States Court of Appeals for the appropriate circuit by July 8, 1996. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2), 42 U.S.C. 7607(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental Protection, Air pollution control, Particulate matter, Intergovernmental relations, Reporting and recordkeeping requirements.

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

Dated: April 25, 1996.

Chuck Clarke,

Regional Administrator.

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

PART 52—[AMENDED]

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

Authority: 52 U.S.C. 7401–7671q.

Subpart N—Idaho

2. Section 52.691 is added to read as follows:

§ 52.691 Extensions.

The Administrator, by authority delegated under section 188(d) of the Clean Air Act, as amended in 1990, hereby extends for one year (until December 31, 1995) the attainment date for the Power-Bannock Counties PM–10 nonattainment area and the Sandpoint PM–10 nonattainment area.

[FR Doc. 96–11344 Filed 5–7–96; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Part 52

[TX–10–1–7025; FRL–5468–2]

Approval and Promulgation of Air Quality Implementation Plans; Texas; Revision to the State Implementation Plan (SIP) Addressing Visible Emissions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: On April 3, 1995 the EPA simultaneously published a direct final rule and notice of proposed rulemaking in which EPA published its decision to approve a revision to the Texas SIP addressing visible emissions. During the 30-day comment period, the EPA received three comment letters in response to the April 3, 1995, rulemaking. This final rule summarizes comments and EPA's responses, and finalizes the EPA's decision to approve the revisions to the visible emissions regulations for Texas.

EFFECTIVE DATE: June 7, 1996.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal business hours at the addresses listed below. The interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the visiting day.

U.S. Environmental Protection Agency, Region 6, Air Planning Section (6PD–L), 1445 Ross Avenue, Dallas, Texas 75202–2733.

U.S. Environmental Protection Agency, Air and Radiation Docket and Information Center, 401 M Street, SW., Washington, DC 20460.

Texas Natural Resource Conservation Commission, 12124 Park 35 Circle, Austin, Texas 78753.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas H. Diggs, Chief, Air Planning Section (6PD–L), USEPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, telephone (214) 665–7214.

SUPPLEMENTARY INFORMATION:

Background

On April 3, 1995, the EPA published a direct final rulemaking approving a revision to the existing Texas regulation concerning the control of visible emissions (60 FR 16806). At the same time that the EPA published the direct final rule, a separate notice of proposed rulemaking was published in the Federal Register (60 FR 16829). This proposed rulemaking specified that EPA would withdraw the direct final rule if adverse or critical comments were filed on the rulemaking. The EPA received three letters containing adverse comments regarding the direct final rule within 30 days of publication of the proposed rule and withdrew the direct final rule on June 5, 1995 (60 FR 29484).

The specific rationale EPA used to approve the revision to the Texas visible emissions regulations is explained in the direct final rule and will not be restated here. This final rule contained in this Federal Register addresses the comments received during the public comment period and announces EPA's final action regarding approval of the visible emissions revisions.

Response to Public Comments

In the April 3, 1995, Federal Register, the EPA requested public comments on the proposed/direct final rules (please reference 60 FR 16806–16808 and 60 FR 16829). The EPA received three adverse comment letters dated May 3, 1995, and thus proceeded to withdraw the direct final rule and adequately address each comment letter. The EPA's response to each comment letter is detailed below.

1. A letter was received from Larry Feldcamp, Baker & Botts, LLP, representing the Texas Industry Project (TIP). The TIP believed that the Texas Regulation I provisions for visible emissions were unwarranted, and that the EPA exceeded its statutory authority under title I of the Clean Air Act as amended in 1990 (CAA) in proposing to approve those provisions into the Texas SIP. The TIP believes that the visible emissions provisions are not necessary for the attainment or maintenance of any National Ambient Air Quality Standard (NAAQS) in Texas. Further, the TIP is concerned that some visible emissions provisions in Regulation I will cause more burdensome monitoring, recordkeeping, reporting, and compliance certification requirements for subject sources, since title V of the CAA incorporates SIP requirements. Finally, the TIP expressed concern about federal suits being available to enforce the visible emissions provisions, provisions which the TIP believes should not be in the Texas SIP.

EPA's response to letter #1: Section 110(a)(1) of the CAA requires States to provide plans for the implementation and maintenance, and enforcement of primary and secondary criteria pollutant standards, and for these plans to be submitted to EPA as part of the SIP. The visible emissions revisions provide for maintenance of the particulate standard statewide, and thus meet the intent of section 110(a)(1). Since EPA believes that the visible emissions regulations provide for maintenance of the particulate standard and strengthen the SIP as a whole, incorporation of these revisions into the SIP is required under section 110. The EPA must take action on state SIP submittals to either approve or disapprove the submittals. The EPA believes that the revised visible emissions provisions in Texas Regulation I are approvable (note—the existing Texas SIP contains visible emissions provisions in Texas Regulation I). This approval will strengthen the Texas SIP by updating the regulation. The EPA believes that

without visible emissions provisions in the Texas SIP, certain NAAQS (e.g. particulate, sulfur oxides, lead, ozone, and nitrogen dioxide) could be threatened. Clearly, the presence of the visible emissions provisions has resulted in particulate matter controls across the State of Texas. For the important visible emissions provisions to be eliminated from the Texas SIP, the State of Texas would have to submit a modeling demonstration to the EPA showing that the NAAQS could be attained and maintained in the State without the visible emissions provisions in Regulation I. Also, the EPA believes that the opacity provisions in Texas Regulation I provide visibility protection (visibility is an air quality related value). In addition, opacity limitations can be used as an indicator (or in some cases, as a determinator) in judging compliance or noncompliance with particulate matter (PM10) and other pollutant standards in the Texas SIP. Finally, the EPA believes that the visible emissions provisions, along with the Federal title V and the State permitting programs, allow for reasonable flexibility in meeting monitoring, recordkeeping, reporting, and compliance certification requirements so that an undue burden does not fall upon subject sources. It is important to note that the original enhanced monitoring proposal package, which provided for certain monitoring, recordkeeping, reporting, and compliance certification requirements, was withdrawn from the Office of Management and Budget on April 3, 1995, was revised significantly, and is planned to be reproposed in the Spring of 1996. The concerns about potentially burdensome monitoring, recordkeeping, reporting, and compliance certification requirements should be resolved under the new proposal that the EPA, in conjunction with the States, local agencies, and the regulated community, will produce.

It is the intent of section 110 of the CAA for States to develop an effective SIP control strategy to ensure attainment and maintenance of the NAAQS. One principle that must be adhered to is that the measures contained in the SIP be federally enforceable. To be enforceable, a legal means to ensure that sources remain in compliance with any measures or rules contained in the SIP must be provided. Federal and State suits are the legal means by which EPA ensures compliance with SIP requirements.

2. A letter was received from Neil Carman representing the Sierra Club (Lone Star Chapter). The Sierra Club supported the proposed action to make federally enforceable the visible emissions provisions of Texas Regulation I with one exception. The Sierra Club believed that the Midlothian cement plants burning hazardous waste, or any cement plant in Texas burning hazardous waste, should be subject to a more stringent visible emissions standard than the grandfathered level of 30 percent opacity. The Sierra Club also stated that the grandfathered status for Texas Industries Inc. and North Texas Cement Company in Midlothian should have been terminated when they were allowed to burn hazardous waste.

3. A letter was received from Sue Pope representing Downwinders At Risk (DAR). The DAR also believed that the Midlothian cement plants burning hazardous waste should be subject to a more stringent visible emissions standard than the grandfathered level of 30 percent opacity.

EPA's response to letters #2 and #3: The EPA will approve the current provisions in order to strengthen the Texas SIP. There are currently 4 PM10 monitors operating in the city of Midlothian, Texas. The data collected from these monitors indicate levels far below the annual and 24-hour PM10 NAAQS of 50 micrograms per cubic meter and 150 micrograms per cubic meter, respectively. EPA believes that these more stringent visible emissions regulations will ensure protection of the PM10 NAAQS in Midlothian. It is important to note that EPA continues to participate in meetings with the Sierra Club and DAR concerning Midlothian air quality concerns.

Final Rulemaking Action

In this final action EPA is promulgating a revision to Texas Regulation I addressing visible emissions. This revision updates the Texas SIP and strengthens the provisions of Texas Regulation I. This revision was submitted by the Governor to the EPA by letters dated August 21, 1989, January 29, 1991, October 15, 1992 and August 4, 1993.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to the SIP shall be considered separately in light of specific technical, economic, and environmental factors, and in relation to relevant statutory and regulatory requirements.

Miscellaneous

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, the EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities (5 U.S.C. 603 and 604). Alternatively, the EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, part D, of the CAA do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP-approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the CAA, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of State action. The CAA forbids the EPA to base its actions concerning SIPs on such grounds (*Union Electric Co.* v. *U.S. E.P.A.*, 427 U.S. 246, 256–66 (1976); 42 U.S.C. section 7410(a)(2)).

Under sections 202, 203, and 205 of the Unfunded Mandates Reform Act of 1995 (Unfunded Mandates Act), signed into law on March 22, 1995, the EPA must undertake various actions in association with proposed or final rules that include a Federal mandate that may result in estimated costs of $100 million or more to the private sector, or to state, local, or tribal governments in the aggregate.

Through submission of this SIP or plan revision, the State and any affected local or tribal governments have elected to adopt the program provided for under section 110 of the CAA. These rules may bind the State, local and tribal governments to perform certain actions and also require the private sector to perform certain duties. To the extent that the rules being approved by this action will impose no new requirements, such sources are already subject to these regulations under the State law. Accordingly, no additional costs to the State, local, or tribal governments, or to the private sector, result from this action. The EPA has also determined that this final action does not include a mandate that may result in estimated costs of $100 million or more to the State, local, or tribal governments in the aggregate or to the private sector.

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 8, 1996. Filing a petition for reconsideration by the Administrator of this final rule does not affect the

finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements (see section 307(b)(2)).

Executive Order

The Office of Management and Budget has exempted this action from review under Executive Order 12866.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur dioxide, Volatile organic compounds.

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

Dated: April 17, 1996.

Allyn M. Davis,

Acting Regional Administrator.

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

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

Authority: 42 U.S.C. 7401–7671q.

Subpart SS—Texas

2. Section 52.2270 is amended by adding paragraph (c)(94) to read as follows:

§ 52.2270 Identification of plan.

* * * * *

(c) * * *

(94) Revisions to the Texas SIP addressing visible emissions requirements were submitted by the Governor of Texas by letters dated August 21, 1989, January 29, 1991, October 15, 1992 and August 4, 1993.

(i) Incorporation by reference.

(A) Revisions to Texas Air Control Board (TACB), Regulation I, Section 111.111, ''Requirements for Specified Sources;'' Subsection 111.111(a) (first paragraph) under ''Visible Emissions;'' Subsections 111.111(a)(1) (first paragraph), 111.111(a)(1)(A), 111.111(a)(1)(B) and 111.111(a)(1)(E) under ''Stationary Vents;'' Subsection 111.111(b) (first paragraph) under ''Compliance Determination Exclusions;'' and Subsections 111.113 (first paragraph), 111.113(1), 111.113(2), and 111.113(3) under ''Alternate Opacity Limitations,'' as adopted by the TACB on June 16, 1989.

(B) TACB Board Order No. 89–03, as adopted by the TACB on June 16, 1989.

(C) Revisions to Texas Air Control Board (TACB), Regulation I, Section 111.111, ''Requirements for Specified Sources;'' Subsections 111.111(a)(4)(A) and 111.111(a)(4)(B)(i) under ''Railroad Locomotives or Ships;'' Subsections 111.111(a)(5)(A) and 111.111(a)(5)(B)(i) under ''Structures;'' and Subsections 111.111(a)(6)(A) and 111.111(a)(6)(B)(i) under ''Other Sources,'' as adopted by the TACB on October 12, 1990.

(D) TACB Board Order No. 90–12, as adopted by the TACB on October 12, 1990.

(E) Revisions to Texas Air Control Board (TACB), Regulation I, Section 111.111, ''Requirements for Specified Sources;'' Subsections 111.111(a)(1)(C), 111.111(a)(1)(D), 111.111(a)(1)(F) (first paragraph), 111.111(a)(1)(F)(i), 111.111(a)(1)(F)(ii), 111.111(a)(1)(F)(iii), 111.111(a)(1)(F)(iv), and 111.111(a)(1)(G) under ''Stationary Vents;'' Subsections 111.111(a)(2) (first paragraph), 111.111(a)(2)(A), 111.111(a)(2)(B), and 111.111(a)(2)(C) under ''Sources Requiring Continuous Emissions Monitoring;'' Subsection 111.111(a)(3) (first paragraph) under ''Exemptions from Continuous Emissions Monitoring Requirements;'' Subsection 111.111(a)(4), ''Gas Flares,'' title only; Subsection 111.111(a)(5) (first paragraph) under ''Motor Vehicles;'' Subsections 111.111(a)(6)(A), 111.111(a)(6)(B) (first paragraph), 111.111(a)(6)(B)(i) and 111.111(a)(6)(B)(ii) under ''Railroad Locomotives or Ships'' (Important note, the language for 111.111(a)(6)(A) and 111.111(a)(6)(B)(i) was formerly adopted as 111.111(a)(4)(A) and 111.111(a)(4)(B)(i) on October 12, 1990); Subsections 111.111(a)(7)(A), 111.111(a)(7)(B) (first paragraph), 111.111(a)(7)(B)(i) and 111.111(a)(7)(B)(ii) under ''Structures'' (Important note, the language for 111.111(a)(7)(A) and 111.111(a)(7)(B)(i) was formerly adopted as 111.111(a)(5)(A) and 111.111(a)(5)(B)(i) on October 12, 1990); and Subsections 111.111(a)(8)(A), 111.111(a)(8)(B) (first paragraph), 111.111(a)(8)(B)(i) and 111.111(a)(8)(B)(ii) under ''Other Sources'' (Important note, the language for 111.111(a)(8)(A) and 111.111(a)(8)(B)(i) was formerly adopted as 111.111(a)(6)(A) and 111.111(a)(6)(B)(i) on October 12, 1990), as adopted by the TACB on September 18, 1992.

(F) TACB Board Order No. 92–19, as adopted by the TACB on September 18, 1992.

(G) Revisions to Texas Air Control Board (TACB), Regulation I, Section 111.111, ''Requirements for Specified Sources;'' Subsections 111.111(a)(4)(A) (first paragraph), 111.111(a)(4)(A)(i), 111.111(a)(4)(A)(ii), and 111.111(a)(4)(B) under ''Gas Flares,'' as adopted by the TACB on June 18, 1993.

(H) TACB Board Order No. 93–06, as adopted by the TACB on June 18, 1993.

(ii) Additional material.

(A) TACB certification letter dated July 27, 1989, and signed by Allen Eli Bell, Executive Director, TACB.

(B) TACB certification letter dated January 9, 1991, and signed by Steve Spaw, Executive Director, TACB.

(C) TACB certification letter dated October 1, 1992, and signed by William Campbell, Executive Director, TACB.

(D) TACB certification letter dated July 13, 1993, and signed by William Campbell, Executive Director, TACB.

[FR Doc. 96–11399 Filed 5–7–96; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Part 60

[FRL–5467–8]

Amendment to Standards of Performance for New Stationary Sources; Small Industrial-Commercial-Institutional Steam Generating Units

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final action.

SUMMARY: Today's action promulgates revisions to the new source performance standards (NSPS) for new, modified, and reconstructed small industrial-commercial-institutional steam generating units (40 CFR part 60, Subpart Dc) that were proposed on November 15, 1995. The revisions exclude certain small steam generating units, when conducting combustion research, from the category of small steam generating units subject to NSPS control requirements for sulfur dioxide (SO_2) and particulate matter (PM). The NSPS are issued under the authority of section 111 of the Clean Air Act (CAA).

Following promulgation of the NSPS, litigation was filed by Babcock and Wilcox, who repeated a concern they had expressed during the public comment period following proposal of the NSPS. That is, they had requested an exemption from the NSPS for steam generating units of 14.6 MW (50 million Btu/hr) heat input capacity or less used for combustion research based on intermittent and infrequent operation.

Discussions with Babcock and Wilcox made it clear that there is a legitimate concern regarding the ability of experimental, and sometimes