

(B) *Professional employee.* An employee has the status of a career employee if the employee is a professional employee. A professional employee is an employee—

(1) Whose primary duty consists of the performance of work requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study, as distinguished from a general academic education, from an apprenticeship, and from training in the performance of routine mental, manual, or physical processes.

(2) Whose work requires the consistent exercise of discretion and judgment in its performance; and

(3) Whose work is predominantly intellectual and varied in character (as opposed to routine mental, manual, mechanical, or physical work) and is of such character that the output produced or the result accomplished cannot be standardized in relation to a given period of time.

(C) *Terms of employment.* An employee with the status of a career employee includes any employee who is—

(1) Eligible to receive vacation, sick leave, or paid holiday benefits;

(2) Eligible to participate in any retirement plan described in section 401(a) that is established or maintained by the employer, or would be eligible to participate if age and service requirements were met;

(3) Eligible to participate in an arrangement described in section 403(b), or would be eligible to participate if age and service requirements were met;

(4) Eligible to participate in a plan described under section 457(a), or would be eligible to participate if age and service requirements were met;

(5) Eligible for reduced tuition (other than qualified tuition reduction under section 117(d)(5) provided to a teaching or research assistant who is a graduate student) because of the individual's employment relationship with the institution;

(6) Eligible to receive employee benefits described under sections 79

(life insurance), 127 (qualified educational assistance), 129 (dependent care assistance programs), or 137 (adoption assistance); or

(7) Classified by the employer as a career employee.

(D) *Licensure status.* An employee is a career employee if the employee is required to be licensed under state or local law to work in the field in which the employee performs services.

(e) *Effective date.* Paragraphs (c) and (d) of this section apply to services performed on or after February 25, 2004.

**Mark E. Matthews,**

*Deputy Commissioner for Service and Enforcement.*

[FR Doc. 04-3994 Filed 2-24-04; 8:45 am]

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[CA295-0439; FRL-7626-6]

### Revisions to the California State Implementation Plan, San Diego County Air Pollution Control District

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

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to approve revisions to the San Diego County Air Pollution Control District portion of the California State Implementation Plan (SIP). These revisions concern oxides of nitrogen (NO<sub>x</sub>) emissions from stationary reciprocating internal combustion engines. We are proposing to approve local rules to regulate these emission sources under the Clean Air Act as amended in 1990 (CAA or the Act). We are taking comments on this proposal and plan to follow with a final action.

**DATES:** Any comments must arrive by March 26, 2004.

**ADDRESSES:** Send comments to Andy Steckel, Rulemaking Office Chief (AIR-4), U.S. Environmental Protection

Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105-3901 or e-mail to [steckel.andrew@epa.gov](mailto:steckel.andrew@epa.gov), or submit comments at <http://www.regulations.gov>.

You can inspect copies of the submitted SIP revisions, EPA's technical support document (TSD), and public comments at our Region IX office during normal business hours by appointment. You may also see copies of the submitted SIP revisions by appointment at the following locations:

California Air Resources Board,  
Stationary Source Division, Rule  
Evaluation Section, 1001 "I" Street,  
Sacramento, CA 95814.

San Diego County Air Pollution Control  
District, 9150 Chesapeake Dr., San  
Diego, CA 92123-1096.

A copy of the rule may also be available via the Internet at <http://www.arb.ca.gov/drdb/drdbtxt.htm>. Please be advised that this is not an EPA Web site and may not contain the same version of the rule that was submitted to EPA.

#### FOR FURTHER INFORMATION CONTACT:

Thomas C. Canaday, EPA Region IX,  
(415) 947-4121, [canaday.tom@epa.gov](mailto:canaday.tom@epa.gov).

#### SUPPLEMENTARY INFORMATION:

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

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#### I. The State's Submittal

##### A. What Rule Did the State Submit?

Table 1 lists the rule addressed by this proposal with the date that it was adopted by the local air agency and submitted by the California Air Resources Board (CARB).

TABLE 1.—SUBMITTED RULE

Local agency	Rule No.	Rule title	Adopted	Submitted
SDCAPCD .....	69.4	Stationary Reciprocating Internal Combustion Engines—Reasonably Available Control Technology.	07/30/03	11/04/03

On December 23, 2003, this rule submittal was found to meet the completeness criteria in 40 CFR Part 51 Appendix V, which must be met before formal EPA review.

#### *B. Are There Other Versions of This Rule?*

We approved a version of Rule 69.4 into the SIP on January 22, 1997. The San Diego County Air Pollution Control District adopted revisions to the SIP-approved version on November 15, 2000 and CARB submitted them to us on March 14, 2001. While we can act on only the most recently submitted version, we have reviewed materials provided with previous submittals.

#### *C. What Is the Purpose of the Submitted Rule Revisions?*

NO<sub>x</sub> contributes to the production of ground-level ozone, smog and particulate matter, which harm human health and the environment. Section 110(a) of the CAA requires states to submit regulations that control NO<sub>x</sub> emissions. Rule 69.4 regulates NO<sub>x</sub> emissions from stationary reciprocating internal combustion engines at facilities emitting 50 tons or more per year of NO<sub>x</sub>. The proposed revisions require all engines subject to the emission limits of the rule to record specified operating parameters, to have a non-resettable totalizing fuel or hour meter, and to be tested at least once every 24 months. Any existing gaseous-fueled engine rated at 1,000 brake horsepower or greater and operated more than 2,000 hours per year must be tested annually. In addition, an owner or operator of such engines newly installed after the date of this rule revision will be required to continuously monitor operating parameters to ensure compliance with the emission standards of the rule. Operators of large new engines (5,000 brake horsepower or larger), operating 6,000 hours or more per year, will be required to continuously monitor emissions. The revisions also specify the averaging period for determining compliance and provide minor clarifications and updates. The TSD has more information about this rule.

## **II. EPA's Evaluation and Action**

#### *A. How Is EPA Evaluating the Rule?*

Generally, SIP rules must be enforceable (*see* section 110(a) of the Act), must require Reasonably Available Control Technology (RACT) for major sources in nonattainment areas (*see* section 182(a)(2)(A) and 182(f)), and must not relax existing requirements (*see* sections 110(l) and 193). The San

Diego County Air Pollution Control District regulates an ozone nonattainment area (*see* 40 CFR part 81), so Rule 69.4 must fulfill RACT.

Guidance and policy documents that we used to help evaluate enforceability and RACT requirements consistently include the following:

1. "State Implementation Plans; Nitrogen Oxides Supplement to the General Preamble; Clean Air Act Amendments of 1990 Implementation of Title I; Proposed Rule," (the NO<sub>x</sub> Supplement), 57 FR 55620, November 25, 1992.
2. "Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations," EPA, May 25, 1988 (the Bluebook).
3. "Guidance Document for Correcting Common VOC & Other Rule Deficiencies," EPA Region 9, August 21, 2001 (the Little Bluebook).
4. Determination of Reasonably Available Control Technology and Best Available Retrofit Control Technology for Stationary Spark-Ignited Internal Combustion Engines, State of California Air Resources Board, November, 2001.

#### *B. Does the Rule Meet the Evaluation Criteria?*

We believe this rule is consistent with the relevant policy and guidance regarding enforceability, RACT, and SIP relaxations. The TSD has more information on our evaluation.

#### *C. Public Comment and Final Action*

Because EPA believes the submitted rule fulfills all relevant requirements, we are proposing to fully approve it as described in section 110(k)(3) of the Act. We will accept comments from the public on this proposal for the next 30 days. Unless we receive convincing new information during the comment period, we intend to publish a final approval action that will incorporate this rule into the federally enforceable SIP.

## **IV. 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 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 proposed action merely proposes to approve state law 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 (Public Law 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 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 a state rule 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, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

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

Dated: February 9, 2004.

**Wayne Nastri,**

*Regional Administrator, Region IX.*

[FR Doc. 04-4128 Filed 2-24-04; 8:45 am]

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**FEDERAL MARITIME COMMISSION****46 CFR Part 515**

[Docket No. 04-02]

**Optional Rider for Proof of Additional NVOCC Financial Responsibility**

**AGENCY:** Federal Maritime Commission.

**ACTION:** Notice of proposed rulemaking; extension of time.

**SUMMARY:** Upon consideration of two requests, the Commission has determined to extend the comment period in this matter.

**DATES:** Comments are now due on February 27, 2004.

**ADDRESSES:** Address all comments concerning this proposed rule to: Bryant L. VanBrakle, Secretary, Federal Maritime Commission, 800 North Capitol Street, NW., Room 1046, Washington, DC 20573-0001, E-mail: [secretary@fmc.gov](mailto:secretary@fmc.gov).

**FOR FURTHER INFORMATION CONTACT:**

Amy W. Larson, General Counsel, Federal Maritime Commission, 800 North Capitol Street, NW., Room 1018, Washington, DC 20573-0001, (202) 523-5740, E-mail: [GeneralCounsel@fmc.gov](mailto:GeneralCounsel@fmc.gov).

Sandra L. Kusumoto, Director, Bureau of Consumer Complaints and Licensing; Federal Maritime Commission, 800 North Capitol Street, NW., Room 970, (202) 523-5787, E-mail: [otibonds@fmc.gov](mailto:otibonds@fmc.gov).

**SUPPLEMENTARY INFORMATION:** The Commission by Notice of Proposed Rulemaking published January 29, 2004, 69 FR 4271-4273, proposed to amend its regulations governing proof of financial responsibility for ocean transportation intermediaries. The Commission proposes to allow an optional rider for additional coverage to be filed with a licensed non-vessel-operating common carrier's proof of financial responsibility for such carriers serving the U.S. oceanborne trade with the People's Republic of China.

The American Surety Association and The Surety Association of America are

seeking a seven-day extension of time to Friday, February 27, 2004, to file comments. In support of this request, the parties advise that they require additional time to complete and submit their comments. The Commission has determined to grant the requests. Comments are now due on Friday, February 27, 2004.

**Bryant L. VanBrakle,**

*Secretary.*

[FR Doc. 04-4071 Filed 2-24-04; 8:45 am]

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**DEPARTMENT OF COMMERCE****National Oceanic and Atmospheric Administration****50 CFR Part 600**

[Docket No. 031031272-3272-01; I.D. 102903A]

**RIN 0648-AR76**

**Fisheries of the United States; Essential Fish Habitat**

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Advance notice of proposed rulemaking; consideration of revision to Essential Fish Habitat (EFH) guidelines; reopening of the comment period.

**SUMMARY:** In a document published in the **Federal Register** on December 11, 2003, NMFS requested comments on potential revisions to the EFH guidelines. The comment period for the advance notice of proposed rulemaking (ANPR) closed on January 26, 2004. The intent of this document is to announce the reopening of the public comment period.

**DATES:** Written comments must be received no later than 5 p.m. eastern standard time on or before April 26, 2004.

**ADDRESSES:** Written comments must be sent to Rolland A. Schmitt, Director, Office of Habitat Conservation, NOAA National Marine Fisheries Service, F/HC - EFH ANPR, 1315 East-West Highway, Silver Spring, MD 20910. Comments may also be sent via fax to (301) 427-2570 or by e-mail to [0648-AR76@noaa.gov](mailto:0648-AR76@noaa.gov). Include in the subject line of the e-mail comment the following document identifier: 0648-AR76. The EFH guidelines can be located online at <http://www.nmfs.noaa.gov/habitat/habitatprotection/essentialfishhabitat8.htm> or within the

Code of Federal Regulations at 50 CFR 600.805 to 600.930.

**FOR FURTHER INFORMATION CONTACT:**

Karen Abrams at (301) 713-4300 (ext. 149) or David MacDuffee at (301) 713-4300 (ext. 155).

**SUPPLEMENTARY INFORMATION:** As announced in the **Federal Register** on December 11, 2003 (68 FR 69070), NMFS requested comments on potential revisions to the EFH guidelines. The comment period closed on January 26, 2004. While NMFS received several comments expressing opinions about whether the EFH guidelines should be revised, NMFS was also asked to lengthen the comment period beyond the original 45 days. As one of the functions of the EFH guidelines is to assist the Fishery Management Councils (Councils) in identifying and conserving EFH, and only one Council had the ability to provide substantive comments, NMFS has decided to reopen the comment period to allow the public and the Councils an additional opportunity to comment on the EFH guidelines. The agency believes these additional comments will aid in the evaluation of the EFH guidelines. Comments received between January 26, 2004 and the date of this notice will be given full consideration by NMFS.

**Background**

In January 2002, NMFS promulgated a final rule (67 FR 2343) that established guidelines (50 CFR 600.805 to 600.930) to assist the Councils and the Secretary of Commerce (Secretary) in the description and identification of EFH in fishery management plans (FMPs), the identification of adverse effects to EFH, and the identification of actions required to conserve and enhance EFH. The final rule also detailed procedures the Secretary (acting through NMFS), other Federal agencies, and the Councils will use to coordinate, consult, or provide recommendations on Federal and state actions that may adversely affect EFH. Such guidelines promulgated through regulation were mandated in the 1996 amendments incorporated into the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1855(b)(1)(A)). The intended effect of the guidelines is to promote the protection, conservation, and enhancement of EFH.

After a 5-year public process, NMFS finalized the EFH guidelines in 2002. Nevertheless, NMFS recognized that a great deal of interest remained from various stakeholders in how to integrate habitat considerations into fishery management. As a result of this interest, NMFS committed to evaluating the