be made for any period prior to the date on which the estate was reduced to one-half the amount specified in § 3.557(b)(4) or less.

(Authority: 38 U.S.C. 5503)

* * * * *

9. Section 3.559 is amended by:

A. Revising the section heading.

B. In paragraph (a), removing ''$500'' and adding, in its place, ''one-half the amount specified in § 3.557(b)(4)''.

C. In paragraph (b), removing ''is then $1,500 or more'' and adding, in its place, ''equals or exceeds the amount specified in § 3.557(b)(4)''.

The revision reads as follows:

§ 3.559 Resumption—where the estate equals or exceeds the statutory limit and includes chose in action.

* * * * *

§ 3.1007 [Amended]

10. Section 3.1007 is amended by removing ''$1,500'' and adding, in its place, ''the amount specified in § 3.557(b)(4)''.

Subpart B—Burial Benefits

11. The authority citation for part 3, subpart B continues to read as follows:

Authority: 105 Stat. 386, 38 U.S.C. 501(a), 2302–2308, unless otherwise noted.

12. In § 3.1604, paragraph (d)(1)(ii) is revised to read as follows:

§ 3.1604 Payments from non-Department of Veterans Affairs sources.

* * * * *

(d) * * *

(1) * * *

(ii) The deceased veteran is buried in a cemetery or a section thereof which is used solely for the interment of persons who are eligible for burial in a national cemetery or who, with respect to persons dying on or after November 1, 2000, were at the time of death members of a reserve component of the Armed Forces not otherwise eligible for such burial or were former members of such a reserve component not otherwise eligible for such burial who were discharged or released from service under conditions other than dishonorable.

* * * * *

PART 13—VETERANS BENEFITS ADMINISTRATION, FIDUCIARY ACTIVITIES

13. The authority citation for part 13 continues to read as follows:

Authority: 72 Stat. 1114, 1232, as amended, 1237; 38 U.S.C. 501, 5502, 5503, 5711, unless otherwise noted.

§ 13.70 [Amended]

14. In § 13.70, paragraph (a)(2) is amended by removing ''$1,500'' and adding, in its place, ''the amount specified in § 3.557(b)(4) of this chapter''.

§ 13.71 [Amended]

15. In § 13.71, paragraph (b) is amended by removing ''$1,500'' and adding, in its place, ''the amount specified in § 3.557(b)(4) of this chapter''.

16. Section 13.108 is amended by:

A. Revising the section heading.

B. In paragraph (a), removing ''$1,500'' and adding, in its place, ''the amount specified in § 3.557(b)(4) of this chapter'', and by removing ''$500'' and adding, in its place, ''one-half the amount specified in § 3.557(b)(4) of this chapter''.

C. In paragraph (c), removing ''exceeds $1,500'' and adding, in its place, ''equals or exceeds the amount specified in § 3.557(b)(4) of this chapter''.

The revision reads as follows:

§ 13.108 Estate equals or exceeds statutory limit; 38 U.S.C. 5503(b)(1).

* * * * *

[FR Doc. 01–23552 Filed 9–20–01; 8:45 am]

BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CO–001–0060a; MT–001–0032a; FRL–7055–4]

Approval and Promulgation of Air Quality Implementation Plans for Colorado and Montana: Transportation Conformity

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving revisions to the Colorado and Montana State Implementation Plans (SIPs) that incorporate consultation procedures for transportation conformity. The conformity rules assure that in air quality nonattainment or maintenance areas, projected emissions from transportation plans and projects stay within the motor vehicle emissions ceiling in the SIP. The transportation conformity SIP revisions enable the States to implement and enforce conformity consultation procedures in regulations for Conformity to State or Federal Implementation Plans of Transportation Plans, Programs, and Projects Developed, Funded or Approved Under Title 23 U.S.C. or the Federal Transit Laws. We are approving these SIP revisions under sections 110(k) and 176 of the Clean Air Act (Act).

DATES: This rule is effective on November 20, 2001 without further notice, unless EPA receives adverse comment by October 22, 2001. If we receive adverse comment, we will publish a timely withdrawal in the **Federal Register** informing the public that this rule will not take effect.

ADDRESSES: Written comments may be mailed to: Richard R. Long, Director, Air and Radiation Program, Mailcode 8P–AR, United States Environmental Protection Agency, Region VIII, 999 18th Street, Suite 300, Denver, Colorado 80202–2466

Copies of the documents relevant to this action are available for public inspection during normal business hours at the following offices:

United States Environmental Protection Agency, Region VIII, Air and Radiation Program, 999 18th Street, Suite 300, Denver, Colorado 80202–2466; and,

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

Copies of the State documents relevant to this action are available for public inspection at:

Colorado Department of Public Health and Environment, 4300 Cherry Creek Dr. S., Denver, Colorado 80246–1530.

Montana Department of Environmental Quality, Planning, Prevention and Assistance Division, 1520 East 6th Avenue, Helena, Montana 59620.

FOR FURTHER INFORMATION CONTACT: Kerri Fiedler, Air and Radiation Program, Mailcode 8P–AR, United States Environmental Protection Agency, Region VIII, 999 18th Street, Suite 300, Denver, Colorado 80202–2466. Telephone number: (303) 312–6493.

SUPPLEMENTARY INFORMATION: Throughout this document, wherever ''we,'' ''our,'' or ''us'' is used, we mean EPA.

Table of Contents

I. Background

a. What Is Transportation Conformity?

Conformity first appeared in the Act's 1977 amendments (Public Law 95–95). Although the Act did not define conformity, it stated that no Federal department could engage in, support in any way or provide financial assistance for, license or permit, or approve any activity which did not conform to a SIP which has been approved or promulgated.

The Act's 1990 Amendments expanded the scope and content of the conformity concept by defining conformity to an implementation plan. Section 176(c) of the Act defines conformity as conformity to an implementation plan's purpose of eliminating or reducing the severity and number of violations of the national ambient air quality standards (NAAQS) and achieving expeditious attainment of such standards. Also, the Act states that no Federal activity will: (1) Cause or contribute to any new violation of any standard in any area, (2) increase the frequency or severity of any existing violation of any standard in any area, or (3) delay timely attainment of any standard or any required interim emission reductions or other milestones in any area.

b. Why Must the States Submit a Transportation Conformity SIP?

We were required to issue criteria and procedures for determining conformity of transportation plans, programs, and projects to a SIP by section 176(c) of the Act. The Act also required that each State submit a revision to its SIP including conformity criteria and procedures. We published the first transportation conformity rule in the November 24, 1993, **Federal Register** (FR), and it was codified at 40 CFR part 51, subpart T and 40 CFR part 93, subpart A. We originally required the States and local agencies to adopt and submit a transportation conformity SIP revision to us by November 25, 1994. However, we revised the transportation conformity rule on August 7, 1995 (60 FR 40098), November 14, 1995 (60 FR 57179), August 15, 1997 (62 FR 43780), and it was codified under 40 CFR part 51, subpart T and 40 CFR part 93, subpart A—Conformity to State or Federal Implementation Plans of Transportation Plans, Programs, and Projects Developed, Funded or Approved Under Title 23 U.S.C. or the Federal Transit Laws (62 FR 43780). Our action of August 15, 1997, required the States to change their rules and submit a SIP revision by August 15, 1998.

c. How Does Transportation Conformity Work?

The Federal (or State) transportation conformity rule applies to all nonattainment and maintenance areas in a State. The Metropolitan Planning Organizations (MPOs), the State Departments of Transportation (in absence of a MPO), and U.S. Department of Transportation (USDOT) make conformity determinations. These agencies make conformity determinations on programs and plans such as transportation improvement programs, transportation plans, and projects. The MPOs calculate the projected emissions for the transportation plans and programs and compare those calculated emissions to the motor vehicle emissions ceiling established in the SIP. The calculated emissions must be smaller than the motor vehicle emissions ceiling (the ''emissions budget'') for showing positive conformity with the SIP.

II. Approval of the States' Transportation Conformity Rules

a. What Did the States Submit?

On November 5, 1999, the Governor of Colorado submitted a SIP revision that includes revisions to Colorado Regulation No. 10, Criteria for Analysis of Conformity, Part B—Conformity to State Implementation Plans of Transportation Plans, Programs and Projects Developed, Funded or Approved Under title 23 U.S.C. or the Federal Transit Act. The Colorado Air Quality Control Commission (AQCC) adopted this SIP revision on October 15, 1998 after appropriate public participation and interagency consultation.

On August 26, 1999, the Governor of Montana submitted a SIP revision that includes revisions to the Transportation Conformity section of its air quality rules (Sub-Chapter 13 of the Administrative Rules of Montana 9.2.2). The Montana Board of Environmental Review adopted this SIP revision on May 14, 1999 after appropriate public participation and interagency consultation. This SIP revision superseded an earlier version of the transportation conformity SIP that was adopted on August 8, 1996 and submitted on February 21, 1997.

b. What Is EPA Approving Today and Why?

We are approving the Colorado and Montana transportation conformity rules except for the incorporation by reference of 40 CFR Part 93, Subpart A, into Colorado Regulation No. 10. The rationale for this exclusion is discussed in Section II.D of this action. ''Incorporation by Reference'' (IBR) means that the State adopted the Federal rules without rewriting the text of the Federal rules but by referring to them for inclusion as if they were printed in the State regulation. EPA is not taking action on the States' IBR of the Federal rule for reasons discussed below. The effect of this action is that the States' consultation procedures will take the place of the general guidelines articulated in 40 CFR 93.105, and the remainder of the Federal rule will continue to apply for conformity purposes. Each State also adopted definitions that supplement, and in some cases, replace the definitions in § 93.101 of the Federal conformity rule. We are approving these definitions.

c. How Did the States Satisfy the Interagency Consultation Process?

Our rule requires the States to develop their own processes and procedures for interagency consultation among the Federal, State, and local agencies and resolution of conflicts meeting the criteria in 40 CFR Part 93, § 93.105. The SIP revisions must include processes and procedures to be followed by the MPO, State DOT, and USDOT in consulting with the State and local air quality agencies and EPA before making conformity determinations. Also, the transportation conformity SIP revision must have processes and procedures for the State and local air quality agencies and EPA in coordinating development of applicable SIPs with MPOs, State DOT, and USDOT.

The States developed their own consultation rules based on the elements in 40 CFR 93.105. We have determined that each State adequately included all elements of 40 CFR 93.105 and met the EPA SIP requirements.

d. Why Is EPA Not Acting on the States' IBR of the Federal Rule?

We promulgated the most recent transportation conformity rule on August 15, 1997. On March 2, 1999, the United States Court of Appeals for the District of Columbia Circuit issued its opinion in *Environmental Defense Fund* v. *Environmental Protection Agency*, No. 97–1637. The Court granted the environmental group's petition for

review and ruled that 40 CFR 93.102(c)(1), 93.121(a)(1), and 93.124(b) are unlawful and remanded 40 CFR 93.118(e)(1) and 93.120(a)(2) to EPA for revision to harmonize these provisions with the requirements of the Act. The sections that were included in this decision were:

(1) 40 CFR 93.102(c)(1) which allowed certain projects for which the National Environmental Policy Act (NEPA) process has been completed by the DOT to proceed toward implementation without further conformity determinations during a conformity lapse,

(2) 40 CFR 93.118(e) which allowed use of motor vehicle emissions budgets (MVEB) in the submitted SIPs after 45 days if EPA had not declared them inadequate,

(3) 40 CFR 93.120(a)(2) which allowed use of the MVEB in a disapproved SIP for 120 days after disapproval,

(4) 40 CFR 93.121(a)(1) which allowed the nonfederally funded projects to be approved if included in the first three years of the most recently conforming transportation plan and transportation improvement programs, even if conformity status is currently lapsed, and

(5) 40 CFR 93.124(b) which allowed areas to use a submitted SIP that allocated portions of a safety margin to transportation activities for conformity purposes before EPA approval.

Since the States were required to submit transportation conformity SIPs not later than August 15, 1998, and include those provisions in verbatim form, Colorado's SIP revision includes all those sections which the Court ruled unlawful or remanded for consistency with the Act. Montana's transportation conformity SIP was adopted and submitted subsequent to the court's decision. Montana attempted to address the court decision by not submitting for IBR the sections of the Federal rule affected by the lawsuit. However, Montana's submittal is not consistent with EPA's most recent interpretations of the sections of the rule affected by the court decision.

Because the court decision has invalidated several sections of the rule, we believe that it would be reasonable to exclude the States' IBR of the rule from this SIP approval action. As a result, we are not taking any action on the IBR of 40 CFR Part 93, Subpart A into the State conformity rules. Conformity determinations should comply with the relevant requirements of the statutory provisions of the Act underlying the court's decision on these issues, and with the remaining sections of the Federal rule not affected by the court decision. (EPA issued guidance on May 14, 1999 on how to implement these provisions in the interim prior to EPA amendment of the Federal transportation conformity rules.) Once these Federal rules have been revised, agencies performing conformity determinations in Colorado and Montana should comply with the requirements of the revised Federal rule until corresponding provisions of the Colorado and Montana conformity SIPs have been amended and approved by EPA. Since EPA is not acting on the States' IBR of any sections of the Federal conformity rule, the Federal rule, along with EPA's guidance for implementing the court decision, will continue to apply for conformity determinations, with the exception of the consultation provisions of the State programs which we are approving today which will apply in lieu of the consultation provision of the Federal rule.

III. Final Action

In this action, we are approving revisions to the Colorado and Montana transportation conformity SIPs. These SIP revisions were submitted by the Governor of Colorado on November 5, 1999 and by the Governor of Montana on August 26, 1999. We are publishing this rule without prior proposal because we view this as a noncontroversial amendment and anticipate no adverse comments. However, in the ''Proposed Rules'' section of today's **Federal Register** publication, we are publishing a separate document that will serve as the proposal to approve the SIP revisions if adverse comments are filed. This rule will be effective on November 20, 2001 without further notice unless we receive adverse comments by October 22, 2001. If we receive adverse comments, we will publish a timely withdrawal of the direct final rule, in the **Federal Register**, informing the public that the rule will not take effect. We will address all public comments in a subsequent final rule based on the proposed rule. We will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. If no such comments are received, the public is advised that this rule will be effective on November 20, 2001, and no further action will be taken on the proposed rule. Please note that if we receive adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, we may adopt as final those provisions of the rule that are not the subject of an adverse comment.

IV. 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 (Public Law 104–4). This rule also does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it 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. section 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. section 804(2). This rule will be effective November 20, 2001 unless EPA receives adverse written comments by October 22, 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 November 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, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: September 5, 2001.

Jack W. McGraw,

Acting Regional Administrator, Region VIII.

Chapter I, title 40, part 52, of the Code of Federal Regulations is amended to read 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)(92) to read as follows:

§ 52.320 Identification of plan.

* * * * *

(c) * * *

(92) On November 5, 1999, the Governor of Colorado submitted Regulation No. 10, Criteria for Analysis of Conformity, Part B—Conformity to State Implementation Plans of Transportation Plans, Programs and Projects Developed, Funded or Approved Under Title 23 U.S.C. or the Federal Transit Act, that incorporates conformity consultation requirements implementing 40 CFR Part 93, Subpart A into State regulation.

(i) Incorporation by reference.

(A) Regulation No. 10, Criteria for Analysis of Conformity, Part B—Conformity to State Implementation Plans of Transportation Plans, Programs and Projects Developed, Funded or Approved Under Title 23 U.S.C. or the Federal Transit Act, 5 CCR 1001–12, as adopted October 15, 1998, effective November 30, 1998.

* * * * *

Subpart BB—Montana

3. Section 52.1370 is amended by adding paragraph (c)(47) to read as follows:

§ 52.1370 Identification of plan.

* * * * *

(c) * * *

(47) On August 26, 1999, the Governor of Montana submitted Administrative Rules of Montana Sub-Chapter 13, ''Conformity'' that incorporates conformity consultation requirements implementing 40 CFR Part 93, Subpart A into State regulation.

(i) Incorporation by reference.

(A) Administrative Rules of Montana 17.8.1301, 17.8.1303, and 17.8.1305; through 1313, effective June 4, 1999; and 17.8.1304 effective August 23, 1996.

* * * * *

[FR Doc. 01–23596 Filed 9–20–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[Docket SC–038–200102(a); FRL–7062–1]

Approval and Promulgation of State Plans for DesignatedFacilities and Pollutants: SC

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The United States Environmental Protection Agency (EPA) is approving the section 111(d)/129 Plan submitted by the South Carolina Department of Health and Environmental Control (DHEC) on September 19, 2000, for the State of South Carolina. The section 111(d)/129 Plan for South Carolina implements and enforces the Emissions Guidelines (EG) for existing Hospital/Medical/Infectious Waste Incinerator (HMIWI) units.

DATES: This final rule is effective on October 22, 2001.

ADDRESSES: Copies of all materials considered in this rulemaking may be examined during normal business hours at the following location: EPA Region 4, Sam Nunn Atlanta Federal Center, 61 Forsyth Street, SW, Atlanta, Georgia 30303–8960.

FOR FURTHER INFORMATION CONTACT: Gregory Crawford at EPA Region 4, Air Planning Branch, 61 Forsyth Street, SW, Atlanta, Georgia 30303–8960, (404) 562–9046.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. What Action Is Being Taken by EPA Today?

We are approving the South Carolina State Plan, as submitted on September 19, 2000, for the control of air emissions from HMIWIs, except for those HMIWIs located in Indian Country. When EPA developed our New Source Performance Standard (NSPS) for HMIWIs, we also