§ 52.220 Identification of Plan.

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(c) * * *

(6) * * *

(xvi) Northern Sonoma County Air Pollution Control District.

(A) Previously approved on September 22, 1972 and now deleted without replacement Rules 56, 64, 64.1 and 64.2.

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(31) * * *

(xviii) * * *

(E) Previously approved on January 24, 1978 and now deleted without replacement Rules 213.2 and 213.3.

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[FR Doc. 99–2782 Filed 2–8–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CO–001–0019a; FRL–6216–6]

Approval and Promulgation of Air Quality Implementation Plans; Colorado; Revision to Regulation No. 7, Section III, General Requirements for Storage and Transfer of Volatile Organic Compounds

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving the revision to the Colorado State Implementation Plan (SIP) as submitted by the Governor on April 22, 1996. The revision consists of the addition of paragraph C to section III, ''General Requirements for Storage and Transfer of Volatile Organic Compounds,'' of Regulation No. 7, ''Regulation To Control Emissions of Volatile Organic Compounds.'' This new paragraph C to section III exempts beer production and associated beer container storage and transfer operations involving volatile organic compounds (VOC) with a true vapor pressure of less than 1.5 pounds per square inch atmosphere (psia), at actual conditions, from the submerged or bottom-fill requirements of section III. B. EPA's approval will serve to make this revision federally enforceable and was requested by the Governor.

DATES: This direct final rule is effective on April 12, 1999 without further notice, unless EPA receives adverse comment by March 11, 1999. If adverse comment is received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Written comments may be mailed to: Richard R. Long, Director, Air and Radiation Program (8P–AR), United States Environmental Protection Agency, Region VIII, 999 18th Street, Suite 500, Denver, Colorado 80202–2466.

Copies of the documents relevant to this action are available for public inspection during normal business hours at the following office: United States Environmental Protection Agency, Region VIII, Air and Radiation Program, 999 18th Street, Suite 500, Denver, Colorado 80202–2466; and, the Air and Radiation Docket and Information Center, United States Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460.

Copies of the State documents relevant to this action are available for public inspection at the Colorado Department of Public Health and Environment, Air Pollution Control Division, 4300 Cherry Creek Drive South, Denver, Colorado 80246–1530.

FOR FURTHER INFORMATION CONTACT: Tim Russ, Air and Radiation Program (8P–AR), United States Environmental Protection Agency, Region VIII, 999 18th Street, Suite 500, Denver, Colorado 80202–2466 Telephone number: (303) 312–6479.

SUPPLEMENTARY INFORMATION:

I. Background to the Action

A. Brief History on the Development of Colorado's Regulation No. 7 (Reg. 7)

On March 3, 1978, EPA designated the Denver-Boulder metropolitan area as nonattainment for the National Ambient Air Quality Standards (NAAQS) for ozone (43 FR 8976). This designation was reaffirmed by EPA on November 6, 1991 (56 FR 56694) pursuant to section 107(d)(1) of the CAA, as amended in 1990. Furthermore, since the Denver-Boulder area had not shown a violation of the ozone standard during the three-year period from January 1, 1987 to December 31, 1989, the Denver-Boulder area was classified as a ''transitional'' ozone nonattainment area under section 185A of the amended Act.

The current Colorado Ozone SIP was approved by EPA in the **Federal Register** on December 12, 1983 (48 FR 55284). The SIP contains Reg. 7 which applies RACT to stationary sources of VOCs. Reg. 7 was adopted to meet the requirements of Section 172(b)(2) and (3) of the 1977 CAA (concerning the application of RACT to stationary sources [1].)

[1] The requirement to apply RACT to existing stationary sources in a nonattainment area was carried forth under the amended Act in section 172(c)(1).

During 1987 and 1988, EPA Region VIII conducted a review of Reg. 7 for consistency with the Control Techniques Guidelines documents (CTGs) and regulatory guidance, for enforceability and for clarity. The CTGs, which are guidance documents issued by EPA, set forth measures that are presumptively RACT for specific categories of sources of VOCs. A substantial number of deficiencies were identified in Reg. 7. In 1987, EPA published a proposed policy document that included, among other things, an interpretation of the RACT requirements as they applied to VOC nonattainment areas (see 52 FR 45044, November 24, 1987). On May 25, 1988, EPA published a guidance document entitled ''Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations, Clarification to Appendix D of the November 24, 1987 **Federal Register** Notice'' (the ''Blue Book''). A review of Reg. 7 against these documents uncovered additional deficiencies in the regulation.

By a letter dated September 27, 1989, the Governor submitted revisions to Reg. 7 that partially addressed EPA's concerns. By a letter dated August 30, 1990, the Governor submitted additional revisions to Reg. 7 that addressed EPA's remaining concerns with the September 27, 1989, SIP revision.

On May 30, 1995, EPA published a final rule in the **Federal Register** (60 FR 28055) that fully approved the Governor's September 27, 1989, and August 30, 1990, revisions to Reg. 7. The final rule became effective on June 29, 1995.

B. Background Material Regarding the New Exemption to Section III ''General Requirements for Storage and Transfer of Volatile Organic Compounds'' of Reg. 7

Section III of Reg. 7 contains the following language in paragraph III. B which relates to the transfer of VOCs: ''Except as otherwise provided in this regulation, all volatile organic compounds transferred to any tank, container, or vehicle compartment with a capacity exceeding 212 liters (56 gallons), shall be transferred using submerged or bottom filling equipment. For top loading, the fill tube shall reach within six inches of the bottom of the tank compartment. For bottom-fill operations, the inlet shall be flush with the tank bottom.''

In June of 1994, the Colorado Association of Commerce and Industry (CACI) sought an exemption to the section III. B submerged/bottom-fill requirements of Reg. 7. One of CACI's members, Coors Brewing Company of

Golden, Colorado (Coors), had determined that it had several tanks and process vessels of greater than 56 gallons capacity to which it transferred VOCs without using submerged or bottom filling equipment. The VOC[2] in this case was mostly ethanol. CACI's original proposed SIP revision to section III of Reg. 7 was determined by both the Colorado Air Pollution Control Division (APCD) and EPA to be overly broad. On March 1, 1995, the APCD proposed an alternative SIP revision, narrowing the scope of the revision to only apply to beer production and associated beer container storage and transfer operations involving VOCs with a true vapor pressure of less than 1.5 psia.

The purpose of CACI's request for the SIP revision was described in their hearing statement that was provided to the Colorado Air Quality Control Commission (AQCC). Documentation provided by Coors, and included in CACI's hearing statement, indicated that costs to retrofit the non-complying tanks and process vessels at the Coors Golden, Colorado facility to permit submerged or bottom filling would be approximately $350,000. The corresponding emission reduction would be approximately 5.74 tons per year (TPY) or 31.45 pounds per day.

On March 16, 1995, the AQCC approved an exemption from Reg. 7's submerged/bottom-fill requirements consistent with the APCD's March 1, 1995, proposal. On April 22, 1996, the Governor submitted this exemption to EPA for approval as a SIP revision. The exemption is limited to beer production and associated beer container storage and transfer operations involving VOCs with a true vapor pressure of less than 1.5 psia.

The exemption is applicable to the Denver-Boulder metropolitan area in that this area has been the only ozone nonattainment area (originally classified as transitional under section 185A of the CAA) in Colorado. Coors is the only large-scale brewery operation in the Denver-Boulder area, although there are several micro-breweries in the Denver-Boulder area to which this exemption would apply.

On October 30, 1997, EPA asked the APCD for additional information regarding the amount of emission reductions that would not be realized as a result of the exemption. In a letter dated November 24, 1997, from Dennis Myers, Unit Leader, Construction Permits, APCD, to Larry Svoboda, Air State Support Unit, Air Program, Region VIII, EPA, the State provided further emission estimates for Coors and the micro-breweries in the Denver-Boulder area that this Reg. 7 revision would affect. For the State's November 24, 1997, letter, Coors provided additional emissions estimates that indicated approximately 12.442 tons per year of VOCs would be exempted from control, at Coors' facility, under the revision to Reg. 7. The State also included in its letter a listing of 44 brewpubs, contract breweries, and micro-breweries located in the Denver-Boulder ozone area. Based on a State ''Inter-Office Communication'', included with the State's November 24, 1997, letter, the State assigned an annual average emission factor of 0.13 tons per year of VOCs for craft breweries (which includes micro-breweries, brewpubs, and contract breweries). Including the average annual VOC emissions from these additional 44 facilities, the Reg. 7 revision would exempt approximately 18.16 tons per year, or 99.5 pounds per day of VOC emissions (12.44 tons per year from Coors and 5.72 tons per year from micro-breweries, brewpubs, and contract breweries).

This amount of VOC emissions is extremely minimal compared to the total inventory of VOC emissions in the Denver-Boulder area. Therefore, EPA does not believe the Reg. 7 exemption will interfere with the area's ability to attain and maintain the ozone NAAQS.[3] In conducting its analysis of the proposed exemption, EPA examined the State's VOC emission inventory for the Denver-Boulder area for 1993, which the State submitted on August 8, 1996 as part of an ozone maintenance plan for the Denver-Boulder area. Although the maintenance plan was rendered unnecessary by EPA's revocation of the 1-hour ozone standard, EPA believes that the 1993 VOC emission inventory contained in the maintenance plan is comprehensive and accurate. In the 1993 inventory, the State estimated that VOC emissions from anthropogenic sources for the Denver-Boulder area were approximately 312 tons per day. The Reg. 7 exemption that EPA is acting on today would increase (or more accurately, would not reduce) VOC emissions in the Denver-Boulder area by approximately 99.5 pounds per day, which is equivalent to 0.05 tons per day. This is only 0.016% of the total 1993 VOC inventory of 312 tons per day, an amount which is not anticipated to interfere with the area's ability to attain or maintain the 0.08 ppm 8-hour ozone standard. Accordingly, EPA is approving the submitted Reg. 7 exemption as a revision to the SIP.

II. Analysis of the State's Submittal

Section 110(k) of the CAA sets out provisions governing EPA's action on submissions of revisions to a State Implementation Plan. The CAA also requires States to observe certain procedural requirements in developing SIP revisions for submittal to EPA. Section 110(a)(2) of the CAA requires that each SIP revision be adopted after reasonable notice and public hearing prior to being submitted by a State to EPA.

To accomplish the above revisions to Reg. 7, the AQCC held a public hearing on March 16, 1995, directly after which the AQCC adopted the revision to Reg. 7. This revision became effective on May 30, 1995. The Governor submitted this revision to Reg. 7 to EPA by a letter dated April 22, 1996. By operation of law under the provisions of section 110(k)(1)(B) of the CAA, the submittal became complete on October 22, 1996.

III. Final Action

EPA is approving the revision to Colorado Regulation No. 7, section III, ''General Requirements for Storage and Transfer of Volatile Organic Compounds,'' that adds a new paragraph C as adopted by the AQCC on March 16, 1995, and submitted to EPA by the Governor on April 22, 1996.

EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should adverse comments be filed. This rule will be effective April 12, 1999 without further notice unless the Agency receives adverse comments by March 11, 1999.

If EPA receives such comments, then EPA will publish a timely withdrawal of the direct final rule informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period on this rule. Any parties interested in commenting on this rule

[2] EPA's definition of a VOC is found in 40 CFR 51.100(s) and was most recently amended on April 9, 1998 (63 FR 17331).

[3] On July 18, 1997, EPA replaced the 0.12 parts per million (ppm) 1-hour ozone standard with a 0.08 ppm 8-hour ozone standard (62 FR 38856). On June 5, 1998, EPA revoked the 0.12 ppm 1-hour standard for the Denver-Boulder area (and other areas around the country) and now only the new 8-hour ozone standard applies. As a result of the revocation, the Denver-Boulder area currently has no designation for ozone. EPA's current thinking is that the Agency will designate areas attainment or nonattainment for the new standard in the year 2000.

should do so at this time. If no such comments are received, the public is advised that this rule will be effective on April 12, 1999 and no further action will be taken on the proposed rule.

IV. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866, entitled ''Regulatory Planning and Review.''

B. Executive Order 12875: Enhancing the Intergovernmental Partnership

Under Executive Order 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a state, local, or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 12875 requires EPA to provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected state, local, and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of state, local, and tribal governments ''to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates.''

Today's rule does not create a mandate on state, local, or tribal governments. The rule does not impose any enforceable duties on state, local, or tribal governments. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this rule.

C. Executive Order 13045

Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) is determined to be ''economically significant'' as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health and safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to E.O. 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

D. Executive Order 13084: Consultation and Coordination With Indian Tribal Governments

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly affects or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 12084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments ''to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities.''

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This final rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of State action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

F. Unfunded Mandates

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 approval action promulgated 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 a redesignation to attainment and pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, will result from this action.

G. Submission to Congress and the Comptroller General

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 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 the publication of the rule in the **Federal Register**. This rule is not a ''major rule'' as defined by 5 U.S.C. section 804(2).

H. 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 April 12, 1999. 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).)

Nothing in this action should be construed as making any determination or expressing any position regarding Colorado's audit privilege and penalty immunity law, sections 13–25–126.5, 13–90–107, and 25–1–114.5, Colorado Revised Statutes, Colorado Senate Bill 94–139, effective June 1,1994, or its impact upon any approved provision in the SIP, including the revision at issue here. The action taken herein does not express or imply any viewpoint on the question or whether there are legal deficiencies in this or any other Clean Air Act program resulting from the effect of Colorado's audit privilege and immunity law. A state audit privilege and immunity law can affect only state enforcement and cannot have any impact on federal enforcement authorities. EPA may at any time invoke its authority under the Clean Air Act, including, for example, sections 113, 167, 205, 211, or 213, to enforce the requirements or prohibitions of the state plan, independently of any state enforcement effort. In addition, citizen enforcement under section 304 of the Clean Air Act is likewise unaffected by a state audit privilege or immunity law.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Note: Incorporation by reference of the State Implementation Plan for the State of Colorado was approved by the Director of the Federal Register on July 1, 1980.

Dated: December 21, 1998.

William P. Yellowtail,

Regional Administrator, Region VIII.

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart G—Colorado

2. Section 52.320 is amended by adding paragraph (c)(83) to read as follows:

§ 52.320 Identification of plan.

* * * * *

(c) * * *

(83) A revision to the Colorado State Implementation Plan was submitted by the Governor of the State of Colorado on April 22, 1996. The revision consists of an amendment to Colorado Air Quality Control Commission Regulation No. 7, ''Regulation To Control Emissions of Volatile Organic Compounds,'' to provide an exemption for beer production and associated beer container storage and transfer operations involving volatile organic compounds under 1.5 psia from certain bottom or submerged filling requirements that Regulation No. 7 otherwise imposes. The revision consists of the addition of paragraph C to section III, ''General Requirements for Storage and Transfer of Volatile Organic Compounds,'' of Regulation No. 7.

(i) Incorporation by reference.

(A) Colorado Air Quality Control Commission Regulation No. 7, 5 CCR 1001–9, section III, paragraph C, adopted by the Colorado Air Quality Control Commission on March 16, 1995, State effective May 30, 1995.

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[FR Doc. 99–2981 Filed 2–8–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[Region 2 Docket No. NY30–188b, FRL–6231–7]

Approval and Promulgation of State Plans for Designated Facilities; New York

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking direct final action on revisions to the State Plan submitted by New York to fulfill the requirements of sections 111(d)/129 of the Clean Air Act for Municipal Waste Combustors (MWC). The revisions concern the implementation and enforcement of the Emissions Guidelines, as amended by EPA on August 25, 1997, applicable to existing large MWC units with individual capacity to combust more than 250 tons per day of municipal solid waste. We are approving the State Plan which imposes revised emission limits for four pollutants (hydrogen chloride, sulfur dioxide, nitrogen oxides and lead) and compliance schedules for the existing MWC's in New York which will reduce the designated pollutants.

DATES: This rule is effective on April 12, 1999 without further notice, unless EPA receives adverse comment by March 11, 1999. If EPA receives such comment, EPA will publish a timely withdrawal in the **Federal Register** informing the public that this rule will not take effect.

ADDRESSES: All comments should be addressed to: Ronald J. Borsellino, Chief, Air Programs Branch, Environmental Protection Agency, Region 2 Office, 290 Broadway, 25th Floor, New York, New York 10007–1866.

Copies of the state submittal are available at the following addresses for inspection during normal business hours:

Environmental Protection Agency, Region 2 Office, Air Programs Branch, 290 Broadway, 25th Floor, New York, New York 10007–1866.

New York State Department of Environmental Conservation, Division of Air Resources, 50 Wolf Road, Albany, New York 12233.

Environmental Protection Agency, Air and Radiation Docket and Information Center, Air Docket (6102), 401 M Street, S.W., Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT: Christine DeRosa or Kirk J. Wieber, Air Programs Branch, Environmental Protection Agency, Region 2 Office, 290 Broadway, 25th Floor, New York, New York 10007–1866, (212) 637–4249.

SUPPLEMENTARY INFORMATION:

A. Background

On December 19, 1995, pursuant to sections 111 and 129 of the Clean Air Act (Act), EPA promulgated new source performance standards (NSPS) applicable to new Municipal Waste Combustors (MWCs) and Emission Guidelines (EG) applicable to existing MWCs. The NSPS and EG are codified at 40 CFR part 60, subparts Eb and Cb, respectively, see 60 FR 65387. Subparts Cb and Eb regulate the following