

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Note: Incorporation by reference of the State Implementation Plan for the State of Vermont was approved by the Director of the Federal Register on July 1, 1982.

Dated: March 8, 1997.

John P. DeVillars,

Regional Administrator, Region I.

Part 52 of chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart UU—Vermont

2. Section 52.2370 is amended by adding paragraph (c)(22) to read as follows:

§ 52.2370 Identification of plan.

* * * * *

(c) * * *

(22) Revisions to the State Implementation Plan submitted by the Vermont Air Pollution Control Division on August 9, 1993 and March 20, 1995.

(i) Incorporation by reference.

(A) Letters from the Vermont Air Pollution Control Division dated August 9, 1993 and March 20, 1995 submitting revisions to the Vermont State Implementation Plan.

(B) Regulations, including section 5–101, “Definitions,” subsection 5–251(2), “Reasonably available control technology for large stationary sources,” and, subsection 5–253.20, “Other

Sources That Emit Volatile Organic Compounds,” adopted on July 9, 1993 and effective on August 13, 1993.

(C) Administrative orders for Simpson Paper Company, in Gilman, Vermont, and, U.S. Samaica Corporation, in Rutland, Vermont, both adopted and effective on January 4, 1995.

3. In § 52.2381, Table 52.2381 is amended by adding a new entry to the end of existing state citation for section 5–101, “Definitions,”; adding two new entries to the end of the existing state citation for section 5–251, “Control of Nitrogen Oxides Emissions,” and by adding new state citation for section 5–253.20, “Other Sources That Emit Volatile Organic Compounds,” to read as follows:

§ 52.2381 EPA—approved Vermont State regulations.

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TABLE 52.2381.—EPA-APPROVED REGULATIONS
[Vermont SIP regulations 1972 to present]

State citation, title and subject	Date adopted by State	Date approved by EPA	Federal Register citation	52.2370	Comments and unapproved sections
* Section 5–101 Definitions	* 7/9/93	* 4/9/97	* 62 FR 17087	* (c)(22)	* Adds definition of reasonably available control technology (RACT).
* Section 5–251 Control of nitrogen oxides emissions.	* 7/9/93	* 4/9/97	* 62 FR 17087	* (c)(22)	* Requires RACT for major stationary sources of NO _x .
	1/4/95	4/9/97	62 FR 17087	(c)(22)	NO _x RACT for Simpson Paper Company's Gilman facility
* Section 5–253 control of volatile organic compounds.	* 7/9/93	* 4/9/97	* 62 FR 17087	* (c)(22)	* Requires RACT at non-CTG VOC sources.
	1/4/95	4/9/97	62 FR 17087	(c)(22)	Non-CTG VOC RACT for U.S. Samaica Corporation's Rutland facility.
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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL–5801–1]

Approval and Promulgation of Air Quality Implementation Plans; Reasonably Available Control Technology for Nitrogen Oxides for the State of New Hampshire

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving a State Implementation Plan (SIP) revision submitted by the State of New Hampshire. This revision establishes and requires Reasonably Available Control Technology (RACT) at stationary sources of nitrogen oxides (NO_x). The intended effect of this action is to approve regulatory provisions and source specific orders which require major stationary sources of NO_x to reduce their emissions statewide in accordance with requirements of the Clean Air Act.

DATES: This action is effective June 9, 1997, unless notice is received by May

9, 1997 that adverse or critical comments will be submitted. If the effective date is delayed, timely notice will be published in the **Federal Register**.

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 Building, Boston, MA 02203-2211. Copies of the documents relevant to this action are available for public inspection during normal business hours, by appointment, at the Office Ecosystem Protection, U.S. Environmental Protection Agency, Region I, One Congress Street, 11th floor, Boston, MA; as well as the Air Resources Division, Department of Environmental Services, 64 North Main Street, Caller Box 2033, Concord, NH 03302-2033.

FOR FURTHER INFORMATION CONTACT: Steven A. Rapp, Environmental Engineer, Air Quality Planning Unit (CAQ), U.S. EPA, Region I, JFK Federal Building, Boston, MA 02203-2211; (617) 565-2773; Rapp.Steve@EPAMAIL.EPA.GOV.

SUPPLEMENTARY INFORMATION:

I. Background

The Clean Air Act (CAA) requires that States develop Reasonably Available Control Technology (RACT) regulations for all major stationary sources of nitrogen oxides (NO_x) in areas which have been classified as "moderate," "serious," "severe," and "extreme" ozone nonattainment areas, and in all areas of the Ozone Transport Region (OTR). EPA has defined RACT as the lowest emission limitation that a particular source is capable of meeting by the application of control technology that is reasonably available considering technological and economic feasibility (44 FR 53762; September 17, 1979). This requirement is established by sections 182(b)(2), 182(f), and 184(b) of the CAA.

These CAA NO_x requirements are further described by EPA in a notice entitled, "State Implementation Plans; Nitrogen Oxides Supplement to the General Preamble; Clean Air Act Amendments of 1990 Implementation of Title I; Proposed Rule," published November 25, 1992 (57 FR 55620). The November 25, 1992 notice, also known as the NO_x Supplement, should be referred to for more detailed information on NO_x requirements. Additional guidance memoranda which have been released by EPA should also be referred to for more information on NO_x requirements.

New Hampshire has three designated ozone nonattainment areas. First, the

area which includes all of Merrimack County, part of Hillsborough County, and part of Rockingham County is classified as a marginal nonattainment area (see 40 CFR Part 81 for the list of affected towns). Second, all of Strafford County and part of Rockingham County is classified as a serious non-attainment area (see 40 CFR Part 81, § 81.330 for the list of affected towns). And third, the part of southern New Hampshire that is located within the Boston-Lawrence-Salem Consolidated Metropolitan Statistical Area (CMSA) is also classified as a serious nonattainment area (see 40 CFR Part 81, § 81.330 for the list of affected towns). Additionally, section 184(a) of the CAA also defines an ozone transport region within the northeastern United States, which includes all of the State of New Hampshire.

Section 182(b)(2) of the CAA requires States to require implementation of RACT with respect to all major sources of volatile organic compounds (VOCs). This RACT requirement also applies to all major sources in ozone nonattainment areas with higher than moderate nonattainment classifications. Section 182(f) states that, "the plan provisions required under this subpart for major stationary sources of volatile organic compounds shall also apply to major stationary sources (as defined in section 302 and subsections (c), (d), and (e) of the section) of oxides of nitrogen." Additionally, section 184(b)(2) requires major stationary sources in the OTR to meet the requirements applicable to major sources if the area were classified as a moderate nonattainment area, unless already classified at a higher nonattainment level. These sections of the CAA, taken together, establish the requirements for New Hampshire to submit a NO_x RACT regulation which covers major sources statewide.

Section 302 of the CAA generally defines "major stationary source" as a facility or source of air pollution which has the potential to emit 100 tons per year or more of air pollution. This definition applies unless another provision of the CAA explicitly defines major source differently. Therefore, for NO_x, a major source is one with the potential to emit 100 tons per year or more in marginal and moderate areas, as well as in attainment areas in the OTR. However, for serious nonattainment areas, a major source is defined by section 182(c) as a source that has the potential to emit 50 tons per year or more.

In New Hampshire's Strafford County, in the part of Rockingham County that is classified as serious nonattainment, and in the Boston-Lawrence-Salem

CMSA, a major stationary source of NO_x is a facility which has a potential to emit 50 tons per year or more of NO_x. Such a facility is therefore subject to NO_x RACT requirements. Throughout the rest of the State, a major stationary source of NO_x is a facility with the potential to emit 100 tons or more per year of NO_x. These sources would also be subject to NO_x RACT requirements. Part Env-A 1211 and the source-specific NO_x RACT determination, order number ARD-95-001 for Groveton Paperboard, Incorporated were submitted in response to the CAA requirement that RACT be required for all major sources of NO_x.

II. State Submittal

The New Hampshire Department of Environmental Services (New Hampshire or NHDES) submitted the NO_x RACT program as a number of revisions to the New Hampshire State implementation plan (SIP). First, on June 17, 1994, NHDES submitted a revision consisting of amendments to Chapter Env-A 1200, specifically Part Env-A 1211, "Nitrogen Oxides (NO_x)," which defines Reasonably Available Control Technology (RACT) requirements for sources of NO_x. Part Env-A 1211 also contains "Phase II NO_x emission limits" for certain types of utility boilers, which are required to be implemented by May 1, 1999.

In addition to the general NO_x RACT regulations in Part Env-A 1211, on July 7, 1995, New Hampshire submitted a source specific NO_x RACT determination for Groveton Paperboard, Incorporated, order number ARD-95-001, which covers processes subject to the miscellaneous NO_x RACT provisions of Part Env-A 1211. On September 18, 1995, New Hampshire submitted an emissions averaging plan, order number ARD-95-002, for Plymouth Cogeneration Limited Partnership, of Plymouth, New Hampshire. And similarly, on October 18, 1995, New Hampshire submitted an alternative NO_x RACT determination for Waterville Valley Ski Area Limited Partnership, order number ARD-95-003, as a revision to the SIP.

In addition to these SIP submittals, on December 21, 1992, New Hampshire submitted Chapter Env-A 900, Part Env-A 901 to EPA as a proposed SIP revision, which includes sections Env-A 901.06, "NO_x Recordkeeping Requirements," and 901.07, "NO_x Reporting Requirements." Sections Env-A 1211.03 through Env-A 1211.13 reference the requirements of sections Env-A 901.06 and Env-A 901.07 as part of the recordkeeping and reporting

requirements for sources subject to NO_x RACT.

III. Description of Submittal

The following is a description of the changes being approved in this action. For a more detailed discussion of New Hampshire's submittal and EPA's proposed action, the reader should refer to the Technical Support Document developed as part of this action. Copies of the Technical Support Document are found at the previously mentioned addresses.

A. Part Env-A 1211

New Hampshire's rule, Part Env-A 1211 Nitrogen Oxides is divided into twenty-two sections. Section 1211.01 defines terms used in the rule. Sections 1211.02 covers applicability of the regulation. Applicability is determined based on combined maximum heat input for each source type for: utility boilers, steam electric boilers, industrial boilers, stationary combustion turbines, stationary internal combustion engines, asphalt plant dryers, and incinerators. For wallboard dryers, calcining mills, calciners and gypsum rock dryers, as well as emergency generators, auxiliary boilers, load shaving units, and categories which fall under the definition of miscellaneous stationary source, emission units are subject to the rule if they are located at a facility which has potential NO_x emissions greater than 50 tons per year since January 1, 1990. However, 1211.10.02 allows sources where actual emissions have not exceeded the major source threshold since 1990, to avoid the requirements of the regulation if the source has been issued a permit or consent order limiting their emissions to less than 50 tons per year.

The New Hampshire NO_x emission limits are specified in sections Env-A 1211.03 through Env-A 1211.13, for utility boilers, steam electric boilers, industrial boilers, stationary combustion turbines, stationary internal combustion engines, asphalt plant dryers, incinerators, wallboard manufacturing, as well as emergency generators, auxiliary boilers, load shaving units. Generally, the limits are at least as stringent as EPA's recommendations in the NO_x Supplement. Although some of the individual limits are not as stringent, the statewide aggregate NO_x reduction from a 1990 baseline achieved by all the limits together is greater than 35 percent. Therefore the regulations are approvable as RACT. For a more detailed discussion of the specific emission limitations and requirements in Part Env-A 1211, as well as EPA's analysis of those requirements, the

reader should refer to the Technical Support Document developed as part of this action. Copies of the Technical Support Document are found at the previously mentioned addresses.

Section 1211.14 defines the emission standards and control options for miscellaneous stationary sources. Section 1211.16 requires subject sources to submit a compliance schedule and requires such sources to install RACT by May 31, 1995. Section 1211.17 defines the requirements for the establishment of alternative RACT emission limits. Section 1211.18 allows emissions averaging for multiple sources under common ownership located in New Hampshire. Section 1211.19 defines the procedure for the issuance of a RACT order.

Section 1211.20 allows sources to reduce enough NO_x during the ozone season to achieve an annual NO_x reduction which is equivalent to the reduction which would be achieved by meeting a RACT limitation year-round. Generally this reduction is achieved by switching to a cleaner fuel during the ozone season (i.e., "fuel switching"). The fuel-switching provisions of this rule are not a generic emissions averaging program, however. Therefore, section 1211.20 requires that fuel-switching requests be approved as case-specific SIP revisions.

Section 1211.21 defines the NO_x testing requirements. Section 1211.22 defines the monitoring requirements for NO_x RACT subject sources. NO_x RACT recordkeeping and reporting requirements are defined throughout Env-A 1211, in combination with the requirements found in sections Env-A 901.06, "NO_x Recordkeeping Requirements," and Env-A 901.07, "NO_x Reporting Requirements."

Additionally, section Env-A 1211.15 requires the State to establish and implement "Phase II NO_x limits" for all applicable sources, except as provided for in Env-A 1211.03(f), or unless shown to be unnecessary by airshed modeling. Env-A 1211.03(f) defines Phase II NO_x limits and requires New Hampshire's Air Resource Division director to implement them for wet-bottom cyclone fired utility boilers with maximum net power output capacity greater than or equal to 320 megawatts, no later than May 1, 1999.

A public hearing was held on March 18, 1994 for these regulations.

NHDES filed the regulation with the Director of Legislative Services on May 20, 1994, and they became effective on that date. On June 17, 1994, New Hampshire submitted their adopted regulation as a formal SIP submittal to EPA. After reviewing the regulations,

EPA sent New Hampshire a letter on July 12, 1994, stating that the rule had been found to be administratively and technically complete.

B. Miscellaneous NO_x RACT—Groveton Paperboard, Inc.

Groveton Paperboard, Incorporated, of Groveton, New Hampshire, produces wood pulp using a soda-based semi-chemical process. Spent pulping chemicals are concentrated by evaporation and then burned in a refractory lined rotary kiln. This recovery kiln is subject to section Env-A 1211.14, "Emission Standards and Control Options for Miscellaneous Stationary Sources." Order number ARD-95-001 defines NO_x RACT for the kiln, including the use of their current control technology (i.e., process and combustion controls, Venturi scrubber, and wet electrostatic-precipitator), combined with limits on fuel usage: (a) black liquor solids, 16.5 gallons per minute; (b) #2 fuel oil, 2,160 gallons per day, at 0.4% sulfur by weight; (c) #6 fuel oil, 393 gallons per day, at 2.2% sulfur. The order also sets daily monitoring, record-keeping, and reporting, as well as the testing requirements of Env-A 1211.21(b).

A public hearing was held on April 11, 1995 and the final order was issued on May 10, 1995, and became effective on that date. Region I received the SIP submittal for Groveton Paperboard on July 7, 1995 and determined the submittal to be administratively and technically complete on September 12, 1995.

C. Emissions Averaging Plan—Plymouth Cogeneration, Ltd.

Plymouth Cogeneration Limited Partnership (PCLP), operates a cogeneration plant, i.e., a facility which produces both electricity and steam or hot water for commercial purposes, in Plymouth, New Hampshire. Order number ARD-95-002 allows PCLP to average emissions on a daily basis between a 1.2 megawatt (MW) diesel-fired electric generator, equipped with a selective catalytic reduction (SCR) unit, and a 1.3 MW diesel-fired generator in order to meet the NO_x emission limitations of section Env-A 1211.07 and Env-A 1211.13, respectively.

On July 25 and 26, 1995, New Hampshire held public hearings on the proposed order. The final order was issued on September 12, 1995, and became effective on that date. On September 18, 1995, New Hampshire submitted an alternative RACT determination for Plymouth Cogeneration Limited Partnership. On January 22, 1996, EPA deemed the

submittal to be administratively and technically complete.

D. Alternative NO_x RACT—Waterville Valley Ski Area, Ltd.

Waterville Valley Ski Area Limited Partnership (WVLP) owns and operates a ski area in Waterville Valley, New Hampshire, which includes NO_x emitting equipment utilized for snow production, building heating, and emergency services. Order number ARD-95-003, as revised September 19, 1995, requires no controls on the 19 residential boilers, but requires WVLP to remove all existing Caterpillar IC engines and all I-R IC engines and replace them with electric compressors. For the three remaining Cummins diesel-fired engines (#4, #5, and #6), the order requires these engines to comply with the hourly emission limits of section Env-A 1211.07(c)(2)(b).

However, due to cost of the compressor replacement, the alternative RACT determination allows a relaxation of the annual testing requirements for the 3 remaining internal combustion (IC) engines. Therefore, for 3 remaining Cummins IC engines (#4, #5, & #6), the final order requires that a different Cummins engine be tested at least once every three years so that eventually, each engine is tested. Also, in lieu of testing these units, the order allows WVLP to use the results of emissions tests conducted on a specific engine at another location within previous 3 years. This is necessary since these engines are leased and frequently rotated for routine maintenance or to be used at other customers.

New Hampshire held a public hearing on July 26, 1995, and the final order was issued on September 19, 1995, and became effective on that date. On October 18, 1995, New Hampshire submitted an alternative NO_x RACT determination for Waterville Valley as a revision to the SIP. On January 22, 1996, EPA deemed the submittal to be administratively and technically complete.

E. NO_x Recordkeeping and Reporting—Env-A 901.06, Env-A 901.07

On December 21, 1992, New Hampshire submitted to EPA a number of amendments to Chapter Env-A 900, including Parts 901-903, as part of a package of regulations intended to fulfill the requirements concerning emission statements in section 182(c)(3)(B) of the Clean Air Act. Part Env-A 1211 references the requirements found in sections Env-A 901.06, "NO_x Recordkeeping Requirements," and Env-A 901.07, "NO_x Reporting Requirements" as applicable NO_x RACT

requirements as well. These regulatory sections, in combination with the other recordkeeping and reporting requirements throughout Part Env-A 1211, constitute adequate NO_x RACT recordkeeping and reporting provisions.

New Hampshire held a public hearing on the amendments to Chapter Env-A 900, including sections Env-A 901.06 and 901.07, on June 18, 1992. The regulations were adopted by the State on November 13, 1992. On February 19, 1993, EPA deemed the submittal administratively and technically complete.

F. Phase II NO_x Limits

Section Env-A 1211.15 states that unless EPA approves an attainment demonstration for New Hampshire which has shown by modelling that beyond-RACT NO_x reductions are not needed, New Hampshire's Air Resources Division (NHARD) Director will establish and implement "Phase II NO_x limits" for all applicable sources, except as provided for in Env-A 1211.03(f). Env-A 1211.03(f) requires the NHARD Director to implement Phase II NO_x emission limits for wet-bottom cyclone fired utility boilers with maximum net power output capacity greater than 320 MW no later than May 1, 1999. After that date, such boilers are required at all times to meet the equivalent of the following NO_x limits: (1) for boilers firing coal, or any combination of fuels with coal, a maximum daily emission of 15.4 tons; and, (2) for boilers firing any fuel or fuels, excluding coal, a maximum daily emissions of 3.8 tons. The limit of 15.4 tons per day represents a NO_x reductions beyond the requirements for RACT. Therefore, these limits are approvable as strengthening the SIP.

IV. Issues

There are two issues associated with this rulemaking action. The first issue is related to the miscellaneous RACT provisions of Part Env-A 1211. In addition to the regulations in Part Env-A 1211, New Hampshire has indicated that they have three sources with processes subject to the miscellaneous NO_x RACT provisions of the rule: Groveton Paperboard, of Groveton; Hampshire Chemical, of Nashua; and, Crown Vantage Corporation, of Berlin. Region I received the SIP submittal for Groveton Paperboard on July 7, 1995 and is approving that submittal in this action. However, New Hampshire has not yet submitted SIP revisions for Hampshire Chemical or Crown Vantage.

EPA believes that Part Env-A 1211 is still fully approvable as meeting the requirements of the CAA for several

reasons. First, on November 7, 1996 EPA issued a RACT policy memorandum¹ which allows full approval for regulations which contain generic RACT provisions (e.g., Section Env-A 1211.14. for miscellaneous NO_x RACT sources), without requiring the submission of all of the adopted RACT limits, where certain conditions are met. Basically, the generic RACT policy states that the generic portion of the NO_x RACT rule can be fully approved if the NO_x emissions from the outstanding RACT determinations are, not from an electric utility source and, they constitute less than 5% of the overall non-utility NO_x emissions (i.e., a "de minimis" level of emissions). In the case of New Hampshire's Part Env-A 1211, the emissions remaining to be covered by the miscellaneous RACT determinations (i.e., Hampshire Chemical's kilns and oil heater and, Crown Vantage's lime kiln, space heaters, and dryer) constitute less than 1% percent of New Hampshire's baseyear non-utility NO_x emissions. Therefore, these remaining emission units can be considered de minimis, as described in EPA's generic RACT policy memorandum.

Second, the NO_x Supplement explicitly encourages States to structure their RACT requirements to inherently incorporate an emissions averaging concept, e.g., installing more stringent controls on some units in exchange for less stringent controls on other units (see 57 FR 55625). In other words, the NO_x Supplement encourages States to structure NO_x RACT requirements around an areawide aggregate NO_x reduction. EPA also issued a policy memorandum which discusses an acceptable aggregate RACT reduction of 30 to 50 percent NO_x reduction from a 1990 baseline.² The NO_x emission limits in Env-A 1211 and the miscellaneous NO_x RACT order for Groveton Paperboard achieve greater than a 35 percent statewide aggregate reduction in NO_x from a 1990 baseline at RACT subject sources, with or without any additional reduction from the remaining emission units.

Finally, section Env-A 1211.14 requires a facility owner subject to the

¹ On November 7, 1996, Sally Shaver, Director of EPA's Air Quality Strategies and Standards Division issued a policy memorandum entitled, "Approval Options for Generic RACT Rules Submitted to Meet the non-CTG VOC RACT Requirements and Certain NO_x RACT Requirements."

² Memorandum from D. Kent Berry, Acting Director of the Air Quality Management Division of the Office of Air Quality Planning and Standards, to the Air Quality Directors of EPA's Regional Offices, entitled, "Cost-Effective Nitrogen Oxides (NO_x) Reasonably Available Control Technology (RACT), March 14, 1994."

miscellaneous RACT provisions to apply and obtain a RACT order. Approval of this regulation into the SIP will continue to obligate the regulated sources to apply for and implement NO_x RACT and, for the State to make a RACT determination for the remaining two miscellaneous NO_x RACT orders as expeditiously as practicable. Furthermore, approval of section Env-A 1211 into the SIP will also provide for enforceability of these requirements by EPA and citizens groups under section 304 of the CAA. Additionally, as described in EPA's November 7, 1996 generic RACT guidance, if EPA later determines that the sources remain unregulated, EPA could issue a SIP call or possibly a finding of failure to implement the SIP. Therefore, EPA believes the regulations are fully approvable as meeting the NO_x RACT requirements of the CAA.

The second issue is related to the NO_x recordkeeping and reporting provisions of Part Env-A 1211. Basically, Part Env-A 1211 cross-references sections Env-A 901.06 "NO_x Recordkeeping Requirements" and Env-A 901.07 "NO_x Reporting Requirements" as part of the applicable requirements for NO_x RACT subject sources. However, sections Env-A 901.06 and Env-A 901.07 were part of a package of regulations for which EPA proposed a limited approval/limited disapproval on September 20, 1994, primarily because the package did not require sufficient recordkeeping and reporting from certain VOC sources.

For the purposes of assuring compliance with the NO_x RACT limits of Env-A 1211, however, EPA considers sections Env-A 901.06 and Env-A 901.07 fully approvable as part of the NO_x RACT regulations. This approval is not intended to affect EPA's September 20, 1994 proposed action concerning the approvability of emission statement requirements in New Hampshire. The State must still address the deficiencies outlined in the September 20, 1994 **Federal Register** notice.

V. Final Action

EPA review of the NO_x RACT SIP submittals, including the NO_x RACT regulations Part Env-A 1211, the NO_x recordkeeping and reporting requirements found in sections Env-A 901.06 and Env-A 901.07, and the miscellaneous NO_x RACT for Groveton Paperboard Company, indicates that New Hampshire has sufficiently defined the NO_x RACT requirements for the State. Therefore, EPA is approving Part Env-A 1211, sections Env-A 901.06 and Env-A 901.07, and the source-specific NO_x RACT order, ARD-95-001, for Groveton Paperboard, as meeting the

NO_x RACT requirements of the Clean Air Act. EPA is also approving: the emissions averaging plan for Plymouth Cogeneration Limited Partnership, order number AED-95-002; and, the alternative NO_x RACT for Waterville Valley Ski Area Limited Partnership, order number ARD-95-003, as revisions to the New Hampshire SIP at this time. New Hampshire must still submit adopted NO_x RACT limits for miscellaneous NO_x emitting equipment at Crown Vantage Corporation and Hampshire Chemical Company for EPA approval.

EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in a separate document in this **Federal Register** publication, EPA is proposing to approve the SIP revision should adverse or critical comments be filed. This action will be effective June 9, 1997 unless adverse or critical comments are received by May 9, 1997.

If the EPA receives such comments, this action will be withdrawn before the effective date by simultaneously publishing a subsequent notice that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on this action serving as a proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective on June 9, 1997.

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.

VI. Administrative Requirements

A. Executive Order 12866

This action has been classified as a Table 3 action for signature by the Regional Administrator under the 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 (OMB) has exempted this regulatory action from E.O. 12866 review.

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 Clean Air Act 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. Moreover, due to the nature of the Federal-State relationship under the CAA, preparation of a 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).

C. Unfunded Mandates

Under Sections 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 promulgated 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 Federal requirements. Accordingly, no additional costs to State, local, or tribal governments, or to

the private sector, result from this action.

D. Submission to Congress and the General Accounting Office

Under section 801(a)(1)(A) as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of the rule in today's **Federal Register**. This rule is not a "major rule" as defined by section 804(2).

E. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by June 9, 1997. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).) EPA encourages interested parties to comment in response to the proposed rule rather than petition for judicial review, unless the objection arises after the comment period allowed for in the proposal.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations,

Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

Note: Incorporation by reference of the State Implementation Plan for the State of New Hampshire was approved by the Director of the Federal Register on July 1, 1982.

Dated: March 8, 1997.

John P. DeVillars,
Regional Administrator, Region I.

Part 52 of chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

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

Subpart EE—New Hampshire

2. Section 52.1520 is amended by adding paragraph (c)(49) and (c)(50) to read as follows:

§ 52.1520 Identification of plan.

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(c) * * *

(49) Revisions to the State Implementation Plan submitted by the New Hampshire Air Resources Division on June 17, 1994, and December 21, 1992.

(i) Incorporation by reference.

(A) Letters from the New Hampshire Air Resources Division dated June 17, 1994, and December 21, 1992, submitting revisions to the New Hampshire State Implementation Plan.

(B) Regulations Chapter Env-A 1200, Part Env-A 1211, "Nitrogen Oxides (NO_x)," effective on May 20, 1994, and Chapter Env-A 900, Part Env-A 901, sections Env-A 901.06 "NO_x Recordkeeping Requirements," and Env-

A 901.07, "NO_x Reporting Requirements," effective on November 13, 1992.

(50) Revisions to the State Implementation Plan submitted by the New Hampshire Air Resources Division on July 7, 1995, September 18, 1995, and October 18, 1995.

(i) Incorporation by reference.

(A) Letters from the New Hampshire Air Resources Division dated July 7, 1995, September 18, 1995, and October 18, 1995, submitting revisions to the New Hampshire State Implementation Plan.

(B) New Hampshire NO_x RACT Order ARD-95-001, concerning Groveton Paperboard Corporation, effective on May 10, 1995.

(C) New Hampshire NO_x RACT Order ARD-95-002, concerning Plymouth Cogeneration Limited Partnership, effective September 12, 1995.

(D) New Hampshire NO_x RACT Order ARD-95-003, concerning Waterville Valley Ski Area Limited, effective September 19, 1995.

For the State of New Hampshire:

3. In § 52.1525 Table 52.1525 is amended by adding new entries in numerical order to existing state citations "Chapter Env-A 900, Part Env-A 901, section Env-A 901.06," and, "Chapter 900, Part Env-A 901, section Env-A 901.07;" and, by adding new state citations for "Chapter Env-A 1200, Part Env-A 1211," "Order ARD-95-001," "Order ARD-95-002," and, "Order ARD-95-003," to read as follows:

§ 52.1525 EPA—approved New Hampshire state regulations.

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TABLE 52.1525—EPA—APPROVED RULES AND REGULATIONS—NEW HAMPSHIRE

Title/subject	State citation chapter	Date adopted by State	Date approved by EPA	Federal Register citation	52.1520	Comments
* Record keeping requirements.	* CH air 900, Part Env-A 901, section Env-A 901.06.	* 11/13/92	* April 9, 1997	* 62 FR 17092	* (c)(49)	* Adds NO _x record keeping requirements.
Reporting requirements.	CH air 900, Part Env-A 901, section Env-A 901.07.	11/13/92	April 9, 1997 62 FR 17092 (c)(49) Adds NO _x reporting requirements.
Nitrogen oxides emission limits.	CH air 1200 Part Env-A 1211.	5/20/94	April 9, 1997 62 FR 17092 (c)(49) Adds NO _x RACT requirements.
Source specific order.	Order ARD-95-001.	5/10/95	April 9, 1997 62 FR 17092 (c)(50) Source specific NO _x RACT order for Groveton Paperboard Corporation, in Groveton, NH.

TABLE 52.1525—EPA—APPROVED RULES AND REGULATIONS—NEW HAMPSHIRE—Continued

Title/subject	State citation chapter	Date adopted by State	Date approved by EPA	Federal Register citation	52.1520	Comments
Source specific order.	Order ARD-95-002.	9/12/95	April 9, 1997	62 FR 17093	(c)(50)	Source specific NO _x RACT order for Plymouth Cogeneration Limited Partnership, in Plymouth, NH.
Source specific order.	Order ARD-95-003.	9/19/95	April 9, 1997	62 FR 17093	(c)(50)	Source specific NO _x RACT order for Waterville Valley Ski Area Limited, in Waterville Valley, NH.
*	*	*	*	*	*	*

[FR Doc. 97-9109 Filed 4-8-97; 8:45 am]
BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[UT-001-0001a; FRL-5802-2]

Clean Air Act Approval and Promulgation of Air Quality Implementation Plan Revision for Utah; Visibility Protection

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA approves a revision to Utah's State Implementation Plan (SIP) for Visibility Protection, as submitted by the Governor with a letter dated July 25, 1996. The revision was adopted by the State in 1993 to address comments received from the 1992 Utah Legislature's Administrative Rules Review Committee regarding the need to remove a visibility policy statement from a regulation format (since it was not a rule). The State responded by deleting the policy statement from the Utah Air Conservation Regulations and adding the text into the Visibility Protection SIP. This submittal was a necessary "housekeeping" step to bring the federally approved SIP up-to-date with administrative revisions that took place at the State in 1993.

DATES: This action will become effective on June 9, 1997 unless adverse comments are received by May 9, 1997. If the effective date is delayed, timely notice will be published in the **Federal Register**.

ADDRESSES: Comments should be addressed to: Richard R. Long, Director, Air Program, EPA Region VIII at the address listed below. Copies of the State's submittal and other information are available for inspection during

normal business hours at the following locations: Air Program, Environmental Protection Agency, Region VIII, 999 18th Street, suite 500, Denver, Colorado 80202-2405; and Utah Department of Environmental Quality, Division of Air Quality, 150 North 1950 West, P.O. Box 144820, Salt Lake City, Utah 84114-4820.

FOR FURTHER INFORMATION CONTACT: Amy Platt, 8P2-A, Environmental Protection Agency, Region VIII, (303) 312-6449.

SUPPLEMENTARY INFORMATION:

I. Background

Section 169A of the Clean Air Act (CAA or Act),¹ 42 U.S.C. 7491, establishes as a National goal the prevention of any future, and the remedying of any existing, anthropogenic visibility impairment in mandatory Class I Federal areas² (referred to herein as the "National goal" or "National visibility goal"). Section 169A calls for EPA to, among other things, issue regulations to assure reasonable progress toward meeting the National visibility goal, including requiring each State with a mandatory Class I Federal area to revise its SIP to contain such emission limits, schedules of compliance and other measures as may be necessary to make reasonable progress toward meeting the National goal. CAA section 169A(b)(2). Section 110(a)(2)(J) of the CAA, 42 U.S.C. 7410(a)(2)(J), similarly requires SIPs to

¹ The Clean Air Act is codified, as amended, in the U.S. Code at 42 U.S.C. 7401, *et seq.*

² Mandatory class I Federal areas include international parks, national wilderness areas, and national memorial parks greater than five thousand acres in size, and national parks greater than six thousand acres in size, as described in section 162(a) of the Act (42 U.S.C. 7472(a)). Each mandatory Class I Federal area is the responsibility of a "Federal land manager" (FLM), the Secretary of the department with authority over such lands. See section 302(i) of the Act, 42 U.S.C. 7602(i).

meet the visibility protection requirements of the CAA.

EPA promulgated regulations that require affected States to, among other things, (1) coordinate development of SIPs with appropriate Federal Land Managers (FLMs); (2) develop a program to assess and remedy visibility impairment from new and existing sources; and (3) develop a long-term (10-15 years) strategy to assure reasonable progress toward the National visibility goal. See 45 FR 80084, December 2, 1980 (codified at 40 CFR 51.300-51.307). The regulations provide for the remedying of visibility impairment that is reasonably attributable to a single existing stationary facility or small group of existing stationary facilities. These regulations require that the SIPs provide for periodic review, and revision as appropriate, of the long-term strategy not less frequently than every three years, that the review process include consultation with the appropriate FLMs, and that the State provide a report to the public and EPA that includes an assessment of the State's progress toward the National visibility goal. See 40 CFR 51.306(c).

The Utah Governor submitted a SIP revision for Visibility Protection with a letter dated April 26, 1985. The submittal met the requirements for visibility monitoring (40 CFR 51.305) and visibility New Source Review (40 CFR 51.307). EPA approved the submittal on May 30, 1986 (51 FR 19550).

On November 24, 1987 (52 FR 45132), EPA disapproved the SIPs of states, including Utah, that failed to comply with the requirements of the provisions of 40 CFR 51.302 (visibility general plan requirements) and 51.306 (visibility long-term strategy). EPA also incorporated corresponding Federal plans and regulations into the SIPs of these states pursuant to section 110(c)(1) of the CAA, 42 U.S.C. 7410(c)(1).