

Executive Order 12988

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 (Civil Justice Reform) and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior has determined 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.*). The State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

Unfunded Mandates

OSM has determined and certifies pursuant to the Unfunded Mandates Reform Act (2 U.S.C. 1502 *et seq.*) that this rule will not impose a cost of \$100 million or more in any given year on local, state, or tribal governments or private entities.

List of Subjects in 30 CFR Part 901

Intergovernmental relations, Surface mining, Underground mining.

Dated: October 9, 1997.

Charles E. Sandberg,

Acting Regional Director, Mid-Continent Regional Coordinating Center.

[FR Doc. 97-27624 Filed 10-16-97; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[TX27-1-5945; FRL-5910-2]

Approval and Promulgation of Air Quality State Implementation Plans (SIP); Texas; Disapproval of Texas Clean Fuel Fleet Program Revision to the State Implementation Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed disapproval.

SUMMARY: The EPA is proposing disapproval of the Texas Clean Fuel Fleet (CFF) SIP revision submitted on August 9, 1996, by the State of Texas for the purpose of establishing a substitute CFF program. The EPA is disapproving the State's SIP revision due to changes in the State law that altered the current SIP revision submittal and because, in EPA's opinion, the State did not make a convincing and compelling equivalency determination with the Federal CFF program.

DATES: Comments must be received on or before November 17, 1997.

ADDRESSES: Written comments on this action should be addressed to Mr. Thomas H. Diggs, Chief, Air Planning Section, Environmental Protection Agency, Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202-2733. Copies of the documents about this action are available for public inspection during normal business hours at the following locations. Persons interested in examining these documents should make an appointment with the appropriate office at least 24 hours before the visiting day.

Environmental Protection Agency, Region 6, Air Planning Section (6PD-

L), 1445 Ross Avenue, Suite 700, Dallas, Texas, 78711-3087. Texas Natural Resource Conservation Commission, 12100 Park 35 Circle, Austin, Texas 78711-3087.

FOR FURTHER INFORMATION CONTACT: Mr. Paul Scoggins, Air Planning Section (6PD-L), EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202-2733, telephone (214) 665-7354 or via e-mail at scoggins.paul@epamail.epa.gov. While information may be requested via e-mail, all comments must be submitted in writing to the EPA Region 6 address above.

SUPPLEMENTARY INFORMATION:

I. Background

On November 15, 1990, Congress enacted amendments to the 1997 Clean Air Act (the Act); Pub. L. 101-549, 104 Stat. 2399, codified at 42 U.S.C. 7401-7671q. The CFF program is contained under part C, entitled, "Clean Fuel Vehicles," of Title II of the Act, as amended November 15, 1990. Part C was added to the Act to establish two programs: a clean-fuel vehicle pilot program in the State of California (the California Pilot Test Program) and the Federal CFF program in certain ozone and carbon monoxide nonattainment areas.

Section 182(c)(4) of the Act, 42 U.S.C. 7511a (c)(4), allows states to opt-out of the Federal CFF program by submitting, for EPA approval, a SIP revision consisting of a substitute program resulting in as much or greater long term emissions reductions in ozone producing and toxic air emissions as the Federal CFF program. The EPA may approve such a revision only if it consists exclusively of provisions other than those required under this Act for the area.

The State of Texas chose to opt-out of the Federal CFF program in a committal SIP revision submitted to EPA on November 15, 1992. In July 1994, Texas submitted the State's opt-out program in a SIP revision to EPA and adopted rules to implement the Texas CFF Program. The Texas CFF SIP was revised based upon changes to State law and resubmitted to EPA on August 6, 1996. On June 20, 1997, the Governor of Texas signed into law Senate Bill 681 that modified the supporting legislation (Chapter 382 of the Texas Health and Safety Code) for the current submitted revision.

II. EPA Analysis of State Submittal

The EPA is proposing disapproval based on the finding that changes to the supporting legislation have altered the August 6, 1996, submitted SIP revision.

As a result, the specific legislative authority in the submission is no longer in effect. In addition to the above changes, Texas's technical and equivalency method has not identified and quantified accurately the covered fleets in the Federal and State covered areas. The Texas CFF program has excluded certain covered fleets from its total fleet aggregation in the El Paso and Houston/Galveston nonattainment areas. Without an adequate determined fleet baseline for comparison, the SIP revision's technical evaluation is not sufficiently comprehensive to determine equivalency with the Federal CFF program. These and additional concerns with the State CFF program and broad compliance exemptions lead EPA to conclude that the State has not made a convincing and compelling demonstration of equivalency with the Federal CFF program. A more detailed discussion of the Texas CFF program elements and control strategy can be found in the Technical Support Document available from the EPA Region VI office.

III. Proposed Action

The EPA is proposing disapproval of the Texas CFF SIP revision submitted to EPA on August 6, 1996. The State's proposed substitute program is codified in 30 Texas Administrative Code, Chapter 114, Sections 114.30, 114.32 through 114.34, and 114.36 through 114.40. The EPA is soliciting public comments on the proposed action discussed in this notice. These comments will be considered before taking final action. Interested parties may participate in the Federal rulemaking procedure by submitting written comments to the EPA Regional office listed in the **ADDRESSES** section of this notice.

The regional office, with EPA's Office of Mobile Sources has initiated efforts to help ensure that this action is consistent with the Act and will not interfere with any applicable requirement concerning attainment or any other applicable requirement of the Act.

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 will be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

IV. State Options

The following are options available to Texas in the implementation of its CFF Program. The State may choose to; adopt the Federal CFF Program; or

revise the current Texas CFF program and resubmit to EPA or substitute another State program or control strategy for the Texas CFF program. Such a substitution could be a stationary or mobile source control program, but only if it consists exclusively of provisions other than those required under the Act.

V. Administrative Requirements

A. Executive Order (E.O.) 12866

The Office of Management and Budget has exempted this regulatory action from E.O. 12866 review.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. See 5 U.S.C. 603 and 604. Alternatively, 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.

The EPA's disapproval of the State request under section 110 and subchapter I, part D of the Act does not affect any existing requirements applicable to small entities. Any preexisting Federal requirements remain in place after this disapproval. Federal disapproval of the State submittal does not affect its State enforceability. Moreover, EPA's disapproval of the submittal does not impose any new Federal requirements. Therefore, EPA certifies that this disapproval action does not have a significant impact on a substantial number of small entities because it does not remove existing requirements and impose any new Federal requirements.

C. Unfunded Mandates

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 private sectors, 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.

The EPA has determined that the disapproval 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 imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and Recordkeeping requirements.

Dated: October 8, 1997.

Jerry Clifford,

Acting Regional Administrator.

[FR Doc. 97-27622 Filed 10-16-97; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention (CDC)

42 CFR Part 84

National Institute for Occupational Safety and Health; Certification of Respiratory Devices Used to Protect Workers in Hazardous Environments

AGENCY: National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (DHHS).

ACTION: Notice of priorities for rulemaking.

SUMMARY: In response to public comments received from its May 16, 1996, request (61 FR 24740), NIOSH is announcing the intended priority order for the development of the next proposed rule amendments (modules) to the current NIOSH procedures for certifying respiratory devices used to protect workers in hazardous environments. The priority order is based on the comments and data in the public record. The priority order of the planned modules is provided to help the respirator community plan for potential changes.

FOR FURTHER INFORMATION CONTACT: Roland Berry Ann, NIOSH, 1095 Willowdale Road, Morgantown, West