

## Collection of Information

This rule contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

## Federalism

The Coast Guard has analyzed this proposal in accordance with the principles and criteria contained in Executive Order 12612, and it has determined that this proposed regulation does not have sufficient federalism implications to warrant preparation of a Federalism Assessment.

## Environment

The Coast Guard considered the environmental impact of this proposal and concluded that, under section 2.B.2. of Commandant Instruction M16475.1B, this proposal is categorically excluded from further environmental documentation. A Categorical Exclusion Determination is available in the docket for inspection or copying where indicated under **ADDRESSES**.

## List of Subjects in 33 CFR Part 117

### Bridges.

For the reasons set out in the preamble, the Coast Guard proposes to amend 33 CFR part 117 as follows:

## **PART 117—DRAWBRIDGE OPERATION REGULATIONS**

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05-1(g); section 117.255 also issued under the authority of Pub. L. 102-587, 106 Stat. 5039.

2. Section 117.595, paragraphs (a)(4), (b)(1), and (c) are revised and paragraph (d) is added to read as follows:

### **§ 117.595 Danvers River.**

(a) \* \* \*

(4) Except as provided in paragraphs (b) through (d) of this section, the draws shall open on signal.

(b) \* \* \*

(1) The draw shall open on signal, except that from May 1 through September 30, 12 midnight to 5 a.m. and from October 1 through April 30, 8 p.m. to 5 a.m., and all day on December 25 and January 1, the draw shall open as soon as possible, but not more than one hour, after notice is given to the drawtenders either at the bridge during the time the drawtenders are on duty or by calling the number posted at the bridge.

\* \* \* \* \*

(c) The draw of the Massachusetts Bay Transportation Authority (MBTA)/AMTRAK Bridge at mile 0.05 between

Salem and Beverly shall open on signal, except that from 12 midnight to 5 a.m. daily and all day on December 25 and January 1, the draw shall open as soon as possible, but not more than one hour, after notice is given to the drawtenders either at the bridge during the time the drawtenders are on duty or by calling the number posted at the bridge.

(d) The Essex County Kernwood Bridge at mile 1.0 shall open on signal, except that from May 1 through September 30, 12 midnight to 5 a.m. and from October 1 through April 30, 7 p.m. to 5 a.m., and all day on December 25 and January 1, the draw shall open as soon as possible, but not more than one hour, after notice is given to the drawtenders either at the bridge during the time the drawtenders are on duty or by calling the number posted at the bridge.

Dated: January 3, 1995.

J.L. Linnon,

Rear Admiral, U.S. Coast Guard, Commander,  
First Coast Guard District.

[FR Doc. 95-1293 Filed 1-18-95; 8:45 am]

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## **ENVIRONMENTAL PROTECTION AGENCY**

### **40 CFR Part 52**

[CA 95-5-6651; FRL-5141-7]

### **Approval and Promulgation of Implementation Plans; California State Implementation Plan Revision, Mojave Desert Air Quality Management District and San Bernardino County Air Pollution Control District**

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

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** EPA is proposing to approve revisions to the California State Implementation Plan (SIP), which concern the control of volatile organic compound (VOC) emissions from the loading, transfer, and storage of organic liquids, including gasoline.

The intended effect of proposing approval of these rules 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 notice of proposed rulemaking (NPRM) will incorporate these rules into the federally approved SIP. EPA has evaluated each of these rules and is proposing to approve them under provisions of the CAA regarding EPA action on SIP submittals, SIPs for national primary

and secondary ambient air quality standards and plan requirements for nonattainment areas.

**DATES:** Comments must be received on or before February 21, 1995.

**ADDRESSES:** Comments may be mailed to: Daniel A. Meer, Rulemaking Section (A-5-3), Air and Toxics 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 9 office during normal business hours. Copies of the submitted rules are also available for inspection at the following locations:

California Air Resources Board,  
Stationary Source Division, Rule  
Evaluation Section, 2020 "L" Street,  
Sacramento, CA 95814.  
Mojave Desert Air Quality Management  
District (formerly San Bernardino  
County APCD), 15428 Civic Drive,  
Suite 200, Victorville, CA 92392-  
2383.

**FOR FURTHER INFORMATION CONTACT:**  
Duane F. James, Rulemaking Section  
(A-5-3), Air and Toxics Division, U.S.  
Environmental Protection Agency,  
Region IX, 75 Hawthorne Street, San  
Francisco, CA 94105-3901, (415) 744-  
1191.

### **SUPPLEMENTARY INFORMATION:**

#### **Applicability**

The rules being proposed for approval into the California SIP include: Mojave Desert Air Quality Management District's (MDAQMD) Rule 461, "Gasoline Transfer and Dispensing," and Rule 462, "Organic Liquid Loading," and San Bernardino County Air Pollution Control District's (SBCAPCD) Rule 463, "Storage of Organic Liquids." SBCAPCD's Rule 463 was adopted and submitted prior to the district being renamed to the MDAQMD. These rules were submitted by the California Air Resources Board to EPA on January 11, 1993 (Rule 463) and July 13, 1994 (Rules 461 and 462).

#### **Background**

On March 3, 1978, EPA promulgated a list of ozone nonattainment areas under the provisions of the Clean Air Act, as amended in 1977 (1977 CAA or pre-amended Act), that included the former SBCAPCD.<sup>1</sup> 43 FR 8964; 40 CFR 81.305. Because this area was unable to meet the statutory attainment date of December 31, 1982, California requested

<sup>1</sup> On July 1, 1993, the SBCAPCD was officially renamed as the MDAQMD. Rule 463 is still identified with the SBCAPCD for completeness.

under section 172(a)(2), and EPA approved, an extension of the attainment date to December 31, 1987. 40 CFR 52.238, 52.222. On May 26, 1988, EPA notified the Governor of California, pursuant to section 110(a)(2)(H) of the pre-amended Act, that the above district's portion of the California SIP was inadequate to attain and maintain the ozone standard and requested that deficiencies in the existing SIP be corrected (EPA's SIP-Call). On November 15, 1990, the Clean Air Act Amendments of 1990 were enacted. Pub. L. 101-549, 104 Stat. 2399, codified at 42 U.S.C. 7401-7671q. In amended section 182(a)(2)(A) of the CAA, Congress statutorily adopted the requirement that nonattainment areas fix their deficient reasonably available control technology (RACT) rules for ozone and established a deadline of May 15, 1991, for states to submit corrections of those deficiencies. Section 182(a)(2)(A) applies to areas designated as nonattainment prior to enactment of the amendments and classified as marginal or above as of the date of enactment. It requires such areas to adopt and correct RACT rules pursuant to pre-amended section 172(b) as interpreted in pre-amendment guidance.<sup>2</sup> EPA's SIP-Call used that guidance to indicate the necessary corrections for specific nonattainment areas. The MDAQMD is classified as severe;<sup>3</sup> therefore, this area was subject to the RACT fix-up requirement and the May 15, 1991 deadline.

The State of California submitted many revised RACT rules for incorporation into its SIP on January 11, 1993, and July 13, 1994, including the rules being acted on in this document. This document addresses EPA's proposed action for MDAQMD's Rule 461, "Gasoline Transfer and Dispensing," and Rule 462, "Organic Liquid Loading," and SBCAPCD's Rule 463, "Storage of Organic Liquids." MDAQMD adopted Rules 461 and 462 on May 25, 1994, and SBCAPCD adopted Rule 463 on November 2, 1992. These submitted rules were found to be complete on March 26, 1993 (Rule 463)

<sup>2</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); "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); and the existing control technique guidelines (CTG's).

<sup>3</sup> The Mojave Desert 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 amendments of 1990. See 55 FR 56694 (November 6, 1991).

and July 22, 1994 (Rules 461 and 462) pursuant to EPA's completeness criteria that are set forth in 40 CFR part 51 Appendix V<sup>4</sup> and are being proposed for approval into the SIP.

These three rules work in concert to reduce VOC emissions by requiring submerged fill pipes and vapor recovery systems for the transfer and storage of organic liquids, including gasoline. VOCs contribute to the production of ground level ozone and smog. The rules were adopted as part of the district's efforts to achieve the National Ambient Air Quality Standard (NAAQS) for ozone and in response to EPA's SIP-Call and the section 182(a)(2)(A) CAA requirement. The following is EPA's evaluation and proposed action for these rules.

#### EPA Evaluation and Proposed Action

In determining the approvability of a VOC 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). The EPA interpretation of these requirements, which forms the basis for today's action, appears in the various EPA policy guidance documents listed in footnote 2. Among those provisions is the requirement that a VOC rule must, at a minimum, provide for the implementation of RACT for stationary sources of VOC emissions. This requirement was carried forth from the pre-amended Act.

For the purpose of assisting state and local agencies in developing RACT rules, EPA prepared a series of Control Technique Guideline (CTG) documents. The CTG's 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). The following CTG's are applicable to these rules: (1) "Control of Hydrocarbons from Tank Truck Gasoline Loading Terminals (EPA-450/2-77-026)," (2) "Control of Volatile Organic Emissions from Bulk Gasoline Plants (EPA-450/2-77-035)," (3) "Control of Volatile Organic Emissions from Storage of Petroleum Liquids in Fixed-Roof Tanks (EPA-450/2-77-036)," (4) "Control of Volatile Organic

<sup>4</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).

Emissions from Petroleum Liquid Storage in External Floating Roof Tanks (EPA-450/2-78-047)," and (5) "Control of Volatile Organic Compound Leaks from Gasoline Tank Trucks and Vapor Collection Systems (EPA-450/2-78-051)." Further interpretations of EPA policy are found in the Blue Book, referred to in footnote 2. In general, these guidance documents have been set forth to ensure that VOC rules are fully enforceable and strengthen or maintain the SIP. Rules 461, 462, and 463 include the following significant changes from the current SIP:

- Applicability sections.
- Test methods for compliance determinations.
- Recordkeeping requirements.
- Exemptions consistent with the CTG's.
- Definitions of terms used in the rules.

EPA has evaluated the submitted rules and has determined that they are consistent with the CAA, EPA regulations, and EPA policy. Therefore, MDAQMD's Rule 461, "Gasoline Transfer and Dispensing," and Rule 462, "Organic Liquid Loading," and SBCAPCD's Rule 463, "Storage of Organic Liquids," are being proposed for approval under section 110(k)(3) of the CAA as meeting the requirements of section 110(a) and Part D.

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

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. 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 sections 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 any small entities affected. 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. 7410(a)(2).

The OMB has exempted this action from review under Executive Order 12866.

List of Subjects in 40 CFR Part 52

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

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

Dated: January 6, 1995.

Felicia Marcus,

Regional Administrator.

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40 CFR Parts 152, 174, and 180

[OPP-300378; FRL-4932-6]

RIN 2070-AC02

**Plant-Pesticides Subject to the Federal Insecticide, Fungicide, and Rodenticide Act; Proposed Exemptions From the Requirement of a Tolerance for Plant-Pesticides and Nucleic Acids and Viral Coat Proteins Produced in Plants under the Federal Food, Drug, and Cosmetic Act; Proposed Rules; Extension of Comment Periods**

AGENCY: Environmental Protection Agency (EPA).

ACTION: Extension of comment periods.

**SUMMARY:** EPA is extending the comment period for a proposed rule for plant-pesticides under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), and three proposed exemptions from the requirement of a tolerance under the Federal Food, Drug, and Cosmetic Act (FFDCA). The proposed rule and proposed exemptions from tolerance requirements describe how EPA proposes to address pesticidal substances produced by plants under FIFRA and FFDCA.

**DATES:** Comments identified by the docket control numbers [OPP- 300367a, 300368a, 300369a, 300371a] must be received on or before February 23, 1995.

**ADDRESSES:** Submit written comments by mail to: Program Resources Section, Public Response and Program Resources Branch, Field Operations Division (7506C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 1132, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

**FOR FURTHER INFORMATION CONTACT:** By mail: Bernice Slutsky, Science and Policy Staff, Office of Prevention, Pesticides and Toxic Substances (7101), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. E-627, 401 M St., SW., Washington, DC, (202-260-6900).

**SUPPLEMENTARY INFORMATION:** The substances plants produce to protect themselves against pests and disease are considered to be pesticides under the FIFRA definition of "pesticide." These substances, along with the genetic material necessary to produce them are designated "plant-pesticides" by EPA. In the Federal Register of November 23, 1994, EPA published: (1) A proposed policy statement that describes EPA's regulatory approach for plant-pesticides under FIFRA and FFDCA ("Proposed Policy; Plant-Pesticides Subject to the Federal Insecticide, Fungicide, and

Rodenticide Act and the Federal Food, Drug, and Cosmetic Act") (59 FR 60496); (2) a proposed regulatory amendment that would describe categories of plant-pesticides that are subject to or exempt from regulation under FIFRA and clarifies the status of plants that produce plant-pesticides ("Plant-Pesticides Subject to the Federal Insecticide, Fungicide, and Rodenticide Act; Proposed Rule") (59 FR 60519); (3) a proposed exemption from the requirement of a tolerance under FFDCA for categories of plant-pesticides that do not result in significantly different dietary exposures ("Plant-Pesticides; Proposed Exemption From the Requirement of a Tolerance Under the Federal Food, Drug, and Cosmetic Act") (59 FR 60535); (4) a proposed exemption from the requirement of a tolerance under FFDCA for nucleic acids, including deoxyribonucleic and ribonucleic acids ("Plant-Pesticides; Proposed Exemption From the Requirement of a Tolerance Under the Federal Food, Drug, and Cosmetic Act for Nucleic Acids Produced in Plants,") (59 FR 60542); and (5) a proposed exemption from the requirement of a tolerance under FFDCA for viral coat proteins ("Plant-Pesticides; Proposed Exemption From the Requirement of a Tolerance Under the Federal Food, Drug, and Cosmetic Act for Viral Coat Proteins Produced in Plants") (59 FR 60545). In response to requests by interested parties, EPA is extending the comment period for the four proposals by 30 days. Elsewhere in this issue of the Federal Register, EPA is also extending the comment period by 30 days for the proposed statement of policy for pesticidal substances produced in plants (plant-pesticides) under FIFRA and FFDCA. Comments for all documents must now be received by February 23, 1995.

Comments must be filed with the corresponding docket numbers:

Docket Number	Document Name
OPP-300369a	Plant-Pesticides Subject to the Federal Insecticide, Fungicide, and Rodenticide Act; Proposed Rule
OPP-300368a	Plant-Pesticides; Proposed Exemption from the Requirement of a Tolerance Under the Federal Food, Drug, and Cosmetic Act
OPP-300371a	Plant-Pesticides; Proposed Exemption from the Requirement of a Tolerance Under the Federal Food, Drug, and Cosmetic Act for Nucleic Acids Produced in Plants
OPP-300367a	Plant-Pesticides; Proposed Exemption from the Requirement of a Tolerance Under the Federal Food, Drug, and Cosmetic Act for Viral Coat Proteins Produced in Plants