The first request will establish the 1990 base year inventory of volatile organic compounds and oxides of nitrogen emissions for the classified ozone nonattainment areas in Maine. The second request will redesignate the Hancock and Waldo counties marginal ozone nonattainment area from nonattainment to attainment, and approve the 1993 attainment year inventory for Hancock and Waldo counties as the required 1993 periodic inventory. In the Final Rules Section of this Federal Register, EPA is approving the State's request as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision 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 that direct final rule, no further activity is contemplated in relation to this proposed rule. 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 on this proposal. Any parties interested in commenting on this proposal should do so at this time.

**DATES:** Comments must be received on or before March 31, 1997.

**ADDRESSES:** Comments may be mailed to Susan Studlien, Deputy Director, Office of Ecosystem Protection (mail code CAA), U.S. Environmental Protection

Agency, Region I, JFK Federal Bldg., Boston, MA 02203. 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 the Bureau of Air Quality Control, Department of Environmental Protection, 71 Hospital Street, Augusta, ME 04333. Persons interested in examining these documents should make an appointment with the appropriate office at least 24 hours before the visiting day.

**FOR FURTHER INFORMATION CONTACT:** For the base year inventory, Robert McConnell, (617) 565-9266, and for the Hancock and Waldo counties redesignation request Richard P. Burkhart, (617) 565-3578.

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

Authority: 42 U.S.C. 7401-7671q.

Dated: February 3, 1997.

John P. DeVillars,

*Regional Administrator, Region I.*

[FR Doc. 97-4965 Filed 2-27-97; 8:45 am]

BILLING CODE 6560-50-P

#### **40 CFR Part 63**

[AD-FRL-5696-1]

RIN 2060-AD93

#### **National Emission Standards for Hazardous Air Pollutants for Source Categories: Gasoline Distribution (Stage I)**

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

**ACTION:** Proposed rule: Amendments.

**SUMMARY:** On December 14, 1994, the EPA promulgated the "National Emission Standards for Hazardous Air Pollutants for Source Categories: Gasoline Distribution (Stage I)" (the "Gasoline Distribution NESHAP"), pursuant to section 112 of the Clean Air Act (Act). This action is proposing amendments to those final standards in order to implement a proposed settlement agreement with the American Petroleum Institute noticed for comment on November 15, 1996 regarding improvements in the screening equations for determining applicability of the Gasoline Distribution NESHAP. No comments were received on the noticed proposed settlement agreement. This action also proposes some