USEPA takes action on the State's NSR SIP.

Sections 324.5524 and 324.5525 contain control requirements and applicable definitions for fugitive dust sources. These control requirements and definitions are very similar to those included in rules approved by USEPA in the State's particulate matter SIP. These sections are acceptable and USEPA is approving sections 324.5524 and 324.5525 for incorporation into the SIP.

Because the USEPA considers this action noncontroversial and routine, we are approving it without prior proposal. This action will become effective on April 13, 1998. However, if we receive adverse comments by March 12, 1998, USEPA will publish a document that withdraws this action.

Nothing in this action should be construed as permitting, allowing or establishing a precedent for any future request for revision to any SIP. The USEPA shall consider each request for revision to the SIP in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

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 (OMB) has exempted this regulatory action from E.O. 12866 review.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, USEPA 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, USEPA 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.

This approval does not create any new requirements. Therefore, I certify that this action does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the Act, preparation of the regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of the State action. The Act forbids USEPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. USEPA*, 427 U.S. 246, 256–66 (1976).

Under section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, the USEPA 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, the USEPA 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 the USEPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

The USEPA has determined that the approval action promulgated today does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves into the SIP requirements already existing under State or local law, and imposes no new Federal requirements. Accordingly, no additional costs to State, local, or tribal governments, or the private sector, result from this action.

Under 5 U.S.C. 801(a)(1)(A) as added by the Small Business Regulatory Enforcement Fairness Act of 1996, USEPA 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).

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by April 13, 1998. 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, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements.

Dated: January 12, 1998.

David A. Ullrich,

Acting Regional Administrator, Region V.

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 X—Michigan

2. Section 52.1170 is amended by adding paragraph (c)(110) to read as follows:

§ 52.1170 Identification of plan.

* * * * *

(c) * * *

(110) A revision to Michigan's State Implementation Plan (SIP), containing part of Michigan's Natural Resources and Environmental Protection Act, was submitted by the Michigan Department of Environmental Quality (MDEQ) on May 16, 1996, and supplemented on September 23, 1997. On December 30, 1997, MDEQ withdrew much of the original submittal. The revision incorporated below contains control requirements and applicable definitions for fugitive dust sources.

(i) Incorporation by reference. The following sections of Part 55 of Act 451 of 1994, the Natural Resources and Environmental Protection Act are incorporated by reference.

(A) 324.5524 Fugitive dust sources or emissions, effective March 30, 1995.

(B) 324.5525 Definitions, effective March 30, 1995.

[FR Doc. 98–3177 Filed 2–9–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[TX35–1–6168; FRL–5962–3]

Approval and Promulgation of Air Quality State Implementation Plans (SIP); Texas; Disapproval of Revisions to the State Implementation Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The EPA is taking final action on disapproval of SIP revisions Texas submitted for Regulation IV, 30 TAC Chapter 114, sections 114.1 ''Maintenance and Operation of Air Pollution Control Systems or Devices

Used to Control Emissions from Motor Vehicles'' and 114.5 ''Exclusions and Exceptions'' on February 24, 1989, September 6, 1990, and July 13, 1993.

The EPA is disapproving these revisions that relate to Statewide antitampering provisions and exemptions to antitampering provisions for motor vehicles or motor vehicle engine emission control systems. The EPA is taking final disapproval action because the State's antitampering rules are not consistent with the Clean Air Act (the Act), section 203(a)(3) and EPA's tampering prohibition as outlined in EPA's antitampering Enforcement Policy, Mobile Source Enforcement Memorandum No. 1A.

EFFECTIVE DATE: This action is effective as of March 12, 1998.

FOR FURTHER INFORMATION CONTACT: Mr. Paul Scoggins, Air Planning Section (6PD–L), EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, telephone (214) 665–7354 or via E-mail at scoggins.paul@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

This document announces EPA's final action regarding disapproval of three revisions that relate to Statewide antitampering provisions and exceptions to antitampering provisions for motor vehicles or motor vehicle engine emission control systems. On February 24, 1989, September 6, 1990, and July 13, 1993, EPA received revisions to the Texas SIP for changes to Regulation IV, 30 TAC Chapter 114, sections 114.1 and 114.5, 114.5, and 114.1 and 114.5 respectively. In their regulations, Texas adopted specific measures restricting emission control equipment removal/modifications (antitampering) and exempting or providing exclusions for vehicles from antitampering requirements.

The Federal tampering prohibition for emission control equipment for motor vehicles and motor vehicle engines is contained in section 203(a)(3) of the Act, 42 U.S.C. 7522(a)(3). Section 203(a)(3)(A) of the Act prohibits ''any person from removing or rendering inoperative any emission control device or element of design installed on or in a motor vehicle or motor vehicle engine prior to its sale and delivery to an ultimate purchaser'' and prohibits ''any person from knowingly removing or rendering inoperative any such device or element of design after such sale and delivery to the ultimate purchaser.'' Mobile Source Enforcement Memorandum No. 1A, dated June 25, 1974, provides guidance on what is a violation of section 203(a)(3).

The State revision, received February 24, 1989, made the following changes. Section 114.1 prohibits: (1) The removal of or render inoperative any system or device used to control emissions from a motor vehicle or motor vehicle engine or any part thereof; (2) specifies the conditions for the acceptable removal and/or installation of vehicle engines, catalytic converters, or other emission control components; (3) prohibits leasing, sale, or offer to sale motor vehicles that have tampered emission control equipment; (4) and finally, establishes sign posting requirements for prohibitions.

Section 114.5 exempts from the provisions of 114.1: (1) Dual-fuel conversions specified by the Department of Public Safety (DPS); (2) vehicles belonging to persons being transferred to a foreign country and specifies associated documentation requirements; (3) sales or offers for sale motor vehicles for wholesale transaction and for sales or trade-ins from an individual to a vehicle dealer; (4) Federal, State and local agencies that sell abandoned, confiscated, or seized vehicles and vehicle auction facilities if specific conditions are satisfied.

The State revision, received September 9, 1990, to section 114.5 exempts all dealer transactions that do not result in the sale of a tampered vehicle to an individual for operation on a public highway.

The State revision, received on July 13, 1993, made the following changes. Section 114.1 addresses the replacement or installation of aftermarket alternative fuel conversions equipment and any other system or device relating to emissions, safety concerns and antitampering. Section 114.5 specifies conditions for granting motor vehicle and motor vehicle engine exclusions from the provisions of section 114.1, deletes original text in section 114.5(c) to improve consistency with section 114.1, and redesignates original paragraphs. For further discussion, please refer to the proposal for this action (62 FR 48033, September 12, 1997).

II. Final Action

The EPA is taking final disapproval action on Texas SIP revisions for Texas Regulation IV, 30 TAC Chapter 114, sections 114.1 and 114.5, based on the following inconsistencies with the Clean Air Act and EPA's tampering prohibition. Section 114.1(b)(4) allows replacement or installation of any system or device (other than catalytic converters, engines and the conversion of the vehicle to alternative fuels, which are handled under separate subsections) if: The system or device can be demonstrated to be at least as effective in reducing emissions as the original equipment. This rule does not provide how the above demonstration will be made nor the criteria for the demonstration. Section 114.5(a)(1) allows registered farm vehicles used primarily on a farm or ranch to remove or make inoperable the farm vehicles air pollution control system or device used to control emissions from the farm vehicle. This exemption is contrary to section 203(a)(3)(A) of the Act and EPA tampering prohibition as outlined in Memorandum No. 1A. Section 114.5(c) allows exclusion from tampering laws by petition to the State for danger to person or property. The EPA has never recognized any circumstances that merit removal of a catalytic converter or other emissions controls because of a fire hazard or other problem. Again, this is contrary to the Act and EPA tampering prohibition. In addition, section 114.1(b)(3) references a deleted section and section 114.1(e) allows dispensing of leaded gasoline if properly labeled. The Act banned the dispensing of leaded gasoline on January 1, 1996.

These inconsistencies and the basis of EPA's action were published as a proposed disapproval action on September 12, 1997, in the **Federal Register** (62 FR 48033). No comments were received during the public comment period.

Texas' statewide tampering prohibitions are part of the state SIP but are not required under section 179(a) of the Act. Even though there is a federal law which provides for EPA enforcement, many states do have such rules and use them successfully as enforcement tools for resolutions of consumer complaints involving tampered vehicles, deterrence of tampering, deterrence of selling tampered vehicles, and enforcement of tampering violations. Federal law in section 203(a) of the Act, which prohibits tampering, will continue to be in effect. Since State tampering rules are not required by the Act, this final disapproval action does not impose sanctions for failure to meet Act requirements.

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.

III. Administrative Requirements

A. Executive Order (E.O.) 12866

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

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. *See* 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

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

C. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995, signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to private 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.

The EPA has determined that this final disapproval action does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal final disapproval action imposes no new 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 5 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 the 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 this rule in today's **Federal Register**. This rule is not a ''major rule'' as defined by 5 U.S.C. section 804(2).

E. Petitions for Judicial Review

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Courts of Appeals for the appropriate circuit by April 13, 1998. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purpose 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) of the Act.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

Dated: January 26, 1998.

Jerry Clifford,

Acting Regional Administrator, Region VI.

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 *et seq.*

Subpart SS—Texas

2. Section 52.2311 is added to read as follows:

§ 52.2311 Motor vehicle antitampering.

The State of Texas submitted revisions to the State Implementation Plan for 30 TAC Chapter 114, sections 114.1 ''Maintenance and Operation of Air Pollution Control Systems or Devices Used to Control Emissions from Motor Vehicles'' and 114.5 ''Exclusions and Exceptions'' on February 24, 1989, and September 6, 1990, and July 13, 1993. The EPA disapproved these revisions that relate to Statewide antitampering provisions and exemptions to antitampering provisions for motor vehicles or motor vehicle engine emission control systems because the State's antitampering rules are not consistent with the Act, section 203(a)(3) and EPA's tampering prohibition as outlined in EPA's antitampering enforcement policy, Mobile Source Enforcement Memorandum No. 1A.

[FR Doc. 98–3175 Filed 2–9–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[AZ 071–009; FRL–5957–4]

Approval and Promulgation of State Implementation Plans; Arizona—Maricopa County Ozone and PM_{10} Nonattainment Areas

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is taking final action approving a State Implementation Plan (SIP) revision submitted by the State of Arizona on September 15, 1997, establishing Cleaner Burning Gasoline (CBG) fuel requirements for gasoline distributed in the Phoenix (Maricopa County) ozone nonattainment area. Arizona has developed these fuel requirements to reduce emissions of volatile organic compounds (VOC) and particulates (PM_{10}) in accordance with the requirements of the Clean Air Act (CAA). EPA is approving Arizona's fuel requirements into the Arizona SIP because either they are not preempted by federal fuels requirements, or to the extent that they are or may be preempted, EPA finds that the requirements are necessary for the Maricopa area to attain the national ambient air quality standards (NAAQS) for ozone and particulates. EPA intends to publish a separate document in the **Federal Register** approving Arizona's opt-out from the federal reformulated gasoline (RFG) program to be effective 90 days from the effective date of this EPA final action.

DATES: This final rule is effective on March 12, 1998.

ADDRESSES: Copies of the SIP revision and EPA's proposed and final