

(D), and (E) of the CAA but do not emit more than 100 tpy of all regulated pollutants.

The state has also provided for exclusion from the small business stationary source definition, after consultation with the EPA and the Small Business Administration Administrator, and after providing notice and opportunity for public comment, of any category or subcategory of sources that the state determines to have sufficient technical and financial capabilities to meet the requirements of the CAA.

### III. This Action

In this action, EPA is approving the SIP revision submitted by the state of Nebraska. The state of Nebraska has submitted a SIP revision implementing each of the program elements required by section 507 of the CAA. NDEQ had selected a Small Business Public Advocate (Ombudsman) at the time of the submission of this program to EPA. This Public Advocate is currently implementing the program schedule to develop the full program. The CAP will be selected in June 1993 and will develop the first annual review of the SBAP effectiveness by December 1993. Coordination with each of the agencies involved in staffing the SBAP has already taken place. The establishment of the SBAP will be fully completed by July 1993. EPA is therefore approving this submittal.

### EPA Action

In this notice, EPA is approving a state program created for the purpose of assisting small businesses in complying with existing statutory and regulatory requirements. This program does not impose any new regulatory burden on small businesses; it is a program under which small businesses may elect to take advantage of assistance provided by the state. Therefore, because the EPA's approval of this program does not impose any new regulatory requirements on small businesses, I certify that it does not have a significant economic impact on any small entities affected.

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 (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.

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, EPA certifies 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 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 (S.Ct. 1976); 42 U.S.C. 7410(a)(2)).

This action has been classified as a Table 2 Action by the Regional Administrator under the procedures published in the *Federal Register* on January 19, 1989 (54 FR 2214-2225). On January 6, 1989, the Office of Management and Budget (OMB) waived Table 2 and 3 SIP revisions (54 FR 2222) from the requirement of section 3 of Executive Order 12291 for a period of two years. EPA has submitted a request for a permanent waiver for Table 2 and Table 3 SIP revisions. The OMB has agreed to continue the temporary waiver until such time as it rules on EPA's request.

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.

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 October 29, 1993. 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).)

The EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. This action will be effective October 29, 1993, unless, by September 29, 1993, notice is received that adverse or critical comments will be submitted.

If such notice is received this action will be withdrawn before the effective date by publishing two subsequent notices. One notice will withdraw the final action and another will begin a new rulemaking by announcing a proposal of the action and establishing a comment period. If no such comments are received, the public is advised that this action will be effective October 29, 1993.

### List of Subjects in 40 CFR Part 52

Air pollution control, Incorporation by reference, Intergovernmental relations.

Dated: August 2, 1993.

**William W. Rice,**  
*Acting 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: 42 U.S.C. 7401-7671q.

### Subpart CC—Nebraska

2. Section 52.1420 is amended by adding paragraph (c)(40) to read as follows:

#### §52.1420 Identification of plan.

(c) \* \* \*

(40) The Nebraska Department of Environmental Quality submitted the Small Business Assistance program State Implementation Plan revision on November 12, 1992.

(i) Incorporation by reference.

(A) Revision to the Nebraska State Implementation Plan for the Small Business Stationary Source Technical and Environmental Compliance Assistance Program was adopted by the state of Nebraska on November 12, 1992, and became effective on the same date.

[FR Doc. 93-20925 Filed 8-27-93; 8:45 am]

BILLING CODE 6560-50-P

### 40 CFR Part 52

[TX-18-1-5692; FRL-4691-3]

**Approval and Promulgation of Air Quality Implementation Plans; Texas; Revision to the State Implementation Plan Correcting Sulfur Dioxide Enforceability Deficiencies**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rulemaking.

**SUMMARY:** This action approves a revision to the Texas State Implementation Plan (SIP) to include revisions to Texas Air Control Board (TACB) Regulation II, chapter 112, entitled Control of Air Pollution from Sulfur Compounds. These revisions correct enforceability deficiencies and strengthen the provisions of chapter 112.

**EFFECTIVE DATE:** This action will become effective on October 29, 1993, unless notice is received by September 29, 1993, that someone wishes to submit adverse or critical comments. If the effective date is delayed, timely notice will be published in the *Federal Register*.

**ADDRESSES:** Written comments on this action should be addressed to Mr. Thomas H. Diggs, Chief, Planning Section, at the EPA Regional Office listed below. Copies of the documents relevant to this action are available for public inspection during normal business hours at the following locations. 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 Programs Branch (6T-AP), 1445 Ross Avenue, suite 700, Dallas, Texas 75202-2733.  
Mr. Jerry Kurtzweg (ANR-443), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.  
Texas Air Control Board, 12124 Park 35 Circle, Austin, Texas 78753.

**FOR FURTHER INFORMATION CONTACT:** Mr. Mark Sather, Planning Section (6T-AP), Air Programs Branch, U.S. Environmental Protection Agency (EPA) Region 6, 1445 Ross Avenue, Dallas, Texas 75202-2733, Telephone (214) 655-7258.

**SUPPLEMENTARY INFORMATION:** A nationwide effort is being undertaken to have sulfur dioxide (SO<sub>2</sub>) enforceability deficiencies identified and corrected in SIPs before operating permit programs become effective. Because the operating permit programs will initially codify underlying SIP requirements, it is important that the underlying SIP is enforceable so that permits themselves will be enforceable. The EPA Region 6 provided a list of deficiencies in Regulation II to the State of Texas by cover letter dated March 13, 1991. The Region used the "SO<sub>2</sub> SIP Enforceability Checklist" when reviewing Regulation II for enforceability deficiencies. This checklist, developed by the EPA, was included as an attachment to the November 28, 1990, memorandum from

Robert Bauman and Rich Biondi to the Air Branch Chiefs. This memorandum, and the EPA Region 6 March 13, 1991, letter are included as attachments to the Technical Support Document. The checklist focused on the following topics: (1) Clarity; (2) averaging times consistent with protection of the SO<sub>2</sub> National Ambient Air Quality Standards (NAAQS); (3) clear compliance determinations; (4) continuous emissions monitoring; (5) adequate reporting and recordkeeping requirements; (6) Director's discretion issues; and (7) Stack Height issues.

The State of Texas filed revisions to Regulation II in the Texas Register on October 9, 1992 (effective October 23, 1992), in order to correct enforceability deficiencies. The revisions, discussed in detail in the Technical Support Document, are briefly outlined below.

### Analysis of State Submission

#### 1. Procedural Background

The Clean Air Act (CAA) requires States to observe certain procedural requirements in developing implementation plans for submission to the EPA. Section 110(a)(2) of the CAA provides that each implementation plan submitted by a State must be adopted after reasonable notice and public hearing. See also section 110(l) of the CAA. Also, the EPA must determine whether a submittal is complete and therefore warrants further EPA review and action [see section 110(k)(1) and 57 FR 13565]. The EPA's completeness criteria for SIP submittals are set out at 40 Code of Federal Regulations (CFR) part 51, appendix V (1991), as amended by 56 FR 42216 (August 26, 1991). The EPA attempts to make completeness determinations within 60 days of receiving a submission. However, a submittal is deemed complete by operation of law if a completeness determination is not made by the EPA six months after receipt of the submission.

After providing adequate notice, the State of Texas held public hearings on May 21, 1992, and May 22, 1992, to entertain public comment on proposed revisions to Regulation II addressing enforceability corrections. Public comments were received and adequately addressed by the State. Following the public hearing and consideration of public comments, the SIP revision was adopted by the State and filed in the Texas Register on October 9, 1992 (effective October 23, 1992). The SIP revision was submitted by the Governor to the EPA by cover letter dated October 15, 1992. It is important to note that by the same cover letter the Governor also

submitted revisions of the TACB Regulation I to the EPA, concerning control of air pollution from visible emissions and particulate matter. The revisions to the TACB Regulation I will be addressed in a separate *Federal Register* notice.

The SIP revision was reviewed by the EPA to determine completeness shortly after its submittal, in accordance with the completeness criteria referenced above. A letter dated December 17, 1992, was forwarded to the Governor indicating the completeness of the submittal and the next steps to be taken in the review process. As noted in this action, the EPA is approving this Texas SIP submittal to correct SO<sub>2</sub> enforceability deficiencies.

#### 2. Review of Revisions to Regulation II

The State of Texas revised Regulation II in order to correct SO<sub>2</sub> enforceability deficiencies. These revisions are found in Chapter 112, entitled Control of Air Pollution from Sulfur Compounds. For a detailed explanation of each change to Regulation II, chapter 112, being approved in this action, please refer to the Technical Support Document. A brief summary of the revisions is presented in the following paragraph.

The revisions to Regulation II, chapter 112, strengthen the provisions. Language has been added to chapter 112 to protect the three-hour SO<sub>2</sub> NAAQS. Compliance determination methods were clarified, including the involvement of the EPA in the approval of equivalent test methods and exemptions. Emission limitations were clarified by the use of equations rather than by the use of graphs. In addition, clear language was added to chapter 112 describing temporary fuel shortage plan filing, operating, and reporting requirements. Continuous emissions monitoring (CEM) provisions (including 40 CFR part 51, appendix P requirements), and recordkeeping and reporting requirements were also added to the regulation. Additional provisions were included to allow affected sources, in lieu of 40 CFR part 51, appendix P CEM requirements, to incorporate the CEM requirements from the Title IV acid rain provisions under section 412(c) of the CAA and all regulations promulgated thereunder.

The revisions to chapter 112 also contain new language which outlines a study to determine whether or not a tighter emission limitation under three pounds per million British Thermal Units (BTU), three-hour average, is required for solid fossil fuel-fired steam generators having a design heat input of greater than 1,500 million BTU per hour and which, on January 1, 1991, were not

subject to the Federal New Source Performance Standards. It is important to note that the provisions outlining the study were initially adopted by the TACB on February 21, 1992, and submitted to the EPA by cover letter from the Governor dated May 29, 1992. At that time, the provisions for the study were found in section 112.5. The May 29, 1992, submittal has now been superseded by the October 15, 1992, submittal being acted upon in this action. The provisions of the study have not changed but are now found in section 112.8. Please reference the Technical Support Document for more information concerning the background for the special study.

Finally, the EPA will not be acting on section 112.8(b) of the TACB Regulation II in this action. The EPA will act upon section 112.8(b) in a separate Federal Register action. Section 112.8(b) contains a relaxed emission limitation of 4.0 pounds SO<sub>2</sub> per million BTU, three-hour average, for solid fossil fuel-fired steam generators located in Milam County, Texas, which began operation prior to January 1, 1955. The current Federally-approved SIP limitation is 3.0 pounds SO<sub>2</sub> per million BTU, three-hour average, which remains in place. The State of Texas has submitted a schedule to the EPA outlining the development, adoption, and Governor's submittal of supporting technical information addressing section 112.8(b).

#### Final Action

The EPA is approving this revision to the Texas SIP to include revisions to the TACB Regulation II, chapter 112, entitled *Control of Air Pollution from Sulfur Compounds*. These revisions correct enforceability deficiencies and strengthen the provisions of Regulation II, chapter 112. The revisions were submitted by the Governor to the EPA by cover letter dated October 15, 1992.

The EPA has reviewed these revisions to the Texas SIP and is approving them as submitted. The EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. This action will be effective October 29, 1993, unless, within 30 days of its publication, notice is received that adverse or critical comments will be submitted.

If such notice is received, this action will be withdrawn before the effective date by publishing two subsequent notices. One notice will withdraw the final action, and another will begin a new rulemaking by announcing a proposal of the action and establishing a comment period. If no such comments

are received, the public is advised that this action will be effective October 29, 1993.

The EPA has reviewed this request for revision of the Federally-approved SIP for conformance with the provisions of the 1990 Clean Air Act Amendments enacted on November 15, 1990. The EPA has determined that this action conforms with those requirements.

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.

#### Regulatory Process

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.

The 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 (S. Ct. 1976); 42 U.S.C. 7410(a)(2)).

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 October 29, 1993. 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 12291

This action has been classified as a Table two action by the Regional Administrator under the procedures published in the Federal Register on January 19, 1989 (54 FR 2214-2225). On January 6, 1989, the Office of Management and Budget (OMB) waived Tables two and three SIP revisions (54 FR 2222) from the requirements of section 3 of Executive Order 12291 for a period of two years. The EPA has submitted a request for a permanent waiver for Table two and three SIP revisions. The OMB has agreed to continue the temporary waiver until such time as it rules on the EPA's request.

#### List of Subjects in 40 CFR Part 52

Air pollution control, Incorporation by reference, Reporting and recordkeeping requirements, Sulfur dioxide.

**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: July 30, 1993.

Joe D. Winkle,

Acting Regional Administrator (6A).

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)(76) to read as follows:

#### § 52.2270 Identification of plan.

\* \* \* \* \*

(c) \* \* \*

(76) A revision to the Texas State Implementation Plan (SIP) to include revisions to Texas Air Control Board (TACB) Regulation II, 31 TAC Chapter 112, Control of Air Pollution from Sulfur Compounds, submitted by the Governor by cover letter dated October 15, 1992.

(i) Incorporation by reference.

(A) Revisions to Texas Air Control Board (TACB), Regulation II, 31 TAC Chapter 112, Section 112.1, "Definitions;" Section 112.2, "Compliance, Reporting, and Recordkeeping;" Section 112.3, "Net Ground Level Concentrations;" Section 112.4, "Net Ground Level Concentration—Exemption Conditions;"

Section 112.5, "Allowable Emission Rates—Sulfuric Acid Plant Burning Elemental Sulfur;" Section 112.6, "Allowable Emission Rates—Sulfuric Acid Plant;" Section 112.7, "Allowable Emission Rates—Sulfur Recovery Plant;" Section 112.8, "Allowable Emission Rates From Solid Fossil Fuel-Fired Steam Generators," Subsections 112.8(a), except for the phrase "Except as provided in subsection (b) of this section," 112.8(c), 112.8(d), 112.8(e); Section 112.9, "Allowable Emission Rates—Combustion of Liquid Fuel;" Section 112.14, "Allowable Emission Rates—Nonferrous Smelter Processes;" Section 112.15, "Temporary Fuel Shortage Plan Filing Requirements;" Section 112.16, "Temporary Fuel Shortage Plan Operating Requirements;" Section 112.17, "Temporary Fuel Shortage Plan Notification Procedures;" Section 112.18, "Temporary Fuel Shortage Plan Reporting Requirements;" Section 112.19, "Application for Area Control Plan;" Section 112.20, "Exemption Procedure;" and Section 112.21, "Allowable Emission Rates Under Area Control Plan," as adopted by the TACB on September 18, 1992.

(B) Texas Air Control Board Order No. 92-19, as adopted by the Texas Air Control Board on September 18, 1992.

(ii) Additional material.

(A) Texas Air Control Board certification letter dated October 1, 1992, and signed by William R. Campbell, Executive Director, Texas Air Control Board.

(B) Texas Air Control Board clarification letter dated July 5, 1993, from William R. Campbell, Executive Director, Texas Air Control Board, to A. Stanley Meiburg, Director, Air, Pesticides, and Toxics Division, EPA Region 6.

\* \* \* \* \*

[FR Doc. 93-20923 Filed 8-27-93; 8:45 am]  
 BILLING CODE 6560-50-P

**40 CFR Part 52**

[VA9-3-5469; FRL-4694-9]

**Approval and Promulgation of Air Quality Implementation Plans; Virginia—Revised Regulations for the Control of Sulfur Dioxide Emissions**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** EPA is approving a State Implementation Plan (SIP) revision submitted by the Commonwealth of Virginia. This revision consists of revised requirements to Parts I, IV, and

V of Virginia's air pollution control regulations with regard to allowable emissions limitations for sulfur dioxide (SO<sub>2</sub>), compliance monitoring, recordkeeping and reporting, and associated revised definitions of terms. The intended effect of this action is to revise the federally-approved SIP so that it conforms with the current State requirements. This action is being taken in accordance with the provisions of the Clean Air Act.

**EFFECTIVE DATE:** This action will become effective October 29, 1993, unless notice is received on or before September 29, 1993, that adverse or critical comments will be submitted. If the effective date is delayed, timely notice will be published in the Federal Register.

**ADDRESSES:** Comments may be mailed to Thomas J. Maslany, Director, Air, Radiation, and Toxics Division, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, PA 19107.

Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air, Radiation, and Toxics Division, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107; Public Information Reference Unit, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460; and the Virginia Department of Air Pollution Control, P.O. Box 10089, Richmond, Virginia, 23240.

**FOR FURTHER INFORMATION CONTACT:** Harold A. Frankford, (215) 597-1325.

**SUPPLEMENTARY INFORMATION:** On February 14, 1985, the Commonwealth of Virginia submitted a revised format and numerous amendments, both administrative and substantive, to its Regulations for the Control and Abatement of Air Pollution. Virginia requested that these changes be reviewed and processed as revisions of the Virginia State Implementation Plan (SIP).

Virginia certified that public hearings pertaining to these proposed revisions were held on June 15, 1984 and September 18, 1984, in Richmond, as required by 40 CFR 51.102. Additional public hearings were held in Abingdon, Roanoke, Lynchburg, Virginia Beach, and Springfield.

On February 25, 1993 (58 FR 11374), EPA approved the majority of Virginia's regulatory and format amendments as revisions of the Virginia SIP. However, in the Notice of Proposed Rulemaking (NPR) published on October 19, 1987 (52 FR 38787), EPA announced that it was deferring action on revised

provisions to Parts I (Definitions) and IV (Control of Existing Sources) governing control of sulfur dioxide (SO<sub>2</sub>) emissions. In this notice, EPA is taking final action on the above-mentioned provisions. The revised provisions are summarized below:

**Summary of SIP Revision**

The following definitions have been revised:

1. Variance (Part I, Section 120-01-03)
2. Coal preparation plant (Part IV, Rule 4-15, Section 120-04-1502C.)
3. Sulfuric acid production unit (Part IV, Rule 4-21, Section 120-04-2102C.)

The revised definition of the term *variance* makes clear that a variance represents an exemption to the applicable regulation rather than a deferral of compliance from an applicable regulation.

The definition of *coal preparation plant* is revised to:

- (1) Include "breaking" as a method of preparing coal;
- (2) Expand "cleaning" to specify "wet or dry cleaning"; and
- (3) Specify "drying" to mean thermal drying.

The revised *sulfuric acid production unit* replaces "sulfuric acid plant." The definition itself is not changed.

The following SO<sub>2</sub> regulations found in Part IV are placed under a source-specific rule in Part IV as part of the administrative changes brought about by Virginia's action to recodify and reorganize its air pollution control regulations:

1. Rule 4-4 (General Process Operations), Section 120-04-0405
2. Rule 4-8 (Fuel Burning Equipment), Section 120-04-0806.
3. Rule 4-9 (Coke Ovens), Section 120-04-0904.
4. Rule 4-11 (Petroleum Refinery Operations) Section 120-04-1104.
5. Rule 4-16 (Portland Cement Plants), Section 120-04-1604.
6. Rule 4-19 (Lightweight Aggregate Process Operations), Section 120-04-1904.
7. Rule 4-21 (Sulfuric Acid Production Units), Section 120-04-2103.

In addition, Virginia has revised the following two rules with additional provisions:

1. Rule 4-18 (Primary and Secondary Metal Operations), Section 120-04-1804. In the SO<sub>2</sub> emission equation applicable to existing sources, the variable "Y" is changed from