

EPA is taking this action in accordance with the Clean Air Act (CAA).

DATES: Written comments must be received on or before October 2, 2006.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R01-OAR-2005-CT-0001 by one of the following methods:

1. <http://www.regulations.gov>: Follow the on-line instructions for submitting comments.

2. E-mail: arnold.anne@epa.gov.

3. Fax: (617) 918-0047.

4. Mail: "EPA-R01-OAR-2005-CT-0001," Anne Arnold, U.S. Environmental Protection Agency, EPA New England Regional Office, One Congress Street, Suite 1100 (mail code CAQ), Boston, MA 02114-2023.

5. Hand Delivery or Courier. Deliver your comments to: Anne Arnold, Manager, Air Quality Planning Unit, Office of Ecosystem Protection, U.S. Environmental Protection Agency, EPA New England Regional Office, One Congress Street, 11th floor, (CAQ), Boston, MA 02114-2023. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4, excluding legal holidays.

Please see the direct final rule which is located in the Rules section of this **Federal Register** for detailed instructions on how to submit comments.

FOR FURTHER INFORMATION CONTACT:

Richard P. Burkhardt, Air Quality Planning, Office of Ecosystem Protection, U.S. Environmental Protection Agency, EPA New England Regional Office, One Congress Street, 11th floor, (CAQ), Boston, MA 02114-2023. Phone: 617-918-1664, Fax: (617) 918-0664, E-mail: burkhart.richard@epa.gov.

SUPPLEMENTARY INFORMATION: 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 rule, 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 If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule.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. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

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

Dated: July 31, 2006.

Robert W. Varney,

Regional Administrator, EPA New England.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R09-OAR-2006-0630; FRL-8215-8]

Approval and Promulgation of Implementation Plans; Revisions to the Nevada State Implementation Plan; Monitoring and Volatile Organic Compound Rules

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing full approval of some revisions and a limited approval/limited disapproval of other revisions to the Nevada Department of Conservation and Natural Resources portion of the Nevada State Implementation Plan (SIP). These revisions concern definitions, organic solvent controls, and various monitoring regulations. We are proposing action on state provisions that regulate emission sources under the Clean Air Act as amended in 1990 (Act or CAA). We are taking comments on this proposal and plan to follow with a final action.

DATES: Any comments must arrive by October 2, 2006.

ADDRESSES: Submit comments, identified by docket number EPA-R09-OAR-2006-0630, by one of the following methods:

1. Federal eRulemaking Portal: www.regulations.gov. Follow the on-line instructions.

2. E-mail: steckel.andrew@epa.gov.

3. Mail or deliver: Andrew Steckel (Air-4), U.S. Environmental Protection Agency Region IX, 75 Hawthorne Street, San Francisco, CA 94105-3901.

Instructions: All comments will be included in the public docket without change and may be made available online at www.regulations.gov,

including any personal information provided, unless the comment includes Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Information that you consider CBI or otherwise protected should be clearly identified as such and should not be submitted through www.regulations.gov or e-mail.

www.regulations.gov is an "anonymous access" system, and EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send e-mail directly to EPA, your e-mail address will be automatically captured and included as part of the public comment. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

Docket: The index to the docket for this action is available electronically at www.regulations.gov and in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California. While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (e.g., copyrighted material), and some may not be publicly available in either location (e.g., CBI). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Julie A. Rose, EPA Region IX, (415) 947-4126.

SUPPLEMENTARY INFORMATION:

Throughout this document, "we," "us" and "our" refer to EPA.

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I. The State's Submittal

A. What regulations did the State submit?

The Governor's designee, the Nevada Department of Conservation and Natural Resources, Division of Environmental Protection (NDEP), submitted a large revision to the applicable state implementation plan (SIP) on January

12, 2006. On March 23, 2006, the Nevada SIP submittal dated January 12, 2006 was found to meet the completeness criteria in 40 CFR part 51 Appendix V, which must be met before formal EPA review.

The primary purpose of these revisions is to clarify and harmonize State and federally-enforceable requirements. Because these revisions incorporate so many changes from the 1970s and 1980s vintage SIP regulations, EPA has decided to review

and act on the submittal in a series of separate actions. The first such action (mostly related to definitions, sulfur dioxide rules, and burning rules) was finalized in the **Federal Register** on March 27, 2006 (71 FR 15040). A second action (related to state statutes) was proposed in the **Federal Register** on June 9, 2006 (71 FR 33413). The remaining portions of the submittal will be acted on in future **Federal Register** actions.

The following table lists the provisions of the Nevada Administrative Code (NAC) addressed by this proposal with the dates they were submitted by NDEP. Some of these provisions were renumbered after their initial adoption. Two of these submitted rules would be new to the SIP: NAC 445B.084 ("Hazardous air pollutant") and NAC 445B.153 ("Regulated air pollutant"), while the remainder would amend existing rules in the SIP.

SUBMITTED PROVISIONS

NAC No.	NAC title	Adopted	Submitted
445B.015	"Alternative method" defined	10/03/95	01/12/06
445B.062	"Equivalent method" defined	10/03/95	01/12/06
445B.063	"Excess emissions" defined	10/04/05	01/12/06
445B.084	"Hazardous air pollutant" defined	11/03/93	01/12/06
445B.134	"Person" defined	09/16/76	01/12/06
445B.153	"Regulated air pollutant" defined	10/04/05	01/12/06
445B.202	"Volatile organic compounds" defined	03/03/94	01/12/06
445B.22093	Organic solvents and other volatile organic compounds	10/04/05	01/12/06
445B.256	Monitoring systems: Calibration, operation and maintenance of equipment	10/03/95	01/12/06
445B.257	Monitoring systems: Location	09/16/76	01/12/06
445B.258	Monitoring systems: Verification of operational status	09/16/76	01/12/06
445B.259	Monitoring systems: Performance evaluations	09/16/76	01/12/06
445B.260	Monitoring systems: Components contracted for before September 11, 1974	09/16/76	01/12/06
445B.261	Monitoring systems: Adjustments	09/16/76	01/12/06
445B.262	Monitoring systems: Measurement of opacity	09/18/03	01/12/06
445B.263	Monitoring systems: Frequency of operation	09/16/76	01/12/06
445B.264	Monitoring systems: Recordation of data	08/22/00	01/12/06
445B.265	Monitoring systems: Records; reports	04/26/84	01/12/06
445B.267	Alternative monitoring procedures or requirements	09/18/03	01/12/06

B. What is the regulatory history of the Nevada SIP?

Pursuant to the Clean Air Amendments of 1970, the Governor of Nevada submitted the original Nevada SIP to EPA in January 1972. EPA approved certain portions of the original SIP and disapproved other portions under CAA section 110(a). See 37 FR 10842 (May 31, 1972). For some of the disapproved portions of the original SIP, EPA promulgated substitute provisions under CAA section 110(c).¹ This original SIP included various rules, codified as articles within the Nevada Air Quality Regulations (NAQR), and various statutory provisions codified in chapter 445 of the Nevada Revised Statutes (NRS). In the early 1980's, Nevada reorganized and re-codified its air quality rules into sections within chapter 445 of the Nevada Administrative Code (NAC). Today, Nevada codifies its air quality regulations in chapter 445B of the NAC and codifies air quality statutes in chapter 445B ("Air Pollution") of title

40 ("Public Health and Safety") of the NRS.

Nevada adopted and submitted many revisions to the original set of regulations and statutes in the SIP, some of which EPA approved on February 6, 1975 at 40 FR 5508; on March 26, 1975 at 40 FR 13306; on January 9, 1978 at 43 FR 1341; on January 24, 1978 at 43 FR 3278; on August 21, 1978 at 43 FR 36932; on July 10, 1980 at 45 FR 46384; on April 14, 1981 at 46 FR 21758; on August 27, 1981 at 46 FR 43141; on March 8, 1982 at 47 FR 9833; on April 13, 1982 at 47 FR 15790; on June 18, 1982 at 47 FR 26386; on June 23, 1982 at 47 FR 27070; on March 27, 1984 at 49 FR 11626. Since 1984, EPA has approved very few revisions to Nevada's applicable SIP despite numerous changes that have been adopted by the State Environmental Commission. As a result, the version of the rules enforceable by NDEP is often quite different from the SIP version enforceable by EPA.

C. What is the purpose of this proposed rule?

The purpose of this proposal is to bring the applicable SIP up to date. The

regulations that are the subject of this proposal include certain definitions, organic solvent controls, and various monitoring rules.

II. EPA's Evaluation and Action

A. How is EPA evaluating the regulations?

Generally, SIP regulations must be enforceable (see section 110(a) of the Act) and must not relax existing requirements (see sections 110(l) and 193). Relevant EPA guidance and policy documents that we used to help evaluate enforceability include "Review of State Implementation Plans and Revisions for Enforceability and Legal Sufficiency," dated September 23, 1987, from J. Craig Potter, Assistant Administrator for Air and Radiation, et al.

B. Do the regulations meet the evaluation criteria?

We believe the following provisions are consistent with the relevant policy and guidance regarding enforceability and SIP relaxations: NAC 445B.015, NAC 445B.062, NAC 445B.063, NAC 445.084, NAC 445B.134, NAC 445B.153, NAC 445B.202, NAC 445B.22093, NAC

¹ Provisions that EPA promulgates under CAA section 110(c) in substitution of disapproved State provisions are referred to as Federal Implementation Plans (FIPs).

445B.256, NAC 445B.257, NAC 445B.258, NAC 445B.259, NAC 445B.260, NAC 445B.261, NAC 445B.263, NAC 445B.264, and NAC 445B.265. Generally, these submitted rules are unchanged from the older versions in the existing SIP other than for certain clarifications and enhancements. The Technical Support Document (TSD) dated August 16, 2006 has more information on our evaluation.

C. What are the regulation deficiencies?

The following provisions conflict with section 110 of the Act and prevent full approval of the SIP revision.

1. NAC 445B.262, Monitoring systems: Measurement of opacity. This regulation lists the methods and procedures for measuring opacity. This regulation allows the director to approve equivalent and alternative opacity procedures without describing the criteria to be used. A new paragraph has been added that removes the director's ability to approve an equivalent or alternative method when determining compliance with standards and emission limits contained in 40 CFR parts 60, 61, 63 and affected sources in the acid rain program. This new paragraph limits the breath of the director's discretion; however, the director maintains the ability to approve equivalent and alternative methods for SIP sources. This constitutes a SIP deficiency and conflicts with section 110 of the CAA. A third paragraph can be added to NAC 445B.262 requiring that equivalent and alternative test methods for SIP sources be approved in advance by EPA.

2. NAC 445B.267, Alternate monitoring procedures or requirements. This regulation lists situations when an alternative monitoring procedure or requirement can be approved by the director. A new paragraph has been added that removes the director's ability to approve an equivalent or alternative method when determining compliance with standards and emission limits contained in 40 CFR parts 60, 61, 63 and affected sources in the acid rain program. This new paragraph limits the breath of the director's discretion; however, the director maintains the ability to approve alternative methods for SIP sources and for ASTM test methods. This constitutes a SIP deficiency and conflicts with section 110 of the CAA. A third paragraph can be added to NAC 445B.267 requiring that equivalent and alternative test methods for SIP sources be approved in advance by EPA.

D. EPA Recommendations To Further Improve the Regulations

The TSD describes additional rule revisions that do not affect EPA's current action but are recommended for the next time the state modifies their rules.

E. Proposed Action and Public Comment

Pursuant to sections 110(k)(3) and 301(a) of the Act, EPA is proposing a full approval of the following provisions: NAC 445B.015, NAC 445B.062, NAC 445B.063, NAC 445.084, NAC 445B.134, NAC 445B.153, NAC 445B.202, NAC 445B.22093, NAC 445B.256, NAC 445B.257, NAC 445B.258, NAC 445B.259, NAC 445B.260, NAC 445B.261, NAC 445B.263, NAC 445B.264, and NAC 445B.265.

In addition, EPA is proposing a limited approval of NAC 445B.262 and NAC 445B.267 to improve the SIP. This approval is limited because EPA is simultaneously proposing a limited disapproval of the two provisions mentioned above. If we finalize this limited disapproval, we will not be imposing sanctions under CAA section 179 and 40 CFR 52.31 because the state's submittal of NAC 445B.262 and NAC 445B.267, which represent updated versions of existing SIP rules, was not required under the Clean Air Act. If finalized as proposed, this action would incorporate the submitted provisions into the SIP, including those provisions identified as deficient.²

We will accept comments from the public on this proposed approval and limited approval/disapproval for the next 30 days.

III. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this proposed 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

² Final approval of these rules would supersede the following rules in the applicable SIP (superseding rule shown in parentheses) upon the established compliance date for any new or amended requirements in the superseding rules: NAC 445.439 (NAC 445B.015); NAC 445.501 (NAC 445B.062); NAC 445.504 (NAC 445B.063); NAC 445.564 (NAC 445B.134); NAC 445.650 (NAC 445B.202); NAC 445.846, NAQR Articles 9.2.1, 9.2.1.1, and 9.2.1.2 (NAC 445B.22093); NAQR Articles 2.17.10 and 2.17.10.1 (NAC 445B.256); NAQR Articles 2.17.6, 2.17.7 (NAC 445B.257); NAC 445.685 (NAC 445B.258); NAC 445.686 (NAC 445B.259); NAC 445.687 (NAC 445B.260); NAC 445.688 (NAC 445B.261); NAC 445.689 (NAC 445B.262); NAC 445.690 (NAC 445B.263); NAC 445.691 (NAC 445B.264); NAC 445.692 (NAC 445B.265); and NAC 445.693 (NAC 445B.267).

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 proposes to approve state rules as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this proposed 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 proposes to approve 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 proposed 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 proposed 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). This action merely proposes to approve state rules implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This proposed 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 proposed 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.*).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Reporting and recordkeeping requirements, Volatile organic compound.

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

Dated: August 21, 2006.

Jane Diamond,

Acting Regional Administrator, Region IX.

[FR Doc. 06-7320 Filed 8-30-06; 8:45 am]

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