

## Federalism

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the rulemaking does not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment.

## Environmental Assessment

The Coast Guard has considered the environmental impact of this proposal and has determined pursuant to Figure 2-1, paragraph 34(h) of Commandant Instruction M16475.1C, that this action is categorically excluded from further environmental documentation. A Categorical Exclusion Determination document will be completed during the comment period.

## List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

Proposed Regulations: In consideration of the foregoing, the Coast Guard proposes to amend Part 100 of Title 33, Code of Federal Regulations as follows:

## PART 100—[Amended]

1. The authority citation for part 100 continues to read as follows:

**Authority:** 33 U.S.C. 1233; 49 CFR 1.46 and 33 CFR 100.35.

2. A new § 100.734 is added to read as follows:

### § 100.734 Annual Gasparilla Marine Parade; Hillsborough Bay, Tampa, FL.

(a) *Regulated Area.* A regulated area is established consisting of all waters of Hillsborough Bay and its tributaries north of a line drawn along latitude 27° 51'30" N. The regulated area includes the following in their entirety: Hillsborough Cut "D" Channel, Sparkman Channel, Ybor Channel and the Hillsborough River south of the John F. Kennedy Bridge. Coordinates Reference Datum: NAD 1983.

(b) *Special Local Regulations.* (1)

Entry into the regulated area is prohibited to all commercial marine traffic from 9 a.m. to 2:30 p.m. EST on the first Saturday in February.

(2) The regulated area is an idle speed, "no wake" zone.

(3) All vessels within the regulated area shall stay clear of and give way to all vessels in parade formation in the Gasparilla Marine Parade.

(4) When within the marked channels of the parade route, vessels participating in the Gasparilla Marine Parade may not exceed the minimum speed necessary to maintain steerage.

(5) Jet skis and vessels without mechanical propulsion are prohibited from the parade route.

(6) Northbound vessels in excess of 80 feet in length without mooring arrangements made prior to the first Saturday in February, are prohibited from entering Seddon Channel unless the vessel is officially entered in the Gasparilla Marine Parade. All northbound vessels in excess of 80 feet without prior mooring arrangements not officially entered in the Gasparilla Marine Parade, must use the alternate route through Sparkman Channel.

(c) *Dates.* This section becomes effective annually at 9 a.m. and terminate at 2:30 p.m. EST on the first Saturday in February.

Dated: July 9, 1998.

**R.C. Olsen, Jr.,**

*Acting Captain U.S. Coast Guard,  
Commander, Seventh Coast Guard District.*

[FR Doc. 98-25162 Filed 9-18-98; 8:45 am]

BILLING CODE 4910-15-M

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[NH004-01-5814; A-1-FRL-6163-2]

### Approval and Promulgation of Air Quality Implementation Plans; New Hampshire; Gasoline Dispensing Facilities and Gasoline Tank Trucks

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

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to approve a State Implementation Plan (SIP) revision submitted by the State of New Hampshire on November 24, 1992. This revision consists of regulations to control volatile organic compound (VOC) emissions from gasoline dispensing facilities and from gasoline tank trucks. The intended effect of this action is to propose approval of these regulations. This action is being taken under the Clean Air Act.

**DATES:** Comments must be received on or before October 21, 1998. Public comments on this document are requested and will be considered before taking final action on this SIP revision.

**ADDRESSES:** Comments may be mailed to Susan Studlien, Deputy Director, Office of Ecosystem Protection, 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 Air Resources Division, Department of Environmental Services, 64 North Main Street, Caller Box 2033, Concord, NH 03302-2033.

### FOR FURTHER INFORMATION CONTACT:

Anne E. Arnold, (617) 565-3166.

**SUPPLEMENTARY INFORMATION:** On November 25, 1992, EPA received a formal SIP submittal from New Hampshire containing a new regulation Part Env-A 1205 "Volatile Organic Compounds (VOC): Gasoline Dispensing Facilities and Gasoline Tank Trucks."

## I. Background

Under the pre-amended Clean Air Act (CAA), ozone nonattainment areas were required to adopt reasonably available control technology (RACT) rules for sources of VOC emissions. EPA issued three sets of control technique guidelines (CTGs) documents, establishing a "presumptive norm" for RACT for various categories of VOC sources. The three sets of CTGs were (1) Group I—issued before January 1978 (15 CTGs); (2) Group II—issued in 1978 (9 CTGs); and (3) Group III—issued in the early 1980's (5 CTGs). Those sources not covered by a CTG were called non-CTG sources. EPA determined that the area's SIP-approved attainment date established which RACT rules the area needed to adopt and implement. Under section 172(a)(1), ozone nonattainment areas were generally required to attain the ozone standard by December 31, 1982. Those areas that submitted an attainment demonstration projecting attainment by that date were required to adopt RACT for sources covered by the Group I and II CTGs. Those areas that sought an extension of the attainment date under section 172(a)(2) to as late as December 31, 1987 were required to adopt RACT for all CTG sources and for all major (i.e., 100 ton per year or more of VOC emissions) non-CTG sources.

On November 15, 1990, amendments to the 1977 CAA were enacted. Pub. L. 101-549, 104 Stat. 2399, codified at 42 U.S.C. 7401-7671q. Section 182(b)(2) of the amended Act requires States to adopt RACT rules for all areas designated nonattainment for ozone and classified as moderate or above. There are three parts to the section 182(b)(2) RACT requirement: (1) RACT for sources covered by an existing CTG—i.e., a CTG issued prior to the enactment of the CAAA of 1990; (2) RACT for sources covered by a post-enactment CTG; and (3) all major sources not covered by a CTG. This RACT requirement applies to nonattainment

areas that previously were exempt from certain RACT requirements to "catch up" to those nonattainment areas that became subject to those requirements during an earlier period. In addition, it requires newly designated ozone nonattainment areas to adopt RACT rules consistent with those for previously designated nonattainment areas.

Pursuant to the amended CAA, two areas in New Hampshire were classified as serious ozone nonattainment areas and one area was classified as a marginal ozone nonattainment area. 56 FR 56694 (Nov. 6, 1991). The serious areas are subject to the section 182(b)(2) RACT catch-up requirement. Also, the State of New Hampshire is located in the Northeast Ozone Transport Region (OTR). The entire state is, therefore, subject to section 184(b) of the amended CAA. Section 184(b) requires that RACT be implemented for all VOC sources covered by a CTG issued before or after enactment of the CAAA of 1990 and for all major VOC sources (defined as 50 tons per year for sources in the OTR). CTGs have been issued for several VOC source categories including gasoline tank trucks and gasoline dispensing facilities (Stage I vapor recovery) which are the source categories addressed in today's action.

Furthermore, the CAA requires serious and above ozone nonattainment areas to adopt regulations which require owners and operators of gasoline dispensing facilities to install and operate so called "Stage II" vapor recovery equipment designed to control vapors emitted when vehicles are refueled (section 182(b)(3) as modified by section 202(a)(6)). Under section 182(b)(3), New Hampshire was required to submit Stage II vapor recovery rules for its two serious ozone nonattainment areas by November 15, 1992.

Also, section 184(b)(2) of the amended Act requires that states in the OTR adopt Stage II or comparable measures within one year of EPA completion of a study identifying control measures capable of achieving emissions reductions comparable to those achievable through section 182(b)(3) Stage II vapor recovery controls. On January 13, 1995, EPA completed its study "Stage II Comparability Study for the Northeast Ozone Transport Region" (EPA-452/R-94-011). Therefore, states in the OTR must adopt Stage II or comparable measures and submit them to EPA as a SIP revision by January 13, 1996. EPA has recently received New Hampshire's Stage II comparability SIP revision. New Hampshire's November 24, 1992 SIP submittal which is the subject of today's

document is not intended to satisfy that requirement.

In response to sections 182(b)(2), 182(b)(3), and 184(b)(1)(B) of the CAA, New Hampshire adopted Part Env-A 1205 "Volatile Organic Compounds (VOC): Gasoline Dispensing Facilities and Gasoline Tank Trucks" and submitted this regulation to EPA as a SIP revision. New Hampshire's regulation is briefly summarized below.

#### *New Hampshire's Env-A 1205*

This regulation requires that all gasoline storage tanks with a capacity equal to or greater than 250 gallons be equipped with a submerged fill pipe and that all storage tanks at facilities with an annual throughput of greater than or equal to 120,000 gallons be equipped with Stage I vapor recovery controls. These requirements apply statewide. In addition, this regulation also requires that gasoline tank trucks operating in the State be maintained vapor-tight and be tested annually. Furthermore, this rule requires that owners or operators of gasoline dispensing facilities, which have an annual throughput equal to or greater than 420,000 gallons and are located in the counties of Hillsborough, Merrimack, Rockingham, and Strafford, install and operate Stage II vapor recovery controls.

EPA has reviewed this regulation against the applicable statutory requirements and for consistency with EPA guidance. New Hampshire's regulation and EPA's evaluation are detailed in a memorandum dated April 29, 1998, entitled "Technical Support Document—New Hampshire—Gasoline Dispensing Facilities and Gasoline Tank Trucks." Copies of that document are available, upon request, from the EPA Regional Office listed in the ADDRESSES section of this document. A summary of EPA's evaluation is provided below.

#### *EPA's Evaluation of New Hampshire's Submittal*

In determining the approvability of a VOC RACT rule, EPA must evaluate the rule for consistency with the requirements of the Act and EPA regulations, as found in section 110 and part D of the Act and 40 CFR part 51 (Requirements for Preparation, Adoption, and Submittal of Implementation Plans). The EPA interpretation of these requirements, which forms the basis for today's action, appears in various EPA policy guidance documents. For the purpose of assisting State and local agencies in developing RACT rules, EPA prepared a series of Control Technique Guidelines (CTG) documents. The CTGs are based on the

underlying requirements of the Act and specify the presumptive norms for RACT for specific source categories. EPA has not yet developed CTGs to cover all sources of VOC emissions. Further interpretations of EPA policy are found in: (1) Those portions of the proposed Post-1987 ozone and carbon monoxide policy that concern RACT, 52 FR 45044 (November 24, 1987); (2) the document entitled "Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations, Clarification to Appendix D of November 24, 1987 **Federal Register** document" (Blue Book) (notice of availability was published in the **Federal Register** on May 25, 1988); (3) the existing CTGs; and (4) the "Model Volatile Organic Compound Rules for Reasonably Available Control Technology" issued as a staff working draft in June 1992. In general, these guidance documents have been set forth to ensure that VOC rules are fully enforceable and strengthen or maintain the SIP.

EPA has evaluated the Stage I vapor recovery and gasoline tank truck requirements of New Hampshire's Env-A 1205 and has found that they are consistent with EPA model regulations and the following EPA guidance documents: "Leaks from Gasoline Tank Trucks and Vapor Collection Systems" (EPA-450/2-78-051); "Guidance to State and Local Agencies in Preparing Regulations to Control Volatile Organic Compounds from Ten Stationary Source Categories" (EPA-450/2-79-004); and "Hydrocarbon Control Strategies for Gasoline Marketing Operations" (EPA-450/3-78-017). As such, EPA believes that New Hampshire's regulation constitutes RACT for these source categories.

EPA has also evaluated the Stage II vapor recovery requirements of New Hampshire's regulation for consistency with the requirements of the Act and EPA guidance. Under section 182(b)(3), EPA was required to issue guidance as to the effectiveness of Stage II systems. In November 1991, EPA issued technical and enforcement guidance to meet this requirement.<sup>1</sup> In addition, on April 16, 1992, EPA published the "General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990" (General Preamble) (57 FR 13498). The guidance documents and the General Preamble interpret the Stage II statutory requirement and indicate what EPA

<sup>1</sup> These two documents are entitled "Technical Guidance—Stage II Vapor Recovery Systems for Control of Vehicle Refueling Emissions at Gasoline Dispensing Facilities" (EPA-450/3-91-022) and "Enforcement Guidance for Stage II Vehicle Refueling Control Programs."

believes a State submittal needs to include to meet that requirement.

Section 182(b)(3)(A) of the Act specifies that Stage II controls must apply to any facility that dispenses more than 10,000 gallons of gasoline per month or, in the case of an independent small business marketer (ISBM), as defined in section 324(c) of the Act, any facility that dispenses more than 50,000 gallons of gasoline per month. The scope of the control requirement in New Hampshire's rule differs from the formula specified in the CAA in two respects. First, the rule applies to facilities with an *annual* throughput of 420,000 gallons of gasoline, rather than measuring throughput on a monthly basis as provided in section 182(b)(3)(A). It is possible that a monthly threshold would capture more gas stations in the program by catching stations with seasonal variations in their throughput. But EPA and New Hampshire have documented that seasonal variation of gasoline sales across the state is not great, approximately three percent. Therefore, EPA has determined that the annual throughput threshold in New Hampshire's rule does not allow gas stations to go uncontrolled that might otherwise be captured by a monthly threshold. Moreover, along the New Hampshire seacoast, where one might expect to see seasonal variation due to summer tourist traffic, the New Hampshire stage II regulation covers a higher percentage of gas stations selling gasoline to the public than it does in inland communities. Finally, in 1992 New Hampshire estimated that its rule would require controls for about 84.3 percent of gasoline throughput in the program area. Data from 1996 demonstrate that the program actually controls 88.5 percent of all throughput. Second, the rule imposes one threshold for all gasoline stations. As noted above, the CAA specifies a lower threshold of 10,000 gallons per month for regular stations and a higher threshold of 50,000 gallons for ISBM's. If one assumes that New Hampshire's rule covers facilities that on average pump 35,000 gallons of gasoline a month, then the rule fails to control emissions from regular stations that pump between 10,000 and 35,000 gallons of fuel a month as compared with the CAA's minimum requirement. Correspondingly, the rule does control emissions from ISBM's that pump between 35,000 and 50,000 gallons a month that the State could allow to go uncontrolled under the CAA's formula.<sup>2</sup>

Although the applicability cut-off in New Hampshire's rule differs from the CAA-required cut-offs, New Hampshire's SIP submittal includes a Stage II Equivalency Demonstration which shows that implementation of its applicability cut-off in the four county area results in equivalent VOC reductions as compared with implementation of the CAA-required applicability cut-offs in the four county area. Also, New Hampshire's Stage II requirements apply to the Manchester previously classified marginal ozone nonattainment area, whereas section 182(b)(3) of the CAA only requires that New Hampshire implement Stage II requirements in the state's two serious areas. New Hampshire's rule, therefore, results in an additional environmental benefit as compared with the section 182(b)(3) CAA-required program. Thus, this rule creates emission reduction credits that are consistent with the principles outlined in EPA's Economic Incentive Program (EIP) rules (59 FR 16690).

Section 182(b)(3)(B) of the Act specifies the time by which certain facilities must comply with the State regulation. For facilities that are not owned or operated by an ISBM, these times, calculated from the time of State adoption of the regulation, are: (1) 6 months for facilities for which construction began after November 15, 1990, (2) 1 year for facilities that dispense greater than 100,000 gallons of gasoline per month, and (3) 2 years for all other facilities. The Stage II compliance schedule in New Hampshire's regulation is consistent with this CAA requirement.

In accordance with EPA's guidance, New Hampshire requires the use of Stage II systems that have been tested and certified by the California Air Resources Board (CARB) as meeting a 95 percent emission reduction efficiency. The State also requires sources to verify proper installation and function of Stage II equipment through the use of a liquid blockage test and a leak test prior to system operation and upon major modification of a facility or upon written notification from the State. In addition, New Hampshire's rule contains recordkeeping requirements consistent with those recommended in EPA's guidance.

EPA is proposing to approve the November 24, 1992 New Hampshire SIP revision. EPA is soliciting public comments on the issues discussed in

thresholds. Under sections 116 and 324(b) states retain their authority to require Stage II controls at facilities in addition to those covered by section 182(b)(3)(A).

this proposal or on other relevant matters. These comments will be considered before taking final action. Interested parties may participate in the Federal rulemaking procedure by submitting written comments to the EPA Regional office listed in the ADDRESSES section of this action.

## II. Proposed Action

EPA is proposing to approve New Hampshire's Env-A 1205 "Volatile Organic Compounds (VOC): Gasoline Dispensing Facilities and Gasoline Tank Trucks" as meeting the section 182(b)(2) and section 184(b)(1)(B) VOC RACT requirements of the CAA for the gasoline dispensing facility and gasoline tank truck source categories. EPA is also proposing to approve New Hampshire's Env-A 1205 as achieving the emission reductions required under section 182(b)(3) for Stage II vapor recovery in serious ozone nonattainment areas.

## III. Administrative Requirements

### A. Executive Orders 12866 and 13045

The Office of Management and Budget (OMB) has exempted this regulatory action from review under Executive Order 12866.

The proposed rule is not subject to Executive Order 13045, entitled "Protection of Children from Environmental Health Risks and Safety Risks," because it is not an "economically significant" action under Executive Order 12866.

### B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 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. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant 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.

SIP approvals under section 110 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, the Administrator certifies that it does not have a significant impact on any small entities affected.

### C. Unfunded Mandates

To reduce the burden of Federal regulations on States and small governments, President Clinton issued Executive Order 12875 on October 26,

<sup>2</sup> Section 182(b)(3)(A) does not preclude states from establishing more stringent applicability

1993, entitled "Enhancing the Intergovernmental Partnership." Under Executive Order 12875, EPA may not issue a regulation which is not required by statute unless the Federal Government provides the necessary funds to pay the direct costs incurred by the State and small governments or EPA provides to the Office of Management and Budget a description of the prior consultation and communications the agency has had with representatives of State and small governments and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected and other representatives of State and small governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates."

The present action satisfies the requirements of Executive Order 12875 because it does not contain a significant unfunded mandate. This rule approves preexisting state requirements and does not impose new federal mandates binding on State or small governments. 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 costs to State, local, or tribal governments in the aggregate; or to the 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 approval action proposed does not include a Federal mandate that may result in estimated costs of \$100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves 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.

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.

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

Environmental protection, Air pollution control, Hydrocarbons, Ozone, Reporting and recordkeeping requirements.

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

Dated: September 11, 1998.

**John P. DeVillars,**

*Regional Administrator, Region I.*

[FR Doc. 98-25195 Filed 9-18-98; 8:45 am]

BILLING CODE 6560-50-P

## DEPARTMENT OF THE INTERIOR

### Bureau of Reclamation

#### 43 CFR Part 414

RIN 1006-AA40

#### Offstream Storage of Colorado River Water and Interstate Redemption of Storage Credits in the Lower Division States

**AGENCY:** Bureau of Reclamation, Interior.

**ACTION:** Proposed rule; reopening of comment period.

**SUMMARY:** The Department of the Interior ("the Department" or "we") hereby gives notice that we are reopening the comment period on our proposed rule entitled "Offstream Storage of Colorado River Water and Interstate Redemption of Storage Credits in the Lower Division States." We originally published the proposed rule on December 31, 1997, at 62 FR 68492, and accepted public comments until April 3, 1998.

**DATES:** We must receive your comments at the address below on or before October 21, 1998.

**ADDRESSES:** If you wish to submit comments, you may do so by any one of three methods. You may mail comments to Bureau of Reclamation, Administrative Record, Lower Colorado Regional Office, P.O. Box 61470, Boulder City, NV 89006-1470. You may comment via the internet at [bjohnson@lc.usbr.gov](mailto:bjohnson@lc.usbr.gov) Or, you may hand-deliver comments to Bureau of Reclamation, Administrative Record, Lower Colorado Regional Office, 400 Railroad Avenue, Boulder City, NV.

**FOR FURTHER INFORMATION CONTACT:** Mr. Dale Enslinger, (702) 293-8659.

**SUPPLEMENTARY INFORMATION:** We request that interested parties provide

comments on whether an authorized entity in a Storing State under the rule must hold an "entitlement" to use Colorado River water pursuant to court decree, contract with the United States, or reservation of water from the Secretary of the Interior. As published on December 31, 1997, section 414.2 of the proposed rule defined "authorized entity" as "a State water banking authority, or other entity of a Lower Division State holding entitlements to Colorado River water. \* \* \*" Section 414.2 of the proposed rule defined "Entitlement" as "an authorization to beneficially use Colorado River water pursuant to: (1) a decreed right, (2) a contract with the United States through the Secretary, or (3) a reservation of water from the Secretary."

The Department received differing comments on these definitions and other technical matters during the previous comment period. For example, differing comments on the definition of "authorized entity" revealed that some read the definition as allowing a State Water Bank to participate in activities under the rule without holding an entitlement to Colorado River water, while others did not. We invite comment on whether the definition of "authorized entity" should be revised to clarify that an "authorized entity," including a State water bank, must hold an entitlement to Colorado River water in order to ensure consistency with the Law of the River, including specifically section 5 of the Boulder Canyon Project Act, 43 U.S.C. 617d, as interpreted by the *Supreme Court in Arizona v. California*, 373 U.S. 546 (1963).

We also invite comment on whether efficiency, flexibility, and certainty in Colorado River management may result combining an approval Interstate Storage Agreement and a contract under Section 5 of the Boulder Canyon Project Act into one document, thus making the parties entitlement holders upon execution of the Agreement. And, we invite comment on whether, if the documents are not combined, the Interstate Storage Agreements and any separate Section 5 contract (or amendments to an existing contract) should be processed and approved simultaneously to eliminate duplication of any administrative and compliance procedures.

Dated: September 15, 1998.

**Patricia J. Beneke,**

*Assistant Secretary—Water and Science.*

[FR Doc. 98-25139 Filed 9-18-98; 8:45 am]

BILLING CODE 4310-94-M