

(1) May request an appointment to inspect records at the Commission's offices between the hours of 8 a.m. and 4:30 p.m. on any day;

(2) Must present suitable identification, such as a driver's license, employee identification card, or Medicare card;

(3) If accompanied by another individual, must sign a statement, if requested by the chief administrative officer, authorizing discussion of his or her record in the presence of that individual;

(4) Who files a request by mail must include his or her date of birth, dates of employment at the Commission (if applicable), and suitable proof of identity, such as a facsimile of a driver's license, employee identification card, or Medicare card; and

(5) Must, if requested by the chief administrative officer, provide additional proof of identification.

#### **§ 3003.4 Response to a request.**

(a) In the case of a request for notice of the existence of a record, the chief administrative officer shall respond within 10 days of receipt of a request and shall inform the individual whether a system of records maintained by the Commission contains such a record.

(b) In the case of a request for access to a record or for a copy of a record, the chief administrative officer shall acknowledge the request within 10 days and shall promptly thereafter—

(1) Fulfill the request by mail or arrange for an inspection by the requester in the Commission's offices; or

(2) If the request is denied, notify the requester of the denial, the reasons for the denial, the procedures for appealing the refusal, and the name and address of the Chairman of the Commission who will consider an appeal.

(c) In the case of a request for amendment, the chief administrative officer shall

(1) Acknowledge the request in writing within 10 days;

(2) Promptly review the record; and

(3)(i) Make any requested amendment of a record found to be not accurate, relevant, timely, or complete; notify the requester of the change and provide a copy of the corrected record; and notify any previous recipient of the record (excluding Commission staff who obtained the record in the performance of their duties and recipients under the Freedom of Information Act) of any change; or

(ii) Inform the requester of a refusal to amend the record, the reasons for the refusal, the procedures for appealing the refusal, and the name and address of the Chairman of the Commission who will consider an appeal.

#### **§ 3003.5 Appeals of denials of access or amendment.**

(a) If a request for access to or amendment of a record is denied, the requester may file a written appeal with the Chairman of the Commission. The Chairman will decide each appeal within 30 days of receipt unless the Chairman has, for good cause, extended the period for another 30 days.

(b) If an appeal is denied, the requester will be notified of the decision, the reasons for the denial, the right to file a concise statement of disagreement, the procedures for filing a statement of disagreement, the subsequent uses of a statement of disagreement, and of the right to seek judicial review in accordance with subsection (g) of the Privacy Act.

#### **§ 3003.6 Fees.**

The first copy of any record furnished under the Privacy Act of 1974 will be provided without charge. Additional copies will be charged at the cost of reproduction.

#### **§ 3003.7 Exemptions.**

The Postal Rate Commission has not established any exempt system of records.

[FR Doc. 99-28125 Filed 10-27-99; 8:45 am]

BILLING CODE 7710-FW-P

## **ENVIRONMENTAL PROTECTION AGENCY**

### **40 CFR Part 52**

[TX-79-1-7328a, FRL-6459-8]

#### **Approval and Promulgation of Implementation Plans; Texas; Repeal of Board Seal Rule and Revisions to Particulate Matter Regulations**

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

**ACTION:** Direct final rule.

**SUMMARY:** The EPA is taking direct final action approving revisions to the Texas Natural Resource Conservation Commission (TNRCC) regulations in the Texas State Implementation Plan (SIP). These revisions remove the Texas Air Control Board (TACB) Seal rule from the Texas SIP and revise and recodify regulations for control of particulate matter in the Texas SIP. Removal of the Board Seal rule eliminates a rule that no longer applies to TNRCC. These revisions to the particulate matter regulations update the SIP-approved regulations and make the SIP citations consistent with the current State citations.

**DATES:** This rule is effective on December 27, 1999 without further notice, unless EPA receives adverse comment by November 29, 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:** Written comments on this action should be addressed to Mr. Thomas H. Diggs, Chief, Air Planning Section (6PD-L), at the EPA Region 6 Office listed below. Copies of documents relevant to this action are available for public inspection during normal business hours at the following locations. Anyone wanting to examine these documents should make an appointment with the appropriate office at least two working days in advance.

Environmental Protection Agency, Region 6, Air Planning Section (6PD-L), 1445 Ross Avenue, Dallas, Texas 75202-2733.

Texas Natural Resource Conservation Commission, Office of Air Quality, 12124 Park 35 Circle, Austin, Texas 78753.

**FOR FURTHER INFORMATION CONTACT:** Bill Deese of the EPA Region 6 Air Planning Section at (214) 665-7253.

#### **SUPPLEMENTARY INFORMATION:**

Throughout this document whenever "we" is used, we mean EPA. Texas Regulation I in the SIP and revisions to Regulation I being approved in this action have undesignated headings. In this document, references to these undesignated heading are preceded by the word "concerning." This document makes many references to subsections of 40 CFR 52.2270. Section 40 CFR 52.2270 was moved to 40 CFR 52.2299 in a **Federal Register** action published July 7, 1999 (64 FR 36586).

On September 1, 1993, the TACB merged with the former Texas Department of Water Resources to become the Office of Air Quality in the new TNRCC. The TACB air regulations were transferred from Title 31 of the Texas Administrative Code (31 TAC) to Title 30 of the Texas Administrative Code (30 TAC). The designation for the General Rules changed from 31 TAC Chapter 101 to 30 TAC Chapter 101. The designation for Regulation I changed from 31 TAC Chapter 111 to 30 TAC Chapter 111. References to TNRCC replaced references to TACB in the regulations.

#### **I. What Is EPA Approving in This Action?**

Below is a brief discussion of the State submittals being approved in this **Federal Register** action.

*A. Adopted by TACB on June 16, 1989, and Submitted to EPA on August 21, 1989*

The TACB adopted the repeal of the existing Regulation I and adopted a new Regulation I. The primary purpose of the new rules was to address EPA's new national ambient air quality standards in the El Paso County PM<sub>10</sub> nonattainment area. While in most cases the purpose of the new rule provisions remained the same, the regulations were reorganized and the rules renumbered and stylistically changed.

We acted upon sections of this submittal concerning Outdoor Burning and concerning Materials Handling, Construction, Roads, Streets, Alleys, and Parking Lots on January 18, 1994 (59 FR 2534), at 52.2270(c)(79), in a **Federal Register** action approving the PM<sub>10</sub> SIP for the El Paso County PM<sub>10</sub> nonattainment area.

We acted upon sections of this submittal concerning Visibility on May 8, 1996 (61 FR 20732), at 52.2270(c)(94).

The purpose of this **Federal Register** action is to approve the remaining sections of the submittal concerning: Incineration, Emission Limits on Nonagricultural Processes, Emission Limits on Agricultural Processes, Exemptions for Portable or Transient Operations, and the repeal of § 111.92 relating to Compliance Dates. We are approving these revisions to Regulation I as 30 TAC Chapter 111 even though they were submitted as 31 TAC Chapter 111.

*B. Adopted by TNRCC March 29, 1995 and Submitted to EPA on July 12, 1995*

The TNRCC adopted the repeal of § 101.12, Board Seal, from the TNRCC General Rules because the rule no longer applies to TNRCC. The TNRCC also revised Regulation I, § 111.103, Exemptions to Prohibitions to Outdoor Burning, by deleting Subsection § 111.103(b)(8). The municipal solid waste provisions contained in this Subsection have been superseded by the Federal Resource Conservation and Recovery Act (RCRA).

*C. Adopted by TNRCC August 21, 1996, and Submitted to EPA on August 30, 1996*

The TNRCC revised Regulation I to clarify the requirements for allowable outdoor burning and to clarify exceptions to prohibition of outdoor burning. The rules were structured to more adequately relate to current outdoor burning needs. This revision repealed §§ 101.101 to 101.107 concerning Outdoor Burning and replaced them with new §§ 101.201 to

101.221 under new Subchapter B, Outdoor Burning. All other sections in Regulation I became Subchapter A, Visible Emissions and Particulate Matter. The TNRCC also replaced all references to TACB in Regulation I with references to TNRCC.

## II. Why Is the TACB Board Seal Rule Being Removed From the SIP?

Section 101.12, Board Seal, of the TNRCC General Rules was approved as Rule 13 in the TACB General Rules approved by EPA May 31, 1972, with the original Texas SIP. The purpose of the Board Seal rule was to provide for a seal bearing the words "Texas Air Control Board," and the oak and olive branches common to other official State seals. The TNRCC adopted the repeal of § 101.12, on March 29, 1995, because the TACB no longer exists and the rule no longer applies to TNRCC.

## III. Background of Texas Regulation I in the Texas SIP?

We approved Texas Regulation I on May 31, 1972 (37 FR 10895), with the original Texas SIP. It was adopted by TACB on January 26, 1972, and consisted of: Rule 101, Outdoor Burning; Rule 102, Incineration; Rule 103, Visible Emissions; Rule 104, Particulate Matter From Materials Handling, Construction, and Roads; Rule 105, Particulate Matter; Rule 106, Transient Operations; Rule 107, Agricultural Process; and untitled Rule 108 for compliance dates.

We approved revisions to Regulation I on: March 25, 1980 (45 FR 19244); July 26, 1982 (47 FR 32126); February 25, 1983 (48 FR 08073); January 18, 1994 (59 FR 02538); and May 8, 1996 (61 FR 20732).

The current SIP-approved Regulation I is available for public inspection by selecting "Texas" and then "TX Chap 111 (Reg 1)" at the following web site: <http://www.epa.gov/earth1r6/6pd/air/sip/sip.htm>

## IV. Outline of Regulation I in the Texas SIP as a Result of This Federal Register Action

Below is an outline of Regulation I as being approved by this action. Sections with titles followed by an "\*" have already been approved by EPA, but are being placed in Subchapter A in this action as requested by the August 30, 1996, submittal. The rest of the sections in Regulation I are being revised and recodified in this action.

## Regulation I (30 TAC Chapter 111)—Control of Air Pollution from Visible Emissions and Particulate Matter

Subchapter A. Visible Emissions and Particulate Matter Visible Emissions\*

Section 111.111 Requirements for Specified Sources\*

Section 111.113 Alternative Opacity Limitations\*

Incineration

Section 111.121 Single-Chamber Incinerators

Materials Handling, Construction, Roads, Streets, Alleys, and Parking Lots\*

Section 111.141 Geographic Areas of Application and Date of Compliance\*

Section 111.143 Materials Handling\*

Section 111.145 Construction and Demolition\*

Section 111.147 Roads, Streets, and Alleys\*

Section 111.149 Parking Lots\*

Emission Limits on Nonagricultural Processes

Section 111.151 Allowable Emissions Limits

Section 111.153 Emission Limits for Steam Generators

Section 111.155 Ground Level Concentrations

Emission Limits on Agricultural Processes

Section 111.171 Emission Limits Based on Process Weight Method

Section 111.173 Emissions Limits Based on Alternate Method

Section 111.175 Exemptions

Exemptions for Portable or Transient Operations

Section 111.181 Exemption Policy

Section 111.183 Requirements for Exemptions

Subchapter B. Outdoor Burning

Section 111.201 General Prohibitions

Section 111.203 Definitions

Section 111.205 Exceptions for Fire Training

Section 111.207 Exceptions for Fires Used for Recreation, Ceremony, Cooking, and Warmth

Section 111.209 Exception for Disposal Fires

Section 111.211 Exception for Prescribed Burn

Section 111.213 Exception for Hydrocarbon Burning

Section 111.215 Executive Director Approval of Otherwise Prohibited Outdoor Burning

Section 111.219 General Requirements for Allowable Outdoor Burning

Section 111.221 Responsibility for Consequences of Outdoor Burning

## V. How Are Sections of Regulation I Being Revised by This Action?

The revisions to Regulation I adopted by TNRCC August 21, 1996, and submitted to EPA on August 30, 1996, placed all sections concerning outdoor burning in new Subchapter B, Outdoor Burning. All other sections in Regulation I were placed in Subchapter

A, Visible Emissions and Particulate Matter.

*A. Subchapter A, Visible Emissions and Particulate Matter.*

We are approving revisions to Regulation I adopted by TACB on June 16, 1989, concerning: Incineration, Emission Limits on Nonagricultural Processes, Emission Limits on Agricultural Processes, Exemptions for Portable or Transient Operations, and the repeal of Section 111.92 in the SIP relating to Compliance Dates.

Below is a brief discussion of each section of Subchapter A.

1. Sections 111.111 and 111.113 Concerning Visible Emissions

We approved sections 111.111 and 111.113 on January 18, 1994 (59 FR 2534), at 52.2270(c)(79), and on May 8, 1996 (61 FR 20732), at 52.2270(c)(94). These revisions included amendments adopted by TACB on June 16, 1989; October 12, 1990; October 25, 1991; September 18, 1992; and June 18, 1993.

2. Section 111.121 Concerning Incineration

Section 111.121, Single-Chamber Incinerators, as adopted by TACB on June 16, 1989, replaces Section 111.11, Incineration, and Section 111.12, Approval of Incinerators, approved by EPA on July 26, 1982 (47 FR 32126), at 52.2270(c)(44). Section 111.121 makes minor revision to the limitations on the burning of garbage or rubbish in residential, publicly-owned, commercial, or hospital/pathological waste incinerators.

3. Sections 111.141 to 111.151 Concerning Materials Handling, Construction, Roads, Streets, Alleys, and Parking Lots

Sections 111.141, 111.143, 111.145, 111.147, and 111.149, as adopted by the TACB on June 16, 1989, and October 25, 1991, were approved by EPA January 18, 1994 (59 FR 2534), at 52.2270(c)(79).

4. Sections 111.151 to 111.155 Concerning Emission Limits on Nonagricultural Processes

Sections 111.151, 111.153, and 111.155, adopted by TACB on June 16, 1989, replace Rule 105, Particulate Matter, approved by EPA May 31, 1972, with the original Texas SIP.

Section 111.151 reformats and makes slight revisions to Rule 105.1. An equation in Subsection 111.151(b) replaces Figure 1, a log-log graph entitled Allowable Particulate Emission Rates for Specific Flow Rates. An equation in Subsection 111.151(c) replaces Figure 2, a graph entitled

Standard Effective Stack Height Based on Specific Flow Rates. Table 1, Allowable Particulate Emission Rates for Specific Flow Rates, and Table 2, Standard Effective Stack Height Based on Specific Flow Rates, are identical to Tables 1 and 2 approved with the original Texas SIP except that Table 1 now clarifies that the rate of emissions is for total suspended particulate (TSP).

Section 111.153, Emissions Limits for Steam Generators, replaces Rule 105.3. Subsection 111.153(a) provides that Section 111.151 does not apply to, or set limits to, any oil or gas fuel-fired steam generator with a heat input greater than 2500 million British thermal units (Btu) per hour or any solid fossil fuel-fired steam generator. Subsection 111.153(b) sets limits to any solid fossil fuel-fired steam generator at 0.3 pounds of TSP per million Btu heat input, averaged over a two-hour period. Subsection 111.153(c) limits any oil or gas fuel-fired steam generator with a heat input greater than 2500 million Btu per hour to 0.1 pounds of TSP per million Btu input averaged over a two-hour period.

Section 111.155, Ground Level Concentrations, which replaces Rule 105.2, sets limits for particulate matter resulting from any ground level source.

5. Sections 111.171 to 111.175 Concerning Emission Limits on Agricultural Processes

Sections 111.171, 111.173, and 111.175, adopted by TACB on June 16, 1989, replace Sections 111.71, 111.72, 111.73, 111.74, 111.75, and 111.76, concerning Particulate Matter from Agricultural Processes, approved by EPA July 26, 1982 (47 FR 32126), at 52.2270(c)(44), and February 25, 1983 (48 FR 8073), at 52.2270(c)(50).

Section 111.171, Emission Limits Based on Process Weight Method, establishes that all sources affected by Section 3.10(e) the Texas Clean Air Act (TCAA), shall have allowable particulate emissions levels determined by the process weight method unless a request for an alternate method is submitted and approved.

Section 111.173, Emission Limits Based on Alternate Method, allows for a source affected by Section 3.10(e) of the TCAA to request an approved alternate method.

Section 111.175, Exemptions, enumerates the sections of Regulation I from which agricultural processes are exempt.

Table 3, Allowable Rate of Emission Based on Process Weight Rate, cited in Section 111.171, is identical to Tables 3 approved with the original Texas SIP. Figure 3, a log-log graph entitled

Allowable Emissions Levels Based on Process Weight Rate, has been deleted.

6. Sections 111.181 and 111.183 Concerning Exemptions for Portable or Transient Operations

Sections 111.181 and 111.183, adopted by TACB on June 16, 1989, replace Sections 111.81, 111.82, and 111.83 concerning Exemptions approved by EPA February 25, 1983 (48 FR 8073), at 52.2270(c)(50).

Section 111.181, Exemption Policy, exempts most portable facilities and transient operations, except those in the inhalable particulate matter Group I and Group II areas in Dallas, El Paso, and Harris counties, from the requirements of certain sections of Chapter 111.

Section 111.183, Requirements for Exemption, stipulates conditions which have to be met in order to qualify for the exemption in section 111.181.

7. Repeal of Section 111.92, Compliance Dates

Section 111.92 was approved by EPA February 25, 1983 (48 FR 8073), at 52.2270(c)(50). No replacement for Section 111.92 was included in the new Regulation I adopted by TACB on June 16, 1989, because the section was outdated and referred to sections of Regulation I that have been revised or have their own compliance dates. The dates in Section 111.92 have passed.

*B. Subchapter B, Outdoor Burning*

Sections 111.101, 111.103, 111.105, and 111.107 concerning Outdoor Burning in the current Texas SIP were adopted by the TACB on June 16, 1989, and October 25, 1991, and approved by EPA on January 18, 1994 (59 FR 2534) at 52.2270(c)(79).

On July 12, 1995, the Governor submitted a revision to Regulation I adopted by TNRCC on March 29, 1995, which revised Section 111.103, Exemptions to Prohibitions to Outdoor Burning, by deleting Subsection 111.103(b)(8). The municipal solid waste provisions contained in this Subsection have been superseded by RCRA.

On August 30, 1996, the Governor submitted to EPA revisions to Regulation I adopted by TNRCC on August 21, 1996, which repealed Sections 111.101, 111.103, 111.105, and 111.107 concerning Outdoor Burning and replaced them with new Subchapter B, Outdoor Burning, consisting of Sections 111.201, 111.203; 111.205; 111.207; 111.209; 111.211; 111.213; 111.215; 111.219; and 111.221. This was done in order to clarify requirements and, where appropriate, add flexibility to existing requirements. Subsections of

old Section 111.103, Exceptions to Prohibition of Outdoor Burning, have been placed in five separate sections in Subchapter B. Below is a brief discussion of each of the sections being approved in this action.

#### 1. Section 111.201, General Prohibitions

Section 111.201 replaces Section 111.101 of the same title. The definition of the term "Executive Director" has been revised to include TNRCC staff representatives. This section prohibits outdoor burning unless authorized by statute, order, or permit.

#### 2. Section 111.203, Definitions

Section 111.203 is a new section which adds definitions of the following terms: Extinguished, Landclearing operation, Practical alternative, Prescribed burn, Structure containing sensitive receptor(s), Sunrise/Sunset, and Wildland. These definitions clarify terms and concepts previously considered ambiguous or undefined.

#### 3. Section 111.205, Exceptions for Fire Training

Section 111.205 replaces Subsection 111.103(b)(1). The revisions simplify the notification procedures by eliminating some of the repetitive and nonessential notification requirements for fire training managers.

#### 4. Section 111.207, Exceptions for Fires Used for Recreation, Ceremony, Cooking, and Warmth

Section 111.207, replaces and makes minor editorial changes to Subsection 111.103(b)(3). Section 111.207 permits fires used solely for recreational or ceremonial purposes, for the noncommercial preparation of food, or for the exclusive purpose of supplying warmth during cold weather.

#### 5. Section 111.209, Exception for Disposal Fires

Section 111.209 replaces Subsections 111.103(b)(2), (4), and (5). Section 111.209 differentiates between fires used solely for the disposal of wastes and other forms of outdoor burning and regulates them in relation to practical alternatives. In regard to domestic waste burning, the rule clarifies allowable burning both in terms of waste collection criteria and types of wastes. The rule permits the burning of diseased animal carcasses when burning is the most effective means of controlling the spread of disease. This section now addresses off-site impacts in burns for land clearing and right-of-way maintenance. New additions specifically address the regulation of crop residue burning and brush burning

by counties and municipalities for detrimental public health and safety considerations.

#### 6. Section 111.211, Exception for Prescribed Burn

Section 111.211, replaces Subsection 111.103(b)(6) relating to exceptions for prescribed burn. Section 111.211 recognizes the use of fire as a positive forest, range, and wildland/wildlife management tool under certain circumstances for which there is no practical alternative. In the case of the burning of coastal salt-marsh, the notification criteria and procedures have been simplified.

#### 7. Section 111.213, Exception for Hydrocarbon Burning

Section 111.213 replaces Subsection 111.103(b)(7). Section 111.213 has been revised to include a sampling and monitoring requirement. Section 111.213 permits hydrocarbon burning for pipeline breaks and spills if the Executive Director determines that the burning is necessary to protect public welfare.

#### 8. Section 111.215, Executive Director Approval of Otherwise Prohibited Outdoor Burning

Section 111.215, relating to Executive Director approval of otherwise prohibited outdoor burning where there is no practical alternative, replaces Subsection 103(a). Section 111.215 now recognizes that authorization is contingent upon not causing a condition of nuisance or traffic hazard.

#### 9. Section 111.219, General Requirements for Allowable Outdoor Burning

Section 111.219, which replaces Section 111.105, clarifies points which have previously been unclear or ill-defined. Section 111.219(1) requires notification of the Texas Forest Service prior to a prescribed or controlled burn. Section 111.219(2) is modified to recognize local government burning ordinance authority stipulated in the TCAA. Section 111.219(3) has been changed to avoid potential off-site impacts to sensitive receptor(s). Section 111.219(4) requires the person initiating a burn to post a flag-person where smoke may blow across a road. Section 111.219(5) adds flexibility to the previously inflexible 300 foot prohibition by setting wind direction and distance from sensitive receptors as the regulatory criteria for determining the extent of the burn. Section 111.219(6) establishes the allowable burn hours to one hour after sunrise to one hour before sunset. This provision

allows more flexibility but is also intended to ensure meteorological conditions are properly evaluated. Section 111.219(7) is modified to provide more specificity to prohibited burn fuels.

#### 10. Section 111.221, Responsibility for Consequences of Outdoor Burning

Section 111.221 replaces Section 111.107 of the same title. There are no changes from the existing rule. This provision states that the authority to burn does not excuse compliance with other applicable laws and does not exempt the person responsible from any consequences, damages, or injuries even though the burning is otherwise conducted in compliance with this regulation.

### VI. Final Action

We are approving revisions to Regulation I in the Texas SIP adopted by TACB June 16, 1989, and submitted to EPA on August 21, 1989, concerning: Incineration, Emission Limits on Nonagricultural Processes, Emission Limits on Agricultural Processes, Exemptions for Portable or Transient Operations, and the repeal of Section 111.92, Compliance Dates. We are also approving revisions, adopted by TNRCC March 29, 1995, and August 21, 1996, and submitted to EPA on July 12, 1995, and August 30, 1996, respectively. These revisions remove Section 101.12, Board Seal, from the TNRCC General Rules. These revisions also revise the Outdoor Burning sections in TNRCC Regulation I and places them in new Subchapter B and places the rest of the sections in Regulation I in new Subchapter A, Visible Emissions and Particulate Matter.

The EPA is 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 revision if adverse comments are received. This rule will be effective on December 27, 1999 without further notice unless we receive adverse comment by November 29, 1999. If EPA receives adverse comments, we will publish a timely withdrawal 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.

## VII. Administrative Requirements

### A. Executive Order (E.O.) 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866, entitled "Regulatory Planning and Review."

### B. Executive Orders on Federalism

Under E.O. 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, E.O. 12875 requires EPA to provide to the OMB 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, E.O. 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 rules on any of these entities. This action does not create any new requirements but simply approves requirements that the State is already imposing. Accordingly, the requirements of section 1(a) of E.O. 12875 do not apply to this rule.

On August 4, 1999, President Clinton issued a new E.O. on federalism, E.O. 13132 (64 FR 43255, August 10, 1999), which will take effect on November 2, 1999. In the interim, the current E.O. 12612 (52 FR 41685, October 30, 1987), on federalism still applies. This rule will not have a substantial direct effect on 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 E.O. 12612. The rule affects only one State, and does not alter the relationship or the distribution of power and responsibilities established in Federal Clean Air Act (the Act).

### C. Executive Order 13045

Executive Order 13045, entitled "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 or 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.

The EPA interprets E.O. 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5-501 of the Order has the potential to influence the regulation. This final rule is not subject to E.O. 13045 because it approves a State program.

### D. Executive Order 13084

Under E.O. 13084, EPA may not issue a regulation that is not required by statute, that significantly 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, E.O. 13084 requires EPA to provide to the OMB, 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, E.O. 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. This action does not involve or impose any requirements that affect Indian tribes. Accordingly, the requirements of section 3(b) of E.O. 13084 do not apply to this rule.

### E. Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, 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 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 Act, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Act forbids EPA to base its actions concerning SIPs on such grounds. *See 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, 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 annual 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 the approval action promulgated does not include a Federal mandate that may result in estimated annual 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 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, result from this action.

### G. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 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. The 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 can not 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. 804(2). This rule will be effective December 27, 1999.

*H. 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 Court of Appeals for the appropriate circuit by December 27, 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).

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

Environmental protection, Air pollution control, Intergovernmental relations, Hydrocarbons, Particulate matter, Reporting and recordkeeping requirements.

Dated: October 7, 1999.

**Jerry Clifford,**

*Acting Regional Administrator, Region 6.*

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

**PART 52—[AMENDED]**

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

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

**Subpart SS—Texas**

2. In § 52.2270(c) the first table is amended by revising the entry for Chapter 111 and by removing the entry for "Section 101.12, Board Seal" to read as follows:

**§ 52.2270 Identification of plan.**

\* \* \* \* \*  
(c) \* \* \*

EPA APPROVED REGULATIONS IN THE TEXAS SIP

State citation	Title/subject	State adoption date	EPA approval date	Explanation
* * * * *				
<b>Chapter 111 (Reg 1)—Control of Air Pollution from Visible Emissions and Particulate Matter</b>				
<b>Subchapter A—Visible Emissions and Particulate Matter</b>				
<b>Visible Emissions</b>				
Section 111.111(a), (b) .....	Requirements for Specified Sources.	06/18/93	05/08/96, 61 FR 20732, 01/18/94, 59 FR 2532.	Ref. 52.2299(c)(94) 52.2299(c)(79) Ref. 52.2299(c)(94)
Section 111.113 .....	Alternative Opacity Limitations ....	06/16/89	05/08/96, 61 FR 20732 .....	Ref. 52.2299(c)(94)
<b>Incineration</b>				
Section 111.121 .....	Single-Chamber Incineration .....	06/16/89	October 28, 1999.	
<b>Materials Handling, Construction, Roads, Streets, Alleys, and Parking Lots</b>				
Section 111.141 .....	Geographic Areas of Application and Date of Compliance.	10/25/91	01/18/94, 59 FR 02534 .....	Ref. 52.2299(c)(79)
Section 111.143 .....	Materials Handling .....	06/16/89	01/18/94, 59 FR 02534 .....	Ref. 52.2299(c)(79)
Section 111.145 .....	Construction and Demolition .....	10/25/91	01/18/94, 59 FR 02534 .....	Ref. 52.2299(c)(79)
Section 111.147 .....	Roads, Streets, and Alleys .....	10/25/91	01/18/94, 59 FR 02534 .....	Ref. 52.2299(c)(79)
Section 111.149 .....	Parking Lots .....	06/16/89	01/18/94, 59 FR 02534 .....	Ref. 52.2299(c)(79)
<b>Emission Limits on Nonagricultural Processes</b>				
Section 111.151 .....	Allowable Emissions Limits .....	06/16/89	October 28, 1999.	
Section 111.153 .....	Emission Limits for Steam Generators.	06/16/89	October 28, 1999.	
Section 111.155	Ground Level Concentrations .....	06/16/89	October 28, 1999.	
<b>Emission Limits on Agricultural Processes</b>				
Section 111.171 .....	Emission Limits Based on Process Weight Method.	06/16/89	October 28, 1999.	
Section 111.173 .....	Emissions Limits Based on Alternate Method.	06/16/89	October 28, 1999.	
Section 111.175 .....	Exemptions .....	06/16/89	October 28, 1999.	
<b>Exemptions for Portable or Transient Operations</b>				
Section 111.181 .....	Exemption Policy .....	06/16/89	October 28, 1999.	

EPA APPROVED REGULATIONS IN THE TEXAS SIP—Continued

State citation	Title/subject	State adoption date	EPA approval date	Explanation
Section 111.183	Requirements for Exemptions	06/16/89	October 28, 1999.	
<b>Subchapter B—Outdoor Burning</b>				
Section 111.201	General Prohibitions	08/21/96	October 28, 1999.	
Section 111.203	Definitions	08/21/96	October 28, 1999.	
Section 111.205	Exceptions for Fire Training	08/21/96	October 28, 1999.	
Section 111.207	Exceptions for Fires Used for Recreation, Ceremony, Cooking, and Warmth.	08/21/96	October 28, 1999.	
Section 111.209	Exception for Disposal Fires	08/21/96	October 28, 1999.	
Section 111.211	Exception for Prescribed Burn	08/21/96	October 28, 1999.	
Section 111.213	Exception for Hydrocarbon Burning.	08/21/96	October 28, 1999.	
Section 111.215	Executive Director Approval of Otherwise Prohibited Outdoor Burning.	08/21/96	October 28, 1999.	
Section 111.219	General Requirements for Allowable Outdoor Burning.	08/21/96	October 28, 1999.	
Section 111.221	Responsibility for Consequences of Outdoor Burning.	08/21/96	October 28, 1999.	
*	*	*	*	*

[FR Doc. 99-27136 Filed 10-27-99; 8:45 am]  
 BILLING CODE 6560-50-P

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

[MD093-3040; FRL-6460-1]

**Approval and Promulgation of Air Quality Implementation Plans; Maryland; VOCs from Paint, Resin and Adhesive Manufacturing and Adhesive Application**

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

**ACTION:** Direct final rule.

**SUMMARY:** EPA is taking direct final action on two revisions to the Maryland State Implementation Plan (SIP). The revisions consist of amendments to Maryland's regulation to control volatile organic compounds (VOC) from Paint, Resin & Adhesive manufacturing and Adhesive Application. The first revision amends Maryland's definition of "honeycomb core installation" to include additional substrates. The second revision clarifies the general emission standard for VOCs from adhesive applications. EPA is approving these revisions to in accordance with the requirements of the Clean Air Act.

**DATES:** This rule is effective on December 13, 1999 without further notice, unless EPA receives adverse written comment by November 29,

1999. If EPA receives such comments, it 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 should be mailed to David L. Arnold, Chief, Ozone and Mobile Sources Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; the Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460; and Maryland Department of the Environment, 2500 Broening Highway, Baltimore, Maryland, 21224.

**FOR FURTHER INFORMATION CONTACT:** Janice M. Lewis, (215) 814-2185, or by e-mail at Lewis.Janice@epa.gov.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

*A. Summary of the SIP Revisions*

On April 12, 1999, the Maryland Department of the Environment (MDE) submitted two revisions to its State Implementation Plan (SIP). The first SIP revision amends the definition of "Honeycomb core installation" found at COMAR 26.11.19.15A(2) so that it

includes other substrates in addition to metal foil. This revision was adopted by Maryland on March 2, 1999 and has been effective in the State as of March 22, 1999. The second SIP revision clarifies the applicability of the General Emission Standard for adhesive applications found at COMAR 26.11.19.15C(4). The intent of this regulation is to require the VOC content of the adhesives to be limited to 3.8 pounds per gallon if the total plantwide VOC emissions from all adhesive applications exceeds 50 pounds per day.

*B. EPA's Evaluation of the SIP Revisions*

The EPA has determined that these amendments to COMAR 26.11.19.15: Paint, Resin, and Adhesive Manufacturing and Adhesive Application meet all federal criteria for approval.

**II. Final Action**

EPA is approving the amendments to COMAR 26.11.19.15 submitted by the MDE on April 12, 1999 as revisions to the Maryland SIP.

EPA is publishing this rule without prior proposal because the Agency views these as noncontroversial amendments and anticipates no adverse comment. However, in the Proposed Rules section of today's **Federal Register**, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision if adverse comments are filed. This rule will be effective on December 13, 1999 without further notice unless EPA receives