DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–166012–02]

RIN 1545–BB82

National Principal Contracts; Contingent Nonperiodic Payments; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to hearing cancellation for public hearing.

SUMMARY: This document contains a correction to a hearing cancellation notice published in the **Federal Register** on May 14, 2004 (69 FR 26782) that relates to the inclusion into income or deduction of a contingent nonperiodic payment provided for under a notional principal contract (NPC).

FOR FURTHER INFORMATION CONTACT: Kate Sleeth, (202) 622–3920 (not a toll free number).

SUPPLEMENTARY INFORMATION:

Background

The hearing cancellation notice that is the subject of this correction is under section 446 of the Internal Revenue Code.

Need for Correction

As published, the hearing cancellation notice (REG–166012–02), contains an error that may prove to be misleading and is in need of clarification.

Correction of Publication

Accordingly, the publication of the hearing cancellation notice (REG–166012–02), which was the subject of FR Doc. 04–11016, is corrected as follows:

On page 26782, column 3, in the heading, the subject line ''National Principal Contracts; Contingent Nonperiodic Payments; Hearing Cancellation'' is corrected to read ''National Principal Contracts; Contingent Nonperiodic Payments; Hearing Cancellation''.

Cynthia Grigsby,

Acting Chief, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel, (Procedures and Administration).

[FR Doc. 04–13953 Filed 6–18–04; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 287–0445; FRL–7775–3]

Revisions to the California State Implementation Plan, Antelope Valley Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing a limited approval and limited disapproval of revisions to the Antelope Valley Air Quality Management District's (AVAQMD) portion of the California State Implementation Plan (SIP). These revisions concern volatile organic compound (VOC) emissions from architectural coatings. In accordance with the Clean Air Act as amended in 1990 (CAA or the Act), we are proposing action on a local rule that regulates these emission sources. We are taking comments on this proposal and plan to follow with a final action.

DATES: Any comments must arrive by July 21, 2004.

ADDRESSES: Mail comments to Andy Steckel, Rulemaking Office Chief (AIR–4), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

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

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

Antelope Valley Air Quality Management District, 43301 Division Street, Suite 206, Lancaster, CA 93535–4649.

A copy of the rules may also be available via the Internet at *http://www.arb.ca.gov/drdb/drdbltxt.htm.* Please be advised that this is not an EPA website and may not contain the same version of the rules that were submitted to EPA.

FOR FURTHER INFORMATION CONTACT: Francisco Dóñez, EPA Region IX, (415) 972–3956.

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 shows the rule addressed by this proposal with the dates that it was adopted by the local air agencies and submitted to us by the California Air Resources Board (CARB).

TABLE 1.—SUBMITTED RULES

Local agency	Rule No.	Rule title	Adopted	Submitted
AVAQMD	1113	Architectural Coatings	03/18/03	06/05/03

On July 18, 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 AVAQMD Rule 1113 into the SIP on January 24, 1985. The AVAQMD adopted revisions to the SIP-approved version of this rule on March 18, 2003. CARB submitted the rule revision to us on June 5, 2003.

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

The rule revisions primarily modify the rule for consistency with the Suggested Control Measure for Architectural Coatings (SCM). The SCM is a model rule developed by CARB which seeks to provide statewide

consistency for the regulation of architectural coatings. The recommended VOC content limits and other provisions of the SCM are the results of an extensive investigation of architectural coatings which included a statewide survey of architectural coatings sold in California and several technology assessments. CARB adopted the SCM on June 22, 2000. 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) in moderate to extreme nonattainment areas for major sources of volatile organic compounds (VOC) and VOC sources covered by a Control Technique Guideline (CTG)(*see* section 182(b)(2)), must not relax requirements adopted before the 1990 CAA amendments in nonattainment areas (section 193), and must not interfere with attainment, reasonable further progress or other applicable requirements of the CAA (section 110(l)). The AVAQMD regulates an ozone nonattainment area (*see* 40 CFR part 81), however, because this rule regulates sources that are not covered by a CTG and that are nonmajor area sources, it is not subject to CAA RACT requirements.

Guidance and policy documents that we used to help evaluate this revised rule to ensure enforceability and compliance with other CAA requirements include the following:

1. Portions of the proposed post-1987 ozone and carbon monoxide policy that concern RACT, 52 FR 45044, November 24, 1987.
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. National Volatile Organic Compound Emission Standards for Architectural Coatings, September 11, 1998 (40 CFR part 59, subpart D).
5. ''Suggested Control Measure for Architectural Coatings,'' CARB, June 22, 2000.
6. ''Improving Air Quality with Economic Incentive Programs,'' EPA–452/R–01–001, EPA, January 2001 (the EIP).

B. Does the Rule Meet the Evaluation Criteria?

This rule improves the SIP by establishing more stringent emission limits and by clarifying labeling and reporting provisions. It is largely consistent with the relevant policy and guidance regarding enforceability and SIP relaxations. Provisions of the rule which do not meet the evaluation criteria are summarized below and discussed further in the TSD.

C. What Are the Rule's Deficiencies?

This rule was based on the SCM and, as a result, contains many of the same deficiencies as the SCM. The deficiencies relate to the averaging provisions incorporated into this rule. While we believe the VOC limits contained in these rules to be feasible and substantiated by a significant investigation of architectural coatings, the averaging provisions provide a valuable alternative compliance mechanism for the VOC limits contained in this rule and may reduce the overall economic impact of compliance with the VOC limits on manufacturers. We have identified five specific problems with these provisions. The first four could be addressed through relatively minor changes to the averaging provisions which we have described below. The fifth could also be addressed by relatively minor changes or by clarification of the State's authority. The following provisions in AVAQMD Rule 1113 conflict with section 110 of the Act and prevent full approval of the SIP revisions.

1. The rule allows for the sell-through of coatings included in approved averaging programs. Because emissions from coatings sold under the sell-through provision cannot be distinguished based on the information explicitly required to be maintained under the rule from emissions from coatings sold under an averaging program, the enforceability of the rules may be compromised by manufacturers claiming that a certain portion of emissions from coatings sold under the sell-through provision should be excluded from averaged emissions. One way to correct this is to clarify that manufacturers with an approved averaging program cannot also use the sell-through provision.
2. The provisions of the averaging compliance option that require manufacturers to describe the records being used to calculate emissions are not specific enough to verify compliance with the rule and represent executive officer discretion. More specificity as to the types of suitable records is needed to verify compliance with the averaging compliance option.
3. The rule's language regarding how violations of the averaging compliance option shall be determined is ambiguous. The language should be clarified to specify that an exceedance for each coating that is over the limit shall constitute a separate violation for each day of the compliance period.
4. The rule allows manufacturers to average coatings based on statewide or district-specific data which makes enforceability more difficult and conflicts with other rule provisions which imply that averaging will only be implemented by CARB and conducted on a statewide basis. The rule should clarify whether emissions from averaging programs will be calculated using statewide or district-specific data.
5. The rule grants the Executive Officer of CARB authority to approve or disapprove initial averaging programs, program renewals, program modifications, and program terminations. This raises jurisdictional issues which could create enforceability problems since CARB has not been granted authority by the state Legislature under the California Health and Safety Code to regulate architectural coatings.

D. EPA Recommendations to Further Improve the Rule

The TSD describes additional rule revisions that do not affect EPA's current action but are recommended for the next time the local agencies modify the rule.

E. Proposed Action and Public Comment

As authorized in sections 110(k)(3) and 301(a) of the Act, EPA is proposing a limited approval of the submitted rule to improve the SIP. If finalized, this action would incorporate the submitted rules into the SIP, including those provisions identified as deficient. This approval is limited because EPA is simultaneously proposing a limited disapproval of the rules under section 110(k)(3). Note that the submitted rule has been adopted by the district and EPA's final limited disapproval would not prevent the local agencies from enforcing it.

All of the identified deficiencies are associated with the averaging program in this rule which sunsets on January 1, 2005. If we finalize this notice as proposed, the effective date of our action will be after July 1, 2003 and would trigger CAA section 179 sanction clocks that expire 18 and 24 months later. However, we believe that sunsetting the averaging program effectively corrects all the deficiencies associated with averaging, and revisions to this rule are not needed to avoid associated sanctions.

We will accept comments from the public on the proposed limited approval and limited disapproval for the next 30 days. EPA finalized a similar limited approval and limited disapproval for seven other California architectural coating rules on January 2, 2004 (69 FR 34). While the eight California rules are very similar, we divided them into several actions for internal administrative and workload management reasons.

III. Background Information

A. Why Was This Rule Submitted?

VOCs help produce ground-level ozone and smog, which harm human health and the environment. EPA has established a National Ambient Air Quality Standard (NAAQS) for ozone. Section 110(a) of the CAA requires states to submit regulations necessary to achieve the NAAQS. Table 2 lists some of the national milestones leading to the submittal of these local agencies' VOC rules.

TABLE 2.—OZONE NONATTAINMENT MILESTONES

Date	Event
March 3, 1978	EPA promulgated a list of ozone nonattainment areas under the Clean Air Act as amended in 1977. 43 FR 8964; 40 CFR 81.305.
May 26, 1988	EPA notified Governors that parts of their SIPs were inadequate to attain and maintain the ozone standard and requested that they correct the deficiencies (EPA's SIP-Call). See section 110(a)(2)(H) of the pre-amended Act.
November 15, 1990	Clean Air Act Amendments of 1990 were enacted. Pub. L. 101–549, 104 Stat. 2399, codified at 42 U.S.C. 7401–7671q.

IV. Administrative Requirements

A. Executive Order 12866, Regulatory Planning and Review

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866, entitled ''Regulatory Planning and Review.''

B. Paperwork Reduction Act

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.*).

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

This rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and title 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 create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities.

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

D. Unfunded Mandates Reform Act

Under section 202 of the Unfunded Mandates Reform Act of 1995, 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 proposed 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 proposes to approve pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

E. Executive Order 13132, Federalism

Executive Order 13132 (64 FR 43255, August 10, 1999) revokes and replaces Executive Orders 12612 (Federalism) and 12875 (Enhancing the Intergovernmental Partnership). Executive Order 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that 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.'' Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This rule will 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, 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. Thus, the requirements of

section 6 of the Executive Order do not apply to this rule.

F. Executive Order 13175, Coordination With Indian Tribal Governments

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' This proposed rule does not have tribal implications, as specified in Executive Order 13175. It will not have substantial direct effects on tribal governments, 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. Thus, Executive Order 13175 does not apply to this rule.

EPA specifically solicits additional comment on this proposed rule from tribal officials.

G. Executive Order 13045, Protection of Children From Environmental Health Risks and Safety Risks

Executive Order 13045 (62 FR 19885, April 23, 1997), applies to any rule that: (1) is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to Executive Order 13045 because it does not involve decisions intended to mitigate environmental health or safety risks and is not ''economically significant'' under Executive Order 12866.

H. Executive Order 13211, Actions That Significantly Affect Energy Supply, Distribution, or Use

This rule is not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires Federal agencies to evaluate existing technical standards when developing a new regulation. To comply with NTTAA, EPA must consider and use ''voluntary consensus standards'' (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical.

The EPA believes that VCS are inapplicable to this action. Today's action does not require the public to perform activities conducive to the use of VCS.

List of Subjects in 40 CFR Part 52

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

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

Dated: June 4, 2004.

Wayne Nastri,

Regional Administrator, Region IX.

[FR Doc. 04–13932 Filed 6–18–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 86

[AMS–FRL–7775–7]

Control of Air Pollution From New Motor Vehicles: In-Use Testing for Heavy-Duty Diesel Engines and Vehicles

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rule; correction.

SUMMARY: The notice of proposed rulemaking concerning air pollution control was published in the **Federal Register** on June 10, 2004 (69 FR 32803). As published, EPA failed to include the rule text. It is provided below in its entirety.

DATES: *Comments:* Comments must be received on or before August 16, 2004 (*see* section IV of the notice of proposed rulemaking at 69 FR 32818 on June 10, 2004, for more information about written comments).

Hearings: We will hold a public hearing on July 15, 2004. The hearing will start at 10 a.m. local time. If you want to testify at the hearing, notify the contact person listed below at least ten days before the hearing. *See* section IV of the notice of proposed rulemaking for more information.

ADDRESSES: Submit your comments, identified by Docket ID No. OAR–2004–0072, by one of the following methods:

1. Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.

2. Agency Web site: *http://www.epa.gov/edocket.* EDOCKET, EPA's electronic public docket and comment system, is EPA's preferred method for receiving comments. Follow the on-line instructions for submitting comments.

3. Mail: Air Docket, Environmental Protection Agency, Mailcode: 6102T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, Attention Docket ID No. OAR–2004–0072. Also send your comments to: Carol Connell, U.S. Environmental Protection Agency, 2000 Traverwood Drive, Ann Arbor, Michigan 48130, Attention Docket ID No. OAR–2004–0072.

4. Hand Delivery: EPA Docket Center, (EPA/DC) EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC, Attention Docket ID No. OAR–2004–0072. Such deliveries are only accepted during the Docket's normal hours of operation from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. OAR–2004–0072. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.epa.gov/edocket,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through EDOCKET, regulations.gov, or e-mail. The EPA EDOCKET and the Federal regulations.gov Web sites are ''anonymous access'' systems, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through EDOCKET or regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your