

EPA APPROVED REGULATIONS IN THE TEXAS SIP—Continued

State citation	Title/Subject	State submittal/adoption date	EPA approval date	Explanation
Section 115.229	Counties and Compliance Schedule.	June 30, 1999	12/20/00	
*	*	*	*	*
Division 3: Control of Volatile Organic Leaks from Transport Vessels				
Section 115.234	Inspection Requirements	June 30, 1999	12/20/00	
Section 115.235	Approved Test Methods	June 30, 1999	12/20/00	
Section 115.236	Recordkeeping Requirements	June 30, 1999	12/20/00	
Section 115.237	Exemptions.	June 30, 1999	12/20/00	
Section 115.239	Counties and Compliance Schedules.	June 30, 1999	12/20/00	
*	*	*	*	*

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CO-001-0043a; FRL-6875-6]

Approval of Air Quality Implementation Plan Revisions and Section 112(l) Program; Colorado; Issuance of Permits To Limit Potential To Emit Criteria and Hazardous Air Pollutants

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The EPA is approving revisions to Colorado’s construction permit requirements in Regulation No. 3 and hazardous air pollutant requirements in Regulation No. 8 of the State Air Quality Control Commission (AQCC) regulations, regarding permits to limit potential to emit criteria and hazardous air pollutants (HAPs). These revisions were submitted to EPA on April 26, 1996. Colorado submitted these revisions to create federally enforceable limits on criteria pollutants and HAPs, for both new and existing sources, through the State’s construction permit program. EPA is approving the revisions to Regulation No. 3 regarding criteria pollutants as part of Colorado’s state implementation plan (SIP) under section 110 of the Clean Air Act (CAA).

SIP approval under section 110 of the CAA, however, only extends to the control of HAPs that are criteria pollutants, such as volatile organic compounds or particulate matter, whereas section 112 of the CAA provides the underlying authority for controlling all HAPs listed in section 112(b) of the CAA. Therefore, the EPA is also approving the revisions to

Regulation No. 3 and Regulation No. 8 under section 112(l) of the CAA.

DATES: This direct final rule is effective on February 20, 2001 without further notice, unless EPA receives adverse comments by January 19, 2001. If adverse comments are received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Written comments may be mailed to Richard R. Long, Director, Air and Radiation Program, Mailcode 8P-AR, Environmental Protection Agency (EPA), Region VIII, 999 18th Street, Suite 300, Denver, Colorado 80202. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air and Radiation Program, Environmental Protection Agency, Region VIII, 999 18th Street, Suite 300, Denver, Colorado, 80202. Copies of the State documents relevant to this action are also available for public inspection at the Colorado Department of Public Health and Environment, Air Pollution Control Division, 4300 Cherry Creek Drive South, Denver, Colorado 80246-1530.

FOR FURTHER INFORMATION CONTACT: Megan Williams, EPA, Region VIII, (303) 312-6431.

SUPPLEMENTARY INFORMATION: Throughout this document wherever “we,” “us,” or “our” are used, we mean the Environmental Protection Agency.

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I. Background Information

A. What Action Is EPA Taking?

In this action, we are approving Colorado’s revisions to AQCC Regulations No. 3 and 8 regarding permits to limit potential to emit criteria and hazardous air pollutants. We are approving, under section 112(l) of the CAA, the provisions in Regulations No. 3 and 8 that pertain to limiting potential to emit HAPs. We are also approving, under section 110 of the CAA, the revisions to Colorado’s construction permit rules in Regulation No. 3 that provide for limiting potential to emit criteria pollutants.

B. What Are the Procedural Requirements Colorado Must Follow for EPA Approval?

Section 110(k) of the CAA authorizes our action on a submission of SIP revisions. The CAA also requires that States observe certain procedural requirements in developing SIP revisions for submittal to EPA. Section 110(a)(2) of the CAA requires that the State adopt each SIP revision after reasonable notice and public hearing.

Colorado held a public hearing on the proposed rule changes on March 16, 1995, continued on May 18, 1995. The changes were adopted by the AQCC directly after the May 18, 1995 hearing and were formally submitted to EPA by the Governor on April 26, 1996. We reviewed the submission against our completeness criteria in 40 CFR part 51, appendix V. We determined the submission was complete and notified the State in a letter dated July 3, 1996.

C. What Was Included in Colorado's Submittal?

On April 26, 1996, Colorado submitted revisions to Regulations No. 3 and 8 to EPA for approval. Specifically, the State requested approval of provisions to limit the potential to emit criteria and hazardous air pollutants. The provisions apply to new and modified stationary sources, and also allow existing sources (through the addition of section III.A.7 of Regulation No. 3, part B) to voluntarily request a construction permit to limit their potential to emit. These limits on potential to emit will potentially enable the source to avoid classification as a major source.

The revisions to Regulations No. 3 and 8 include several provisions to ensure that permits containing limits on potential to emit will meet all applicable requirements and will be practically enforceable. For example, Regulation No. 8, part E, section IV.B.3 requires that all permit conditions for sources requesting voluntary limits on potential to emit HAPs must be at least as stringent as any applicable requirement in the Colorado SIP or that is otherwise federally enforceable (e.g., any section 112 or other CAA requirement). In addition, Regulation No. 8, part E, sections IV.G and IV.B.2 require continuous compliance with emission limits and practically enforceable permit conditions for all permits issued to sources requesting limits on potential to emit HAPs. Furthermore, pursuant to the provisions in Regulation No. 3, part B, section IV.C, all permits to limit potential to emit criteria or hazardous air pollutants are subject to public participation requirements and will be sent to the EPA for comment.

Thus, Colorado's revisions to Regulations No. 3 and 8 to create limits on potential to emit criteria and hazardous air pollutants were made to ensure that such permits would meet all applicable requirements and be both practically and federally enforceable.

D. Why is EPA Approving These Revisions to Regulation No. 3 and Regulation No. 8?

We are approving these revisions to Regulations No. 3 and 8 because the revisions are consistent with all requirements of the CAA and with EPA guidance. Specifically, we are approving the revisions to Regulation No. 3 that pertain to criteria pollutants as part of the SIP under section 110 of the CAA. Because we don't have authority under section 110 to approve provisions relating to HAPs, except for HAPs that

are constituents of criteria pollutants, we are approving the provisions in Regulation No. 3 and Regulation No. 8 pertaining to creating limits on potential to emit HAPs under section 112(l) of the CAA.

In the July 10, 1996 **Federal Register** (61 FR 36295-36298) EPA revised 40 CFR part 63, subpart E, to provide for approval of programs designed to limit sources' potential to emit hazardous air pollutants under section 112(l) of the CAA. We previously found that Colorado met all requirements for approval of a State program under section 112(l) for implementing and enforcing emission standards for HAPs, when we granted interim approval of Colorado's operating permit program under Title V of the CAA on January 24, 1995 (60 FR 4568). We found, in our review of the State's program, that it contained adequate authorities, adequate resources for implementation, and an expeditious compliance schedule and therefore met the requirements in section 112(l)(5) and 40 CFR 63.91.

The effect of this approval under sections 110 and 112(l) of the CAA will be that the relevant provisions of AQCC Regulations No. 3 and 8 and the permits issued under these provisions will be federally enforceable. We reserve the right to deem permit conditions not federally enforceable. Such a determination will be based upon the permit, permit approval procedures, or permit requirements which do not conform with the permit program requirements or the requirements of our underlying regulations.

II. Final Action

We are approving Colorado's provisions in Regulations No. 3 and 8 to limit potential to emit HAPs (submitted on April 26, 1996) under section 112(l) of the CAA. Our approval under section 112(l) of the CAA includes the new section in Colorado's Regulation No. 8 titled "Air Pollution Permits to Limit the Potential to Emit Hazardous Air Pollutants" (Regulation No. 8, part E, section IV), and the associated provisions for issuing such permits in Colorado's Regulation No. 3.

In addition, we are approving the revisions to Regulation No. 3 that were included as part of Colorado's submittal and that pertain to criteria pollutants as part of the SIP under section 110 of the CAA. These revisions to Regulation No. 3, specifically, part B, sections III.A.4, III.A.7 and IV.C.4, allow sources to voluntarily request a permit to limit potential to emit criteria pollutants. We are not taking action under section 110 of the CAA on the revisions to

Regulation No. 3, specifically, part B, section IV.C.1.c, that pertain only to hazardous air pollutants.

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

EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should adverse comments be filed. This rule will be effective February 20, 2001 without further notice unless the Agency receives adverse comments by January 19, 2001.

If the EPA receives such comments, then EPA will publish a document withdrawing the final rule and informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period. Any parties interested in commenting should do so at this time. If no such comments are received, the public is advised that this rule will be effective on February 20, 2001 and no further action will be taken on the proposed rule.

III. 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. 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). For the same reason, this rule also does not

significantly or uniquely affect the communities of tribal governments, as specified by Executive Order 13084 (63 FR 27655, May 10, 1998). 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 (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 (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. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" issued under the executive order. 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.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate,

the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2). This rule will be effective February 20, 2001 unless EPA receives adverse written comments by January 19, 2001.

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by February 20, 2001. 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).)

List of Subjects in 40 CFR Part 52

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

Dated: September 8, 2000.

Jack W. McGraw,

Acting Regional Administrator, Region VIII.

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 *et seq.*

Subpart G—Colorado

2. Section 52.320 is amended by adding paragraph (c)(88) to read as follows:

§ 52.320 Identification of plan.

* * * * *

(c) * * *

(88) On April 26, 1996, the Governor of Colorado submitted revisions to Regulation No. 3 to allow a source to voluntarily request a permit to limit potential to emit and to require that such permits be subject to public participation.

(i) Incorporation by reference.

(A) Regulation No. 3, "Air Contaminant Emissions Notices," 5 CCR

1001–5, revisions adopted 5/18/95, effective 7/30/95, as follows: part B, sections III.A.4, III.A.7, and IV.C.4.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 238–0256a; FRL–6895–7]

Revisions to the California State Implementation Plan, Santa Barbara and Ventura County Air Pollution Control Districts

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve revisions to the Santa Barbara County Air Pollution Control District (SBCAPCD) and Ventura County Air Pollution Control District (VCAPCD) portion of the California State Implementation Plan (SIP). These revisions concern Oxides of Nitrogen (NO_x) emissions from Natural-Gas Fired Fan-Type Central Furnaces and Residential Water Heaters, Large Water Heaters and Small Boilers. We are approving local rules that regulate these emission sources under the Clean Air Act as amended in 1990 (CAA or the Act).

DATES: This rule is effective on February 20, 2001 without further notice, unless EPA receives adverse comments by January 19, 2001. If we receive such comment, we will publish a timely withdrawal in the **Federal Register** to notify the public that this rule will not take effect.

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 documents (TSDs) at our Region IX office during normal business hours. You may also see copies of the submitted SIP revisions at the following locations:

Environmental Protection Agency, Air Docket (6102), Ariel Rios Building, 1200 Pennsylvania Avenue, NW., Washington, DC 20460

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 "L" Street, Sacramento, CA 95812