

response to this rule, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this rule. The EPA will not institute a second comment period on this document. Any parties interested in commenting on this document should do so at this time.

**DATES:** Written comments must be received on or before March 3, 2004.

**ADDRESSES:** Comments may be submitted by mail to: Anne Marie Hoffman, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303-8960. Comments may also be submitted electronically, or through hand delivery/courier. Please follow the detailed instructions described in the direct final rule, **SUPPLEMENTARY INFORMATION** (sections I.B.1 through 3.) which is published in the rules section of this **Federal Register**.

**FOR FURTHER INFORMATION CONTACT:** Anne Marie Hoffman, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303-8960. The telephone number is (404) 562-9074. Ms. Hoffman can also be reached via electronic mail at [hoffman.annemarie@epa.gov](mailto:hoffman.annemarie@epa.gov).

**SUPPLEMENTARY INFORMATION:** For additional information see the direct final rule which is published in the rules section of this **Federal Register**.

Dated: January 20, 2004.

**A. Stanley Meiburg,**

*Acting Regional Administrator, Region 4.*

[FR Doc. 04-1971 Filed 1-30-04; 8:45 am]

BILLING CODE 6560-50-P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[R01-OAR-2004-NH-0001; A-1-FRL-7616-9]

#### Approval and Promulgation of Air Quality Implementation Plans; New Hampshire; Control of Gasoline Fuel Parameters; Removal of the Reformulated Gasoline Program From Four Counties in New Hampshire

**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 October 31, 2002 and October 3, 2003, establishing fuel emissions performance requirements for gasoline distributed in southern New Hampshire which includes Hillsborough, Merrimack, Rockingham, and Strafford Counties. New Hampshire has developed these fuel requirements to reduce emissions of nitrogen oxides (NO<sub>x</sub>) and volatile organic compounds (VOC) in accordance with the requirements of the Clean Air Act (CAA). EPA is proposing to approve New Hampshire's fuel requirements into the New Hampshire SIP because EPA has found that the requirements are necessary for southern New Hampshire to achieve the national ambient air quality standard (NAAQS) for ozone. The intended effect of this action is to propose approval of New Hampshire's request to control fuel emissions performance requirements in these four southern counties. In addition, should EPA approve this action, reformulated gasoline (RFG) will no longer be required in this area 90 days after final approval in accordance with the procedures set forth in 40 CFR Section 80.72. This action is being taken under section 110 of the Clean Air Act.

**DATES:** Written comments must be received on or before March 3, 2004.

**ADDRESSES:** Comments may be mailed to David Conroy, Unit Manager, Air Quality Planning, Office of Ecosystem Protection (mail code CAQ), U.S. Environmental Protection Agency, EPA-New England, One Congress Street, Suite 1100, Boston, MA 02114-2023. Comments may also be submitted electronically, or through hand delivery/courier, please follow the detailed instructions described in Part (I)(B)(1)(i) through (iv) of the Supplementary Information section.

**FOR FURTHER INFORMATION CONTACT:** Robert C. Judge, Air Quality Unit, U.S. Environmental Protection Agency, EPA New England Regional Office, One Congress Street, Suite 1100 (CAQ), Boston, MA 02114-2023, (617) 918-1045, [judge.robert@epa.gov](mailto:judge.robert@epa.gov).

#### SUPPLEMENTARY INFORMATION:

##### I. General Information

*A. How Can I Get Copies of This Document and Other Related Information?*

1. *The Regional Office has established an official public rulemaking file available for inspection at the Regional Office. EPA has established an official*

public rulemaking file for this action under Regional Material EDocket Number R01-OAR-2004-NH-0001. The official public file consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public rulemaking file does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public rulemaking file is the collection of materials that is available for public viewing at the Office of Ecosystem Protection, U.S. Environmental Protection Agency, EPA New England Regional Office, One Congress Street, Suite 1100, Boston, MA. EPA requests that if at all possible, you contact the contact listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30 excluding federal holidays.

2. *Electronic Access.* An electronic version of the public docket is available through EPA's Regional Material EDocket (RME) system, a part of EPA's electronic docket and comment system. You may access RME at <http://docket.epa.gov/rmepub/index.jsp> to review associated documents and submit comments. Once in the system, select "quick search," then key in the appropriate RME Docket identification number.

You may also access this **Federal Register** document electronically through the Regulations.gov web site located at <http://www.regulations.gov> where you can find, review, and submit comments on Federal rules that have been published in the **Federal Register**, the Government's legal newspaper, and are open for comment.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing at the EPA Regional Office, as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in the official public rulemaking file. The entire printed comment, including the copyrighted material, will be available at the Regional Office for public inspection.

3. *Copies of the State submittal and EPA's technical support document are also available for public inspection during normal business hours, by appointment at the State Air Agency.* Air Resources Division, Department of Environmental Services, 6 Hazen Drive, P.O. Box 95, Concord, NH 03302-0095.

#### *B. How and to Whom Do I Submit Comments?*

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate rulemaking identification number by including the text "Public comment on proposed rulemaking R01-OAR-2004-NH-0001" in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments.

1. *Electronically.* If you submit an electronic comment as prescribed below, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in Regional Material EDocket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *Regional Material EDocket (RME).* Your use of EPA's Regional Material EDocket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to RME at <http://docket.epa.gov/rmepub/index.jsp>, and follow the online instructions for submitting comments. Once in the RME system, select "quick search," and then key in RME Docket ID Number R01-OAR-2004-NH-0001. The system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or

other contact information unless you provide it in the body of your comment.

ii. *E-mail.* Comments may be sent by electronic mail (e-mail) to [conroy.dave@epa.gov](mailto:conroy.dave@epa.gov), please include the text "Public comment on proposed rulemaking R01-OAR-2004-NH-0001" in the subject line. EPA's e-mail system is not an "anonymous access" system. If you send an e-mail comment directly without going through Regulations.gov, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket.

iii. *Regulations.gov.* Your use of Regulations.gov is an alternative method of submitting electronic comments to EPA. Go directly to [Regulations.gov](http://www.regulations.gov) at <http://www.regulations.gov>, then click on the button "TO SEARCH FOR REGULATIONS CLICK HERE", and select Environmental Protection Agency as Agency name to search on. The list of current EPA actions available for comment will be listed. Please follow the online instructions for submitting comments. The system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

iv. *Disk or CD ROM.* You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Section 2, directly below. These electronic submissions will be accepted in WordPerfect, Word or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By Mail.* Send your comments to: David Conroy, Unit Manager, Air Quality Planning, Office of Ecosystem Protection (mail code CAQ), U.S. Environmental Protection Agency, EPA New England Regional Office, One Congress Street, Suite 1100, Boston, MA 02114-2023. Please include the text "Public comment on proposed rulemaking R01-OAR-2004-NH-0001" in the subject line on the first page of your comment

3. *By Hand Delivery or Courier.* Deliver your comments to: David Conroy, Unit Manager, Air Quality Planning, Office of Ecosystem Protection, U.S. Environmental Protection Agency, EPA New England Regional Office, One Congress Street, 11th floor, (CAQ), Boston, MA 02114-2023. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through

Friday, 8:30 to 4:30 excluding federal Holidays..

#### *C. How Should I Submit CBI to the Agency?*

Do not submit information that you consider to be CBI electronically to EPA. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the official public regional rulemaking file. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public file and available for public inspection without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

#### *D. What Should I Consider as I Prepare My Comments for EPA?*

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at your estimate.
5. Provide specific examples to illustrate your concerns.
6. Offer alternatives.
7. Make sure to submit your comments by the comment period deadline identified.
8. To ensure proper receipt by EPA, identify the appropriate regional file/rulemaking identification number in the subject line on the first page of your response. It would also be helpful if you provided the name, date, and **Federal Register** citation related to your comments.

## II. Rulemaking Information

Organization of this document. The following outline is provided to aid in locating information in this preamble.

The information in this section is organized as follows:

### Description of the SIP Revision and EPA's Action

- A. What Is the Background for This Action?
- B. What Fuel Control Requirements Are Being Established?
- C. What Are the Relevant EPA Requirements?
- D. How Has the State Met the Test Under Section 211(c)(4)(C)?
- E. What About Federal Reformulated Gasoline?
- F. Why Is EPA Taking This Action?

### Description of the SIP Revision and EPA's Action

#### A. What Is the Background for This Action?

Under the Clean Air Act Amendments of 1990, southern New Hampshire was divided into three separate ozone nonattainment areas: the New Hampshire portion of the Boston area which is comprised of portions of Hillsborough and Rockingham counties; the Portsmouth-Dover-Rochester area which includes portions of Rockingham and all of Strafford county; and the Manchester area, which includes all of Merrimack and the remaining portions of Hillsborough and Rockingham counties. Each of these areas was designated nonattainment for ozone.

To bring these areas into attainment, the State adopted and implemented a broad range of ozone control measures including stage II vapor recovery on gasoline retail facilities, numerous stationary and area source VOC controls, NO<sub>x</sub> controls on stationary sources, and a vehicle inspection and maintenance (I/M) program. In addition, the State participated in the federal RFG program in the four southern counties in New Hampshire since January 1, 1995. This strategy and other measures resulted in significant air quality improvements in southern New Hampshire. Nevertheless, in light of ongoing concerns regarding the oxygenate requirement in RFG, specifically the use of methyl tertiary butyl ether (MTBE), the Governor instructed the Department of Environmental Services (DES) to opt-out of the federal RFG program.

New Hampshire had voluntarily chosen to participate in the reformulated gasoline program. Ultimately, EPA approved RFG as one of the control strategies that New Hampshire needs to attain the national ambient air quality standard (NAAQS) for ozone. As such, RFG is now

approved as part of the State Implementation Plan (SIP). New Hampshire is now seeking to amend the SIP to replace RFG with oxygen flexible reformulated gasoline (OFRFG).

By this rule, the OFRFG rule, New Hampshire is ensuring that it replaces the VOC and NO<sub>x</sub> benefits that RFG is required to achieve. These emission reductions are critical to New Hampshire's attainment of the 1-hour ozone standard, and are critical strategies that are part of the State's approved rate of progress plans.

#### B. What Fuel Control Requirements Are Being Established?

New Hampshire has adopted a rule PART Env-A 1611 entitled "Oxygen Flexible Reformulated Gasoline" effective May 2, 2002. That rule was established to mimic the requirements of the federal RFG. It sets forth performance standards for NO<sub>x</sub> (3.0% reduction) and VOC (23.4% reduction) that each gallon of fuel sold in New Hampshire will be required to meet in the summertime. The rule also establishes other performance standards for wintertime NO<sub>x</sub>, air toxics, benzene and heavy metals but those portions of the rule were not submitted to EPA for approval. Importantly, this rule does not establish a minimum oxygen requirement for gasoline to contain in New Hampshire. New Hampshire has not set an oxygen minimum in order to encourage fuel with less oxygenates, most notably MTBE, to be sold in the State. Compliance with the requirements of this rule will be determined based on the phase II complex model in 40 CFR 80.45, just as is done with federal RFG. Gasoline certified as Phase II federal RFG will be considered a compliant fuel. Because NO<sub>x</sub> and VOC are necessary components in the production of ground level ozone in hot summer months, reduction of these pollutants will help areas achieve the NAAQS for ozone and thereby produce benefits for human health and the environment.

#### C. What Are the Relevant Clean Air Act Requirements?

In determining the approvability of a SIP revision, EPA must evaluate the proposed revision 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).

For SIP revisions approving certain state fuel measures, an additional statutory requirement applies. CAA section 211(c)(4)(A) prohibits state

regulations respecting a fuel characteristic or component for which EPA has adopted a control or prohibition under section 211(c)(1), unless the state control is identical to the federal control. Section 211(c)(4)(C) provides an exception to this preemption if EPA approves the state requirements in a SIP. Section 211(c)(4)(C) states that the Administrator may approve an otherwise preempted state fuel standards in a SIP:

Only if [s]he finds that the State control or prohibition is necessary to achieve the national primary or secondary ambient air quality standard which the plan implements. The Administrator may find that a State control or prohibition is necessary to achieve that standard if no other measures that would bring about timely attainment exist, or if other measures exist and are technically possible to implement, but are unreasonable or impracticable.

EPA interprets the reference to "other measures" that must be evaluated as generally not encompassing other state fuel measures. The Agency believes that the Act does not call for a comparison between state fuels measures to determine which measures are unreasonable or impracticable, but rather section 211(c)(4) is intended to ensure that a state resorts to a fuel measure only if there are no available practicable and reasonable nonfuels measures. Thus, in demonstrating that other measures are unreasonable or impracticable, a state need not address the reasonableness or practicability of other state fuel measures.

EPA's August, 1997 "Guidance on Use of Opt-in to RFG and Low RVP Requirements in Ozone SIPs" gives further guidance on what EPA is likely to consider in making a finding of necessity. Specifically, the guidance recommends breaking down the necessity demonstration into four steps: identify the quantity of reductions needed to reach attainment; identify other possible control measures and the quantity of reductions each measure would achieve; explain in detail which of those identified control measures are considered unreasonable or impracticable; and show that even with the implementation of all reasonable and practicable measures, that the state would need additional emission reductions for timely attainment, and that the state fuel measure would supply some or all of such additional reductions.

EPA has evaluated the submitted SIP revision and has determined that it is

consistent with the requirements of the CAA, EPA regulations, and conforms to EPA's completeness criteria in 40 CFR part 51, Appendix V. Further, EPA has looked at New Hampshire's demonstration that this fuel control program is necessary in accordance with 211(c)(4)(C) and agrees with the State's conclusion that a fuel measure is needed to achieve the ozone NAAQS.

The SIP submittal contains: (1) New Hampshire rule, PART Env-A 1611 entitled "Oxygen Flexible Reformulated Gasoline" effective May 2, 2002; (2) documentation of the public notice dated January 14, 2002, and evidence of the public hearing regarding the OFRFG which occurred on February 20, 2002; (3) evidence of State legal authority; and (4) an application for waiver of federal preemption initially dated December 7, 2001 and updated October 3, 2003. Information regarding prohibitions on the sale of non-conforming gasoline, test procedures and sampling for the SIP revision can be found in PART Env-A 1611 of the New Hampshire Department of Environmental Services regulations, and New Hampshire statutes on enforcement and penalties can be found at New Hampshire Revised Statutes Annotated (R.S.A.) Chapter 125-C:6 and Chapter 125-C:15. Based on this and a detailed enforcement strategy in the October 31, 2002 submittal, EPA has concluded that these provisions confer on the State the requisite authority to enforce compliance with the NO<sub>x</sub> and VOC control requirements in their OFRFG rule.

#### *D. How Has the State Met the Test Under Section 211(c)(4)(C)?*

CAA section 211(c)(4)(A) preempts certain state fuel regulations by prohibiting a state from prescribing or attempting to enforce any control or prohibition respecting any characteristic or component of a fuel or fuel additive for the purposes of motor vehicle emission control if the Administrator has prescribed under section 211(c)(1) a control or prohibition applicable to such characteristic or component of the fuel or fuel additive, unless the state prohibition is identical to the prohibition or control prescribed by the Administrator.

EPA has adopted federal controls for RFG under section 211(k). These regulations are found in 40 CFR 80.40–80.130. The specific standards being approved here, summertime VOC and NO<sub>x</sub> controls, are identified in 40 CFR 80.41. Four counties in New Hampshire are presently required under the federal rule to use federal RFG. See 40 CFR 80.70(j)(8).

A state may prescribe and enforce an otherwise preempted fuel control requirement only if the EPA approves the control into the state's SIP. In order to approve a preempted state fuel control into a SIP, EPA must find that the state control is necessary to achieve a NAAQS because no other reasonable or practicable measures exist to bring about timely attainment. Thus, to determine whether New Hampshire's OFRFG rule is necessary to meet the ozone NAAQS, EPA must consider whether there are other reasonable and practicable measures available to produce the emission reductions needed to achieve the 1-hour ozone NAAQS. In addition, while EPA has not yet acted on the recommendation, in July 2003, the Governor of New Hampshire did make a recommendation that much of this area should be designated nonattainment of EPA's 8-hour ozone standard.

With the State's decision to opt-out of the federal RFG program, the VOC and NO<sub>x</sub> reductions achieved by this program need to be replaced to ensure that the southern New Hampshire areas meet the 1-hour ozone standard. New Hampshire nonattainment areas have measured air quality in recent years exceeding the 1-hour and 8-hour ozone standard. Given this situation, it is clear that the reductions provided by participation of the four counties of southern New Hampshire in the federal RFG program are critical to achievement of the ozone NAAQS.

For purposes of demonstrating necessity, New Hampshire has determined the level of reductions achieved from the phase 2 RFG VOC and NO<sub>x</sub> reductions required in the various SIP submittals made by New Hampshire for its 15 percent rate of progress plan, its subsequent 9 percent rate of progress plan and its attainment demonstration as estimates of the emission reductions that are necessary for southern New Hampshire to achieve the ozone NAAQS. Based on MOBILE6, EPA's mobile sources emission estimation tool, New Hampshire believes that RFG is responsible for 5.5 tons per summer day of VOC reductions for the summer of 2004. New Hampshire's OFRFG rule, because it requires the same "performance standards" to be met, will achieve the same level of emission reductions of both VOC and NO<sub>x</sub>.

With this estimate of the reductions necessary to achieve the ozone NAAQS, the State evaluated an extensive list of non-fuel alternative controls to determine if reasonable and practicable controls could be implemented to provide sufficient reductions in a timely

manner. The State analyzed potential control measures by reviewing previously prepared emission inventories to determine if other non-fuel control measures could be adopted and used to replace the VOC reductions that RFG had achieved. The State reviewed all the source categories that comprised the emission inventory, and evaluated control measures on each source category. For a variety of reasons, most control measures were either already implemented, or were found to be unreasonable or impracticable for achieving reductions in a timely manner. (See October 3, 2003 submittal from the State of New Hampshire.) In addition, New Hampshire recognized that OFRFG would yield some additional NO<sub>x</sub> emission reductions which would replace the emission reductions that federal RFG was required to achieve.

As one example, the State evaluated the possibility of further controlling gasoline refueling, or stage II, emissions. The State does have a stage II vapor recovery program for facilities with an annual throughput greater than 420,000 gallons per year, but requiring even smaller facilities (*i.e.*, gas stations) to comply would yield 0.038 tons per summer weekday (tpswd). The State concluded that a regulatory change would be necessary to further control emissions from this source category. In addition, such controls could not be adopted and implemented as quickly as the fuel control. Further, the actual installation of these controls would take additional time, which would not be reasonable or practicable because the State needed to replace the reductions as soon as possible. For these reasons and the small amount of available reductions, the State concluded that further stage II controls were not a practical measure for achieving VOC emission reductions. The State also considered the effect of further improving its vehicle inspection and maintenance program through the implementation of OBD2. This would yield an additional 0.64 tpswd. While this program may indeed be implemented by the summer of 2004, it will not replace the need for further controls. Other control measures were similarly evaluated, and determined to be either technically impossible or unreasonable and impracticable, or in a longer time frame from when the State needed to secure the replacement emission reductions. The State's analysis did not identify any non-fuel alternative controls that could conceivably be implemented by the summer of 2004—the earliest time frame

for EPA approval of OFRFG. (See October 3, 2003 State submittal.) Because they found no reasonable or practicable non-fuel control measures, additional reductions are necessary.

New Hampshire's OFRFG rule will achieve approximately 5.5 tpd of VOC reductions and some NO<sub>x</sub> reductions beginning the first summer it is implemented, and is designed to replace the emission reductions required to be achieved by federal RFG. EPA believes these emission reductions are necessary to achieve the applicable ozone NAAQS in southern New Hampshire. EPA is basing today's action on the information available to the Agency at this time, which indicates that adequate reasonable and practicable non-fuel measures are not available to the State that would achieve these needed emission reductions, and protect New Hampshire's air quality in a timely manner. Hence, EPA is finding that these fuel standards are necessary for attainment of the applicable ozone NAAQS, and EPA is proposing to approve them as a revision to the New Hampshire SIP.

#### *E. What About Federal Reformulated Gasoline?*

As discussed earlier, New Hampshire has adopted OFRFG to replace the emission reductions from federal RFG from which the State has petitioned to withdraw. EPA's decision to grant or deny an opt-out request, based on whether or not a state has satisfied the substantive opt-out requirements under 40 CFR 80.72, need not be made through notice and comment rulemaking. See 61 FR 35673 at 35675 (July 8, 1996). EPA established a petition process to allow case-by-case consideration of individual state requests to opt-out of the federal RFG program.<sup>1</sup> The Opt-out Rule establishes specific requirements regarding what information a State must submit in connection with an opt-out petition. These regulatory provisions also address when a state's petition is complete and the appropriate transition time for opting out. EPA has applied these criteria. If EPA approves this SIP revision as a final action, EPA intends to also approve New Hampshire's petition for withdrawal from the RFG program. Consistent with EPA's Opt-out Rule (see 40 CFR 80.72(c)(5)), the opt-out would become effective 90 days

<sup>1</sup> Pursuant to authority under sections 211(c) and (k) and 301(a) of the Clean Air Act, EPA promulgated regulations to provide criteria and general procedures for states to opt-out of the RFG program where the state had previously voluntarily opted into the program. The regulations were initially adopted on July 8, 1996 (61 FR 35673); and were revised on October 20, 1997 (62 FR 54552).

from the effective date of the final rulemaking for this SIP revision. The Opt-out Rule also directs EPA to publish a notice in the **Federal Register** announcing the approval of any opt-out petition and the effective date for removal of the state from the RFG program.

New Hampshire had participated voluntarily in the federal RFG program since it began in January 1995. By letter dated April 16, 2001, the Governor of New Hampshire announced the state's intent to opt-out, and indicated that the addition information and material necessary by EPA's rule would be forthcoming in future submittals from the State. The final information needed by EPA in order to proceed with this rulemaking was submitted by New Hampshire DES on October 3, 2003.

#### *F. Why Is EPA Taking This Action?*

EPA is proposing to approve a SIP revision at the request of the New Hampshire DES. This rule was adopted by the State effective May 2, 2002. To ensure that it secures the needed approval under section 211(c)(4)(C) of the Clean Air Act, New Hampshire submitted this action for EPA approval, to make it part of the SIP, and to complete the submission of material needed for opt-out of the RFG program.

### **III. Proposed Action**

EPA is proposing to approve a SIP revision submitted by the State of New Hampshire on October 31, 2002 and October 3, 2003, establishing fuel emission control requirements for gasoline distributed in southern New Hampshire which includes Hillsborough, Merrimack, Rockingham and Strafford Counties. New Hampshire has adopted a rule PART Env-A 1611 entitled "Oxygen Flexible Reformulated Gasoline" effective May 2, 2002. That rule was established to mimic the requirements of the federal RFG. It sets forth performance standards for NO<sub>x</sub> (3.0% reduction) and VOC (23.4% reduction) that each gallon of fuel sold in New Hampshire will be required to meet in the summertime. The rule also establishes other performance standards for wintertime NO<sub>x</sub>, air toxics, benzene and heavy metals but those portions of the rule were not submitted to EPA for approval. EPA is proposing to approve New Hampshire's fuel requirements into the SIP because EPA has found that the requirements are necessary for southern New Hampshire to achieve the national ambient air quality standard for ozone.

### **IV. What Are the Administrative Requirements**

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this 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 action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this 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 approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4).

This 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), because it merely approves 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 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 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, Hydrocarbons, Intergovernmental relations, Nitrogen dioxide, Ozone, and Reporting and recordkeeping requirements.

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

Dated: January 22, 2004.

**Robert W. Varney,**

*Regional Administrator, EPA-New England.*  
[FR Doc. 04-2067 Filed 1-30-04; 8:45 am]

**BILLING CODE 6560-50-P**

### ENVIRONMENTAL PROTECTION AGENCY

#### 40 CFR Parts 52 and 81

[OH158-1b; FRL-7616-5]

#### Redesignation and Approval of Ohio Implementation Plan

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

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to redesignate Lucas County, Ohio, to an attainment area for sulfur dioxide (SO<sub>2</sub>). EPA further proposes to approve Ohio's plan for continuing to attain the SO<sub>2</sub> standards. Finally, EPA proposes to approve State rule limits for two sources that are equivalent to the current limits for these sources.

**DATES:** Written comments on this proposed rule must arrive on or before March 3, 2004.

**ADDRESSES:** You should mail written comments to: J. Elmer Bortzer, Acting Chief, Air Programs Branch (AR-18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Comments may also be submitted electronically, or through hand delivery/courier. Commenters are advised to review the information and follow the instructions for submitting comments as described in part (I)(B) of

the **SUPPLEMENTARY INFORMATION** section of the companion direct final rule published in the rules section of this **Federal Register**.

You may inspect copies of Ohio's submittal at: Criteria Pollutant Section, Air Programs Branch (AR-18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

**FOR FURTHER INFORMATION CONTACT:** John Summerhays, Criteria Pollutant Section, Air Programs Branch (AR-18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886-6067. *summerhays.john@epa.gov.*

**SUPPLEMENTARY INFORMATION:** For additional information, see the direct final rule published in the rules section of this **Federal Register**.

#### List of Subjects

##### 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements, Sulfur dioxide.

##### 40 CFR Part 81

Air pollution control, National parks, Wilderness areas.

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

Dated: January 20, 2004.

**Bharat Mathur,**

*Acting Regional Administrator, Region 5.*  
[FR Doc. 04-1967 Filed 1-30-04; 8:45 am]

**BILLING CODE 6560-50-P**

### FEDERAL COMMUNICATIONS COMMISSION

#### 47 CFR Parts 25, 74, and 78

[ET Docket No. 03-254; FCC 03-318]

#### Coordination Between the Non-Geostationary and Geostationary Satellite Orbit

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** This document proposes to modify our frequency coordination rules to promote sharing between non-geostationary satellite orbit (NGSO) and geostationary satellite orbit (GSO) fixed-satellite service (FSS) operations and various terrestrial services operating in several frequency bands. We undertake this proceeding to facilitate the introduction of new satellite and terrestrial services while promoting interference protection among the various users in these bands.

**DATES:** Comments must be filed on or before March 3, 2004, and reply comments must be filed on or before March 18, 2004.

**FOR FURTHER INFORMATION CONTACT:** Ted Ryder, Office of Engineering and Technology, (202) 418-2803, e-mail: *tryder@fcc.gov*, or James Miller, (202) 418-7351 TTY (202) 418-2989, e-mail: *jjmiller@fcc.gov*.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's *Notice of Proposed Rule Making*, ET Docket No. 03-254, FCC 03-318, adopted December 15, 2003 and released December 23, 2003. The full text of this document is available for inspection and copying during normal business hours in the FCC Reference Center (Room CY-A257), 445 12th Street, SW., Washington, DC 20554. The complete text of this document also may be purchased from the Commission's copy contractor, Qualex International, 445 12th Street SW., Room, CY-B402, Washington, DC 20554. The full text may also be downloaded at: <http://www.fcc.gov>. Alternate formats are available to persons with disabilities by contacting Brian Millin at (202) 418-7426 or TTY (202) 418-7365.

Pursuant to §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments on or before March 3, 2004, and reply comments on or before March 18, 2004. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. See *Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121, May 1, 1998. Comments filed through the ECFS can be sent as an electronic file via the Internet to <http://www.fcc.gov/e-file/ecfs.html>. Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to [ecfs@fcc.gov](mailto:ecfs@fcc.gov), and should include the following words in the body of the message, "get form <your e-mail address>." A sample form and directions will be sent in reply. Parties who choose to file by paper must file an original and four copies of each filing.