

TABLE 52.1167.—EPA-APPROVED RULES AND REGULATIONS.—Continued

| State citation | Title/subject | Date submitted by State | Date approved by EPA | Federal Register citation | 52.1120(c) | Comments/unapproved sections |
|------------------|---|-------------------------|----------------------|---|------------|--|
| 310 CMR 7.33 ... | City of Boston/ South Boston Parking Freeze. | 7/30/93 | October 15, 1996. | [Insert FR citation from published date]. | 111 | Applies to the parking of motor vehicles within the area of South Boston, including Massport property in South Boston. |

[FR Doc. 96-26201 Filed 10-11-96; 8:45 am]
BILLING CODE 6560-50-P

40 CFR Part 52

[TN-158-1-9632a; FRL-5619-6]

Approval and Promulgation of Implementation Plans State: Approval of Revisions to the Knox County Portion of the State of Tennessee's State Implementation Plan (SIP)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving revisions to the Knox County portion of the Tennessee State Implementation Plan (SIP) to allow the Knox County Department of Air Pollution Control (Knox County) to utilize permits-by-rule for the purpose of limiting potential to emit (PTE) criteria pollutants for certain source categories to less than the title V permitting major source thresholds. EPA is also approving under section 112(l) of the Clean Air Act several source categories of the submitted regulations for limiting PTE of hazardous air pollutants (HAP) to less than title V permitting major source thresholds. These permits-by-rule provide a way for sources to accept limitations on their operations without the added burden of obtaining source-specific permits for the following source categories: fuel-burning equipment burning natural gas/liquified petroleum gas (LPG) and/or distillate oil, fuel burning equipment burning natural gas/LPG and/or residual oil, on-site power generation, concrete mixing plants, coating operations, printing operations, and fiberglass molding and forming operations. On May 23, 1995, Knox County through the Tennessee Department of Environment and Conservation submitted a SIP revision fulfilling the requirements necessary to utilize exclusionary rules to limit PTE of air pollutants in a federally enforceable manner.

DATES: This final rule is effective December 16, 1996 unless adverse or

critical comments are received by November 14, 1996. 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 Scott Miller at the Environmental Protection Agency, Region 4 Air Planning Branch, 100 Alabama Street, SW, Atlanta, Georgia 30303. Copies of documents relative 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. Reference file TN158-1-9632. The Region 4 office may have additional background documents not available at the other locations.

Air and Radiation Docket and Information Center (Air Docket 6102), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460. Environmental Protection Agency, Region 4 Air Planning Branch, 100 Alabama Street, SW, Atlanta, Georgia 30303. Scott Miller, 404/562-9120.

Tennessee Department of Environment and Conservation, Division of Air Pollution Control, 9th Floor, L & C Annex, 401 Church Street, Nashville, Tennessee 37243-1531.

Knox County Department of Air Pollution Control, Suite 339, City-County Building, 400 West Main Street, Knoxville, Tennessee 37902.

FOR FURTHER INFORMATION CONTACT: Scott Miller at 404/562-9120.

SUPPLEMENTARY INFORMATION:

I. Background and Purpose

On May 23, 1995, the Knox County Department of Air Pollution Control through the Tennessee Department of Environment and Conservation submitted SIP revisions designed to allow Knox County to utilize permits-by-rule for the purpose of limiting PTE for fuel-burning equipment burning natural LPG and/or distillate oil, fuel burning equipment burning natural gas/

LPG and/or residual oil, on-site power generation, concrete mixing plants, coating operations, printing operations, and fiberglass molding and forming operations. Permits-by-rule are designed to create federally enforceable limits on a facility's PTE in a manner that does not require a facility-specific evaluation of emissions and limiting conditions. As such, permits-by-rule are appropriate for the purpose of limiting PTE when a facility has one type of emission source. EPA is approving all source category permits-by-rule submitted for purposes of limiting PTE for criteria pollutants. EPA is approving under section 112(l) of the CAA, Knox County Air Pollution Control (KCAPC) regulations Section 25.10.7, Section 25.10.8, and Section 25.10.10 for purposes of limiting PTE of HAP from coating operations, printing operations, and fiberglass molding and forming operations. For a description of this and other ways to limit PTE for a facility see the EPA guidance document entitled "Options for Limiting the Potential to Emit (PTE) of a Stationary Source Under Section 112 and Title V of the Clean Air Act (Act)" dated January 25, 1995, from John Seitz to the EPA Regional Air Division Directors.

These permits-by-rule were designed to meet criteria listed in the EPA guidance memorandum entitled "Guidance for State Rules for Optional Federally Enforceable Emissions Limits Based on Volatile Organic Compound Use" dated October 15, 1993, from D. Kent Barry to the EPA Regional Air Division Directors, an EPA guidance document entitled "Approaches to Creating federally-Enforceable Emissions Limits" dated November 3, 1993, and the January 25, 1995, guidance memorandum referenced above. These guidance documents set out specific guidelines for permit-by-rule development regarding applicability, compliance determination and certification, monitoring, reporting, record keeping, public involvement, practical enforceability, and the requirement that a facility cannot rely on emission limits or caps contained in

a permit-by-rule to justify violation of any rate-based emission limits or other applicable requirements.

A permit-by-rule applies to facilities which agree to limit their annual emissions to less than major source thresholds for criteria and/or hazardous air pollutant (HAP) emissions. A permit-by-rule must also provide that a facility owner or operator specifically apply for coverage under the permit-by-rule. KCAPC regulation Section 25.10.C.5 requires that a facility operating under a permit-by-rule must submit a written statement verifying this status to the Department. The source categories covered by the permit-by-rule regulations are fuel-burning equipment burning natural LPG and/or distillate oil, fuel burning equipment burning natural gas/LPG and/or residual oil, on-site power generation, concrete mixing plants, coating operations, printing operations, and fiberglass molding and forming operations. As such, these regulations meet the guidelines specified in the October 15, 1993, and the January 25, 1995, guidance documents that require a permit-by-rule to clearly identify the category of sources that qualify for the rule's coverage.

The October 15, 1993, and the January 25, 1995, guidance documents suggest that facilities be required to show compliance with the permit-by-rule on a yearly basis by requiring monthly record keeping of the relevant variable causing emissions and showing compliance using the monthly record of the relevant variable affecting emissions. The January 25, 1995, guidance document stipulates that where monitoring cannot be used to determine emissions directly, limits on appropriate operating parameters must be established for the units or source, and monitoring must verify compliance with those limits. In the case of the Knox County regulations, a facility is required to keep records of the use of or processing of a product or substance that produces the emissions. For instance, KCAPC Regulation Section 25.10.B.8 requires printing operations to keep monthly records of materials including but not limited to inks, thinners, and solvents if they contain any VOC or HAP. The printing facility must then show compliance with the 20,000 pounds per year limitation during any twelve consecutive month period. EPA believes that the permit-by-rule submitted by Knox County meets guidelines outlined in the October 15, 1993, and January 25, 1995, guidance documents for purposes of detailing specific compliance monitoring to show

compliance with the relevant limit resulting from a permit-by-rule.

The October 15, 1993, guidance document recommends that all submittals that result from permit-by-rule be certified for truth, accuracy, and completeness. KCAPAC regulation Section 25.10.C.3 requires that each facility which chooses to be covered by a permit-by-rule must submit annual reports and compliance certifications addressing the applicable requirements, and terms and conditions of each standard. Therefore, EPA believes that the permit-by-rule regulations submitted by Knox County meet requirements outlined in the October 15, 1993, guidance document for purposes of certification with respect to truth, completeness, and accuracy.

The October 15, 1993, guidance document recommends that reporting requirements should vary based on how close the facility emissions are to the relevant major source threshold. For facilities that are close to the major source threshold, the guidance recommends that a state or local air pollution control agency require more frequent reporting of the variable affecting emissions (e.g. gasoline throughput). KCAPC Regulation Section 25.10.C.3 requires all facilities to report emissions information or the variable directly affecting emissions on an annual basis. While under ideal circumstances, Knox County would require more frequent reporting as the relevant variable affecting emissions approached major source levels for title V, EPA believes that coupled with the requirement found in KCAPC Regulation Section 25.10.C.4, which requires that any exceedance of any applicable limitation be reported by one week after occurrence, Knox County's permit-by-rule regulations meet requirements outlined in the October 15, 1993, guidance document for purposes of reporting the relevant variable affecting emissions from the process. The October 15, 1993, guidance document also requires that a facility report any exceedance of an exclusionary rule within one week after its occurrence. The Knox County regulations satisfy this requirement by a verbatim incorporation of this requirement in KCAPC Regulation Section 25.10.C.4. Therefore, EPA believes that the Knox County regulations meet the requirements set out in the above-listed guidance documents for reporting.

The October 15, 1993, and the January 25, 1995, guidance documents specify that record keeping is required by a facility to show that the facility is eligible for the permit-by-rule and that

the facility is in compliance with the relevant permit-by-rule. The October 15, 1993, guidance document requires that record keeping be maintained on site and available to the permitting authority upon demand. The October 15, 1993, guidance document also requires that a facility be required to retain records for a period sufficient to support enforcement efforts. The Knox County regulations require that copies of all records required to be kept for permit-by-rule purposes be kept on site. The permit-by-rule regulations submitted by Knox County require that records be kept for a period of five years from the date of last entry. EPA believes that a five year time period is an adequate time period for a facility subject to a permit-by-rule to maintain records in order to support enforcement efforts.

The November 3, 1993, and the January 25, 1995, guidance documents set out requirements for public involvement in the development and application of permit-by-rule regulations. The November 3, 1993, guidance document states that if permit-by-rule regulations are sufficiently reliable and replicable, EPA and the public need not be involved with their application to individual sources, as long as the protocols themselves have been subject to notice and opportunity to comment and have been approved by EPA into the SIP. The January 25, 1995, guidance document provides that source category standards approved into the SIP or under section 112(l) of the Clean Air Act, if enforceable as a practical matter, can be used as federally enforceable limits on PTE. Once a specific source qualifies under the applicability requirements of the source-category rule, additional public participation is not required to make the limits federally enforceable as a matter of legal sufficiency since the rule itself underwent public participation and EPA review. The Knox County permit-by-rule underwent public participation at the local level when these rules were made locally-effective. EPA has had an opportunity to review these regulations and is publishing this notice to take comment on these regulations at the national level. Later in this Federal Register document, practical enforceability of Knox County's permit-by-rule regulations will be addressed. EPA believes that with this Federal Register document and other public process received at the local level that the Knox County permit-by-rule regulations satisfy requirements for public participation outlined in the November 3, 1993, and the January 25, 1995, guidance documents.

The January 25, 1995, guidance document sets out requirements for a permit-by-rule to be practically enforceable. These requirements stem from past precedence in what the EPA has required for a permit to be considered enforceable as a practical matter. See 54 FR 27274 (June 28, 1989) and a June 13, 1989, EPA policy memorandum entitled "Limiting Potential to Emit in New Source Permitting." The criteria include clear statements as to the applicability, specificity as to the standard that must be met, explicit statements of the compliance time frames (e.g. hourly, daily, monthly, or 12-month averages, etc.), that the time frame and method of compliance employed must be sufficient to protect the standard involved, record keeping requirements must be specified, and equivalency provisions must meet specific requirements. In general, practical enforceability means that the provision must specify: (1) a technically accurate limitation and the portions of the source subject to the limitation; (2) the time period for the limitation; and (3) the method to determine compliance including appropriate monitoring, record keeping, and reporting. All of these elements have been discussed prior to this paragraph in this Federal Register with the exception of (2) above. The Knox County regulations require facilities subject to the permit-by-rule to keep records on a monthly basis and to determine compliance with a yearly limit on a calendar monthly rolling average basis. This method for determining compliance with the permit-by-rule was addressed specifically as one practically enforceable way to show compliance with a permit limit in the June 13, 1989, guidance document entitled "Limiting Potential to Emit in New Source Permitting." As such, EPA believes the Knox County permit-by-rule regulations meet the requirements necessary for a permit-by-rule to be enforceable as a practical matter.

Finally, the October 15, 1993, guidance document stipulates that a facility cannot rely on emission limits or caps contained in a permit-by-rule to justify violation of any rate-based emission limits or other applicable requirements. This requirement for title V permitting is fulfilled by inclusion of KCAPC Regulation Section 25.10.C.5 which stipulates that non-compliance with provisions of the permit-by-rule regulations will be subject to an enforcement action unless the facility has first obtained a formal release through a part 70 permit or some other

federally enforceable permit from Knox County.

Eligibility for federally enforceable permit-by-rule limitations extends not only to certifications made after the effective date of this rule, but also to certifications issued under the current Knox County rule prior to the effective date of this rulemaking. If Knox County followed its own permit-by-rule regulation, it received certifications that established a limiting condition on a facility's PTE. EPA will consider all such permit-by-rule certifications which were submitted in a manner consistent with the Knox County regulations as federally enforceable upon the effective date of this action.

II. Final Action

In this action, EPA is approving the Knox County permit-by-rule regulations found at KCAPC Regulations: Section 25.10 into the Knox County portion of the Tennessee SIP. EPA is approving KCAPC Regulations Section 25.10.A, 25.10.B.7, 25.10.B.8, 25.10.B.10, 25.10.C for purposes of limiting PTE of HAP under section 112(l) of the CAA. The EPA is publishing this document without prior proposal because the EPA views this as a noncontroversial amendment and anticipates no adverse comments. However, in a separate document in this Federal Register publication, EPA is proposing to approve the SIP revision should adverse or critical comments be filed. This action will be effective December 16, 1996 unless, by November 14, 1996, adverse or critical comments are received. If the EPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on this action serving as a proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective December 16, 1996.

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

Nothing in this action shall be construed as permitting or allowing or establishing a precedent for any future request for a revision to any state implementation plan. 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.

III. Administrative Requirements

A. Executive Order 12866

This action has been classified as a Table 3 action for signature by the Regional Administrator under the procedures published in the Federal Register on January 19, 1989, (54 FR 2214-2225), as revised by a July 10, 1995, memorandum from Mary Nichols, Assistant Administrator for Air and Radiation. The Office of Management and Budget has exempted this action from review under Executive Order 12866.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 600, 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, 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 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).

C. Unfunded Mandates Reform Act of 1995

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), 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 final action promulgated today does not include a Federal mandate that may result in estimated costs of \$100 million or more to State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new Federal requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

D. Submission to Congress and the General Accounting Office

Under U.S.C. 801(a)(1)(A) as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted 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 General Accounting Office prior to publication of the rule in today's Federal Register. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

E. Petitions for Judicial Review

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 December 16, 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).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen oxides, Ozone, Particulate matter, Sulfur oxides.

Dated: August 29, 1996.

Robert F. McGhee,

Acting Regional Administrator.

Part 52 of chapter I, title 40, *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 RR—Tennessee

2. Section 52.2220, (c) is amended by adding paragraph (c)(140) to read as follows:

§ 52.2220 Identification of plan.

* * * * *

(c) * * *

(140) Permit-by-rule regulations for Knox County Department of Air Pollution Control submitted by the Knox County Department of Air Pollution Control through the Tennessee Department of Environment and Conservation on May 23, 1995 as part of Knox County's portion of the Tennessee SIP.

(i) Incorporation by reference.

(A) Regulation Section 25.10 of the Knox County portion of the Tennessee SIP as adopted by the Knox County Air Pollution Control Board on April 12, 1995.

(ii) Other material. None.

[FR Doc. 96-26199 Filed 10-11-96; 8:45 am]

BILLING CODE 6560-50-P

40 CFR Part 52

[ME-001-3567a; A-1-FRL-5620-1]

Approval and Promulgation of Air Quality Implementation Plans; Maine; Stage II Vapor Recovery

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving a State Implementation Plan (SIP) revision submitted by the State of Maine on July 24, 1995. This revision includes requirements for controlling volatile organic compound (VOC) emissions from bulk gasoline terminals and gasoline dispensing facilities. The intended effect of this action is to approve these regulations into the Maine SIP. This action is being taken in accordance with the Clean Air Act.

DATES: This action is effective December 16, 1996, unless EPA receives adverse or critical comments by November 14, 1996. If the effective date is delayed,

timely notice will be published in the Federal Register.

ADDRESSES: Comments may be mailed to Susan Studlien, Deputy Director, Office of Ecosystem Protection, U.S. Environmental Protection Agency, Region I, JFK Federal Building, Boston, MA 02203. Copies of the documents relevant to this action are available for public inspection during normal business hours, by appointment at the Office of Ecosystem Protection, U.S. Environmental Protection Agency, Region I, One Congress Street, 11th floor, Boston, MA; Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, 401 M Street, S.W., (LE-131), Washington, D.C. 20460; and the Bureau of Air Quality Control, Department of Environmental Protection, 71 Hospital Street, Augusta, ME 04333.

FOR FURTHER INFORMATION CONTACT: Anne E. Arnold, (617) 565-3166.

SUPPLEMENTARY INFORMATION: On July 26, 1995, EPA received a formal State Implementation Plan submittal from the Maine Department of Environmental Protection (DEP) containing the following VOC regulations:

Chapter 100: Definitions Regulation
Chapter 112: Bulk Terminal Petroleum Liquid Transfer Requirements
Chapter 118: Gasoline Dispensing Facilities Vapor Control

These regulations had been recently revised pursuant to the reasonable further progress (RFP) requirements of the Clean Air Act (CAA) [Section 182(b)(1)].

Background

On November 15, 1990, amendments to the 1977 Clean Air Act were enacted. Public Law 101-549, 104 Stat. 2399, codified at 42 U.S.C. 7401-7671q. Section 182(b)(1) of the amended Act requires that states with ozone nonattainment areas classified as moderate and above develop reasonable further progress (RFP) plans to reduce VOC emissions by 15 percent within these areas by 1996 when compared to 1990 baseline emission levels. The State of Maine contains three moderate ozone nonattainment areas 56 FR 56694 (Nov. 6, 1991). EPA, however, determined that RFP plans were not required in the Lewiston-Auburn moderate ozone nonattainment area and the Knox and Lincoln counties moderate ozone nonattainment area (60 FR 29763, (June 6, 1995)). Therefore, Maine adopted and submitted to EPA an RFP Plan for the Portland moderate ozone nonattainment area only. The revisions to Maine's Chapter 112 and Chapter 118 were adopted in order to generate VOC