

(v) 5 U.S.C. 552a(f)(2) through (5) require an agency to promulgate rules for obtaining access to records. Since EPA is claiming that these systems of records are exempt from subsection (d) of the Act, concerning access to records, the requirements of subsections (f)(2) through (5) of the Act, concerning agency rules for obtaining access to such records, are inapplicable and are exempt to the extent that this system of records is exempt from subsection (d) of the Act. Although EPA is claiming exemption from the requirements of subsections (f)(2) through (5) of the Act, EPA has promulgated rules which establish Agency procedures because, under certain circumstances, it might be appropriate for an individual to have access to all or a portion of his records in this system of records. These procedures are described elsewhere in this part.

(c) *Exemption under 5 U.S.C. 552a(k)(1).*

(1) *System of records affected.* EPA 41 Inspector General's Operation and Reporting (IGOR) System Personnel Security Files.

(2) *Authority.* Under 5 U.S.C. 552a(k)(1), the head of any agency may by rule exempt any system of records within the agency from certain provisions of the PA of 1974, if the system of records is subject to the provisions of 5 U.S.C. 552(b)(1). A system of records is subject to the provisions of 5 U.S.C. 552(b)(1) if it contains records that are specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy and are in fact properly classified pursuant to such Executive order.

(3) *Qualification for Exemption.* EPA 41 may contain some records that bear a national defense/foreign policy classification of Confidential, Secret, or Top Secret.

(4) *Scope of exemption.* To the extent that EPA 41 contains records provided by other Federal agencies that are specifically authorized under criteria established by Executive Order to be kept secret in the interest of national defense or foreign policy and are in fact properly classified by other Federal agencies pursuant to that Executive order, the system of records is exempt from the following provisions of the PA: 5 U.S.C. 552a(c)(3); (d); (e)(1), (4)(G) and (4)(H); and (f)(2) through (5).

(5) *Reasons for exemption.* EPA 41 is exempt from the above provisions of the PA for the following reasons:

(i) 5 U.S.C. 552a(c)(3) requires an agency to make the accounting of each disclosure of records available to the

individual named in the record at his request. These accountings must state the date, nature, and purpose of each disclosure of a record and the name and address of the recipient. Making such an accounting could result in the release of properly classified information, which would compromise the national defense or disrupt foreign policy.

(ii) 5 U.S.C. 552a(d) requires an agency to permit an individual to gain access to records pertaining to him or her, to request amendment to such records, to request a review of an agency decision not to amend such records, and to contest the information contained in such records. Granting such access could cause the release of properly classified information, which would compromise the national defense or disrupt foreign policy.

(iii) 5 U.S.C. 552a(e)(1) requires each agency to maintain in its records only such information about an individual as is relevant and necessary to accomplish a purpose of the agency required by statute or by Executive order of the President. The application of this provision could impair personnel security investigations which use properly classified information, because it is not always possible to know the relevance or necessity of specific information in the early stages of an investigation. Relevance and necessity are often questions of judgment and timing, and it is only after the information is evaluated that the relevance and necessity of such information can be established.

(iv) 5 U.S.C. 552a(e)(4) (G) and (H) require an agency to publish a **Federal Register** notice concerning its procedures for notifying an individual upon request if the system of records contains a record pertaining to him or her, how to gain access to such a record, and how to contest its content. Since EPA is claiming that this system of records is exempt from subsection (f) of the Act, concerning agency rules, and subsection (d) of the Act, concerning access to records, these requirements are inapplicable and are exempt to the extent that this system of records is exempt from subsections (f) and (d) of the Act. Although EPA is claiming exemption from these requirements, EPA has published such a notice concerning its notification, access, and contest procedures because, under certain circumstances, EPA might decide it is appropriate for an individual to have access to all or a portion of his records in this system of records.

(v) 5 U.S.C. 552a(f)(1) requires an agency to promulgate rules which shall establish procedures whereby an

individual can be notified in response to his request if any system of records named by the individual contains a record pertaining to him or her. Since EPA is claiming that this system of records is exempt from subsection (d) of the Act, concerning access to records, the requirements of subsections (f) (2) through (5) of the Act, concerning agency rules for obtaining access to such records, are inapplicable and are exempt to the extent that this system of records is exempt from subsection (d) of the Act. Although EPA is claiming exemption from the requirements of subsection (f) of the Act, EPA has promulgated rules which establish Agency procedures because, under certain circumstances, it might be appropriate for an individual to have access to all or a portion of his or her records in this system of records. These procedures are described elsewhere in this part.

(d) *Exempt records provided by another Federal agency.* Individuals may not have access to records maintained by the EPA if such records were provided by another Federal agency which has determined by regulations that such records are subject to general exemption under 5 U.S.C. 552a(j) or specific exemption under 5 U.S.C. 552a(k). If an individual requests access to such exempt records, EPA will consult with the source agency.

(e) *Exempt records included in a nonexempt system of records.* All records obtained from a system of records which has been determined by regulations to be subject to specific exemption under 5 U.S.C. 552a(k) retain their exempt status even if such records are also included in a system of records for which a specific exemption has not been claimed.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA-310-0465; FRL-7809-6]

Revisions to the California State Implementation Plan, South Coast Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve revisions to the South Coast Air Quality Management District ("SCAQMD") portion of the California State Implementation Plan (SIP). These revisions concern oxides of nitrogen

(NO_x) and oxides of sulfur (SO_x) emissions from facilities emitting 4 tons or more per year of NO_x and/or SO_x under the SCAQMD Regional Clean Air Incentives Market ("RECLAIM"). We are proposing to approve a local rule 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 October 14, 2004.

ADDRESSES: Send comments to Andy Steckel, Rulemaking Office Chief (AIR-4), U.S. EPA, Region IX, 75 Hawthorne Street, San Francisco, CA 94105-3901 or e-mail to 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.

South Coast Air Quality Management District, 21865 E. Copley Dr., Diamond Bar, CA 91765-4182.

A copy of the rule may also be available via the Internet at <http://www.arb.ca.gov/drdb/drdbltx.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: Andy Steckel, EPA Region IX, (415)947-4115, steckel.andrew@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 SCAQMD and submitted by the California Air Resources Board (CARB).

TABLE 1.—SUBMITTED RULES

Local agency	Rule No.	Rule title	Adopted	Submitted
SCAQMD	2015	Backstop provisions	06/04/04	07/29/04

On August 10, 2004, 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 2015 into the SIP on September 9, 2003.

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

NO_x helps produce 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_x emissions. The RECLAIM program sets an emissions cap and declining balance for many of the largest NO_x and SO_x facilities in the South Coast Air Basin. The program was designed to provide additional incentives for industry to reduce emissions and advance pollution control technologies. During our review of previously submitted versions of the RECLAIM program rules, EPA raised concerns regarding provisions that allowed facilities, under certain conditions, to not deduct excess emissions associated with equipment breakdowns from the facility's RECLAIM Trading Credit ("RTC") Allocation. EPA notified SCAQMD that these provisions conflicted with the Clean Air Act as interpreted by a

September 20, 1999 EPA policy that, where possible, requires mitigation of all excess emissions during equipment malfunctions, startup, and shutdown.

SCAQMD staff committed in a letter dated April 2, 2002 to address the issue of breakdown emissions under the RECLAIM program. On May 13, 2002, EPA proposed conditional approval of the May 2001 RECLAIM amendments into the SIP (67 FR 31998). The conditional approval was finalized on September 4, 2003 (68 FR 52512). Specifically, the conditional approval required that SCAQMD adopt amendments to RECLAIM which would establish a mechanism within the RECLAIM program to ensure mitigation of all excess emissions resulting from breakdowns. The commitment made in the April 2nd letter stipulated that SCAQMD would monitor and track excess emissions from breakdowns and compare the total amount of these excess emissions to unused RTCs each year for the entire RECLAIM program. If the yearly breakdown emissions from all RECLAIM sources exceeded the unused RTCs, programmatic reductions from RECLAIM allocations in the following year would be made to mitigate the excess emissions. The TSD has more information about these rules.

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 SCAQMD regulates an ozone nonattainment area (see 40 CFR part 81), so the RECLAIM program 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_x 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. Requirements applicable to emissions trading programs such as RECLAIM are contained in "Improving Air Quality with Economic Incentive Programs," January 2001, Office of Air and Radiation, EPA-452/R-01-001 ("EIP Guidance"). This guidance applies to discretionary economic incentive programs ("EIPs") and represents the

agency's interpretation of what EIPs should contain in order to meet the requirements of the CAA. Because this guidance is non-binding and does not represent final agency action, EPA is using the guidance as an initial screen to determine whether approvability issues arise.

5. Excess emissions provisions are addressed by "State Implementation Plans: Policy Regarding Excess Emissions During Malfunctions, Startup and Shutdown," EPA's Office of Air and Radiation and Office of Enforcement and Compliance Assurance, September 20, 1999 ("Excess Emissions Policy").

B. Does the Rule Meet the Evaluation Criteria?

We believe this rule is consistent with the CAA as applied by relevant policy and guidance regarding emissions trading programs, excess emissions provisions, enforceability, RACT, and SIP relaxations. Specifically, the submitted rule amendments were found to fulfill the requirements of EPA's previous conditional approval of the RECLAIM program rules and to address all concerns raised therein with respect to our Excess Emissions Policy. 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.

III. 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 (Pub. L. 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: August 17, 2004.

Wayne Nastri,

Regional Administrator, Region IX.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No 040804229-4229-01; I.D. 080204G]

RIN 0648-AS34

Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) Provisions; Fisheries of the Northeastern United States; Northeast (NE) Multispecies Fishery; Framework Adjustment 40-A

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes regulations to implement measures in Framework Adjustment 40-A (FW 40-A) to the NE Multispecies Fishery Management Plan (FMP). FW 40-A was developed by the New England Fishery Management Council (Council) to provide additional opportunities for vessels in the fishery to target relatively healthy stocks of groundfish in order to mitigate the economic and social impacts resulting from the effort reductions required by Amendment 13 to the FMP, and to harvest groundfish stocks at levels that approach optimum yield (OY). The proposed action would create three programs to allow vessels to use Category B Days-at-Sea (DAS) (both Regular and Reserve) to target healthy stocks: Regular B DAS Pilot Program; Closed Area (CA) I Hook Gear Haddock Special Access Program (SAP); and Eastern U.S./Canada Haddock SAP Pilot Program. In addition, FW 40-A proposes to relieve an Amendment 13 restriction that currently prohibits vessels from fishing both in the Western U.S./Canada Area, and outside that area on the same trip. The intended effect of FW 40-A would be to provide fishing opportunities that would mitigate some of the negative economic and social impacts caused by the effort reductions in Amendment 13.