List of Subjects in 31 CFR Part 2

Classified information, Reporting and recordkeeping requirements.

For the reasons set forth above, 31 CFR Part 2 is amended as set forth below.

PART 2—NATIONAL SECURITY INFORMATION

1. The authority citation for part 2 is revised to read as follows:

Authority: 31 U.S.C. 321; E.O. 12958, 60 FR 19825, 3 CFR, 1995 Comp., p. 333.

2. Section 2.2 is revised to read as follows:

§ 2.2 Classification Authority.

Designations of original classification authority for national security information are contained in Treasury Order (TO) 102–19 (or successor order), which is published in the **Federal Register**. The authority to classify inheres within the office and may be exercised by a person acting in that capacity. There may be additional redelegations of original classification authority made pursuant to TO 102–19 (or successor order). Officials with original classification authority may derivatively classify at the same classification level.

3. Section 2.9 is revised to read as follows:

§ 2.9 Derivative Classification Authority.

Designations of derivative classification authority for national security information are contained in Treasury Order 102–19 (or successor order). The authority to derivatively classify inheres within the office and may be exercised by a person acting in that capacity. There may be additional redelegations of derivative classification authority made pursuant to TO 102–19 (or successor order). Officials identified in Treasury Order 102–19 (or successor order) may also administratively control and decontrol sensitive but unclassified information using the legend ''Limited Official Use'' and may redelegate their authority to control and decontrol. Such redelegations shall be in writing on TD F 71–01.20 ''Designation of Controlling/Decontrolling Officials'' (or successor form).

Robert E. Rubin,

Secretary of the Treasury.

[FR Doc. 98–7680 Filed 3–24–98; 8:45 am]

BILLING CODE 4810–25–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL–5977–5]

Approval and Promulgation of Implementation Plans; Colorado; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is promulgating corrections to the State Implementation Plan (SIP) for the State of Colorado. First, EPA is correcting its January 21, 1997 rulemaking in which EPA approved several Colorado new source review (NSR) SIP revisions. Specifically, pursuant to a December 17, 1996 request from the state of Colorado, EPA is removing from the approved SIP two sections of Colorado's prevention of significant deterioration (PSD) rules in Regulation No. 3. EPA is also disapproving a provision in the State's definition of ''Federally enforceable'' in Regulation No. 3 that EPA inadvertently failed to disapprove in its January 21, 1997 rulemaking. The provision in that definition which is being disapproved states that provisions which are not required by the Federal Clean Air Act (Act) shall not be submitted as part of the SIP and shall not be federally enforceable. This provision is being disapproved because the Act provides that any provision approved by EPA as part of the SIP is federally enforceable unless and until the State requests, and EPA approves, a SIP revision removing such provision.

Second, EPA is correcting an October 5, 1979 rulemaking in which EPA incorrectly listed Colorado House Bill 1109 as being approved as part of the Colorado SIP.

Last, EPA is correcting a September 23, 1980 rulemaking, in which EPA mistakenly replaced a Colorado SIP approval in 40 CFR 52.320 with a Montana SIP approval.

EPA proposed these corrections for public comment on December 17, 1997, and no comments were received within the 30-day public comment period.

EFFECTIVE DATE: This rule is effective on April 24, 1998.

ADDRESSES: Copies of the documents relative to this action are available for inspection during normal business hours at the Air Program, Environmental Protection Agency, Region VIII, 999 18th Street, suite 500, Denver, Colorado 80202–2466 and The Air and Radiation Docket and Information Center, 401 M Street, SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Vicki Stamper, EPA Region VIII, at (303) 312–6445.

SUPPLEMENTARY INFORMATION: On December 17, 1997, EPA proposed several corrections to previous Colorado SIP approvals (62 FR 66046–49). EPA received no public comments on the proposed actions within the 30-day public comment period. EPA received one comment letter, from the Colorado Air Pollution Control Division (APCD), after the close of the public comment period. EPA discusses the APCD's comment letter in section I.B. of this notice. The APCD's comment letter does not warrant any change to the proposed action. Therefore, EPA is promulgating the corrections to the Colorado SIP as proposed in the December 17, 1997 **Federal Register**. The following provides background information on the specific corrections being made to the Colorado SIP and EPA's justification for these corrections:

I. Corrections to EPA's January 21, 1997 Rulemaking

On January 21, 1997, EPA promulgated approval of five Colorado SIP revisions submitted on November 12, 1993, August 25, 1994, September 29, 1994, November 17, 1994, and January 29, 1996. (See 62 FR 2910–2914.) All of these SIP submittals contained revisions to the State's NSR and PSD provisions in Parts A and B of Colorado Regulation No. 3.

A. Correction to Exclude Sections V.B. and VII.A.5. of Part B of Colorado Regulation No. 3 From the SIP

Although the State's November 12, 1993 submittal discussed above only included a few changes to the State's construction permitting requirements, the State submitted its construction permitting regulations (including its PSD rules) in their entirety because the State had also restructured and renumbered Regulation No. 3 in this submittal. Subsequently, on December 17, 1996, the State submitted a request to exclude two sections of Part B of Regulation No. 3 from its November 12, 1993 SIP submittal, specifically Sections V.B. and VII.A.5. (referred to herein as Sections V.B. and VII.A.5. or as ''the two provisions.'') On January 21, 1997, EPA's approval of the State's November 12, 1993 SIP submittal was published (62 FR 2910). The approval did not exclude Sections V.B. and VII.A.5.

Section V.B. of Part B of Regulation No. 3 applies the Class I sulfur dioxide PSD increment to certain pristine areas

in Colorado that are not designated Class I by the Federal PSD regulations. This is not required by the Act or Federal PSD regulations. Section VII.A.5. of Part B of Regulation No. 3 provides that no new major stationary source or major modification shall individually consume more than 75% of an applicable increment. No such provision (or similar provision) is required by the Act or Federal PSD regulations. Neither of the two provisions is necessary for the State to demonstrate attainment and/or maintenance of the National Ambient Air Quality Standards (NAAQS). Therefore, EPA believes that these two provisions may be removed from the SIP.

In this instance, EPA believes it is appropriate to remove the two provisions from the SIP pursuant to EPA's authority under section 110(k)(6) of the Act. Section 110(k)(6) of the Act provides as follows:

> Whenever the Administrator determines that the Administrator's action approving, disapproving, or promulgating any plan or plan revision (or part thereof), area designation, redesignation, classification, or reclassification was in error, the Administrator may in the same manner as the approval, disapproval, or promulgation revise such action as appropriate without requiring any further submission from the State. Such determination and the basis thereof shall be provided to the State and public.

The State submitted its request well before EPA's final approval of the State's November 12, 1993 SIP submittal was published in the **Federal Register** or was otherwise announced to the public. Thus, EPA had an opportunity to exclude the two provisions from the final published rule, but failed to do so.

Although there may be instances where a request to withdraw components of a SIP implicates the Act's requirement for State notice and hearing, EPA does not believe this is one of them. First, these two provisions had been part of the State's regulations for many years,[1] but had been expressly excluded from the State's SIP submittals of prior PSD revisions and had been expressly excluded from EPA's rulemaking actions on those prior PSD rule revisions. (See 51 FR 31125, September 2, 1986, and 56 FR 12850, March 28, 1991.) Second, the State merely renumbered these two provisions at its July 15, 1993 hearing, and there was no indication that the State intended to change course and submit these two provisions to EPA for approval into the SIP. Presumably, if the State had intended such a change in course, the State would have focused its notice and public hearing on the two provisions prior to adopting the renumbering of Regulation No. 3 and submitting it to EPA. This did not occur, and the evidence suggests that submittal of these two provisions to EPA was merely an oversight. If EPA had reviewed the circumstances more carefully when it received the State's December 17, 1996 letter, EPA could have corrected its final rule before publication.

With respect to Section V.B., EPA also believes a correction is necessary because Section V.B. (which, as stated above, applies the Class I sulfur dioxide increment to certain pristine Class II areas in Colorado) is inconsistent with the requirements of EPA's PSD regulations. Specifically, 40 CFR 51.166(g) contains certain requirements for redesignating an area from Class II to Class I, and the State has not addressed those requirements for the areas listed in Section V.B. Thus, EPA erred in approving Section V.B. as part of the SIP. This position is consistent with EPA's prior rulemaking regarding this provision. In a September 2, 1986 action, EPA did not approve this provision into the SIP, explaining that the State had not followed the specific procedures outlined in 40 CFR 51.166(g) for redesignating an area from Class II to Class I. (See 51 FR 31125.)

For the reasons discussed above, EPA is correcting its January 21, 1997 SIP approval to remove Sections V.B. and VII.A.5. of Part B of Regulation No. 3 from the approved SIP.

B. Correction to Disapprove Provision in Definition of ''Federally Enforceable'' in Colorado Regulation No. 3

In the State's September 29, 1994 SIP submittal of revisions to Regulation No. 3, the State revised its definition of ''Federally Enforceable'' in Section I.B.22. of Part A of Colorado Regulation No. 3. EPA's nonattainment NSR and PSD permitting regulations in 40 CFR 51.165 and 51.166, respectively, require this term to be defined in States' permitting programs, as it is used in various definitions and provisions of the Federal preconstruction permitting regulations.

Colorado's definition of ''Federally enforceable'' basically mirrors the Federal definition in 40 CFR 51.165(a)(1)(xiv) and 51.166(b)(17). However, on August 18, 1994, the State revised this definition (among other things) to add a provision stating the following: ''Notwithstanding the foregoing, and except for the voluntarily accepted limitations and conditions described in the preceding sentence, any provision, standard, or regulation that is not required by the Federal Act or that is more stringent than the Federal Act is adopted under powers reserved to the State of Colorado pursuant to section 116 of the Federal Act, is not to be submitted to the EPA as a provision of the SIP and shall not be federally enforceable.'' (Referred to hereafter as the ''quoted language.'') According to the State, this revision was made to mirror the definition found in Section 25–7–105.1 of the Colorado Air Pollution Prevention and Control Act.

During the State's public comment period on this regulatory change, EPA stated in an August 12, 1994 letter that it could not approve the quoted language as part of the SIP. Any provision that has been submitted by the State and approved by EPA as part of the SIP is considered to be Federally enforceable regardless of whether it is required by the Act or more stringent than the Act. Similarly, terms and conditions incorporated into a permit that is issued under an EPA-approved permitting program, such as new source review or title V operating permits, are also generally considered to be Federally enforceable.[2] The only way a State can change the Federal enforceability of any provision that has been approved by EPA as part of the SIP is by submitting a request for revision to the SIP and by receiving EPA approval of the SIP revision (through notice and comment rulemaking via the **Federal Register**).

EPA believes the quoted language is thus misleading to the public and the regulated community.

As noted earlier in this notice, EPA received one comment letter, from the Colorado Air Pollution Control Division (APCD), after the close of the public comment period.[3] In its comment letter, the APCD objects to EPA's proposal to disapprove the quoted language. The APCD comments that EPA does not have the authority to expand the scope

[1] The Colorado Air Quality Control Commission originally adopted Section V.B. on March 10, 1983 and Section VII.A.5. on May 17, 1990.

[2] States can designate certain provisions in a title V permit that have not been approved as part of the SIP or that are not otherwise Federally enforceable or Federally required as ''State-only'' in a title V operating permit, and those terms would not be considered Federally enforceable. [See 40 CFR 70.6(b)(2).]

[3] The APCD did not explain why it was submitting comments after the deadline for comments, nor did it request an extension of the comment period. EPA does not believe it has a legal obligation to consider or respond to this late comment letter as part of this rulemaking action. Nonetheless, because doing so will not significantly delay EPA's final rulemaking action in this matter, EPA is providing this brief response to the APCD's letter. EPA has provided a separate response in a letter to the APCD.

of a SIP submittal by turning State-only provisions into Federally-enforceable provisions and that EPA's disapproval of the quoted language may preclude the State from submitting State-only provisions to EPA for the purpose of providing complete information about the State program.

As to these assertions, the APCD does not explain how EPA's disapproval of the quoted language would turn State-only provisions in a SIP submittal into Federally-enforceable provisions. The State remains free to explicitly identify State-only measures in a SIP submittal and provide them to EPA for informational purposes only. EPA has not approved such measures into the SIP in the past and does not intend to do so in the future because EPA does not consider such measures to be part of the official SIP submittal. EPA's disapproval of the quoted language will not change EPA's approach to explicitly-identified State-only measures in SIP submittals. Similarly, EPA's disapproval of the quoted language will not give EPA the authority to approve, into the Federally enforceable SIP, measures the State has not submitted to EPA or force the State to submit measures that it would not otherwise submit.

On the other hand, if the quoted language remains part of the approved SIP, some may mistakenly believe that it renders unenforceable by EPA a measure the Governor has asked EPA to approve and EPA has approved into the SIP, simply because the measure is not required by the Clean Air Act or is more stringent than Federally required. Such an interpretation is inconsistent with the Clean Air Act (e.g., sections 110, 113, and 304 of the Act), and relevant case law. See, e.g., *Union Elec. Co.* v. *E.P.A.*, 96 S.Ct. 2518 (1976). Also, under such an interpretation, the quoted language would make it impossible for the general public, the regulated community, or EPA to have any certainty regarding the contents of the Federally enforceable SIP in Colorado. This result would clearly be contrary to Congressional intent. Thus, EPA feels compelled to disapprove the quoted language. The APCD's comments offer no reason for EPA to change its position on this matter.

In EPA's January 21, 1997 rulemaking, EPA approved the definition of ''Federally enforceable'' into the SIP in its entirety. (See 62 FR 2914.) However, for the reasons discussed above and in EPA's August 12, 1994 letter to the State, EPA believes its approval of the quoted language was made in error. Consequently, EPA is correcting its January 21, 1997 rulemaking by disapproving the language in the State's definition of ''Federally enforceable'' which states that any provision, standard or regulation not required by the Act is not to be submitted as part of the SIP and shall not be Federally enforceable. EPA is making this correction pursuant to section 110(k)(6) of the Act. Because the quoted language is not required by the Act and will not affect the State's ability to implement its permit program, EPA's disapproval of the quoted language will not start any sanctions or Federal implementation plan clocks.

II. Correction of October 5, 1979 Rulemaking

On October 5, 1979, EPA approved several submittals from the State of Colorado, which were made pursuant to the 1977 revisions to the Act. (See 44 FR 57401–57411.) In that action, EPA listed House Bill 1109 in 40 CFR 52.320(c)(14)as one of the submittals being approved (see 44 FR 57409, October 5, 1979). House Bill 1109 repealed and reenacted the State's Air Quality Control Act. The bill was signed into law by the Governor on June 20, 1979 and submitted to EPA on July 23, 1979, along with House Bill 1090 (regarding burning of solid wastes) and Senate Bill 1 (regarding provisions for reducing motor vehicle emissions). In the preamble to the October 5, 1979 rulemaking, EPA discussed the State's July 23, 1979 submittal of the three bills. EPA indicated that it was taking no action on House Bill 1109 at that time and would propose action in the **Federal Register** at a future date to take public comment on the acceptability of the State's revised Air Quality Control Act (see 44 FR 57403). Since EPA clearly stated in the preamble that it was not taking action on House Bill 1109, EPA erred in listing House Bill 1109 as being approved as part of the SIP in 40 CFR 52.320(c)(14). Therefore, pursuant to section 110(k)(6) of the Act, EPA is correcting the regulatory text regarding the State's July 23, 1979 submittal to remove the reference to House Bill 1109.[4]

Although EPA's October 5, 1979 rulemaking indicated that EPA would propose action on House Bill 1109 at a future date, EPA no longer believes it is necessary to take action on House Bill 1109 or any successor provisions in the State's Air Quality Control Act. Generally, EPA does not believe it is necessary to approve State authorizing legislation into the SIP. Instead, EPA needs to be satisfied that such authorizing legislation exists and that it shows that the State has adequate legal authority to adopt, implement, and enforce the SIP. Therefore, EPA will not be taking action on House Bill 1109.

III. Correction of September 23, 1980 Rulemaking

On September 23, 1980, EPA approved various SIP submittals from the State of Montana intended to address the 1977 revisions to the Act. In that action, EPA mistakenly revised 40 CFR 52.320, which identifies SIP approvals for the State of Colorado, to reflect approval of these various Montana SIP submittals (see 45 FR 62984). EPA's original intention with the September 23, 1980 rulemaking was to revise 40 CFR 52.1370(c)(8) for the State of Montana's plan, but EPA promulgated the language regarding Montana's SIP at 40 CFR 52.320(c)(8). On June 30, 1982, EPA partially corrected this error for Montana by promulgating the September 23, 1980 approval at 40 CFR 52.1370(c)(10). (See 47 FR 28373.) However, no correction was ever made to the ''Identification of Plan'' for Colorado at 40 CFR 52.320. Consequently, EPA is amending 40 CFR 52.320(c)(8) to reinstate the previous Colorado SIP approval promulgated at 52.320(c)(8), as it was last revised on March 2, 1976 (see 41 FR 8958).

IV. Final Action

EPA is revising 40 CFR 52.320(c)(72)(i)(D) to exclude Sections V.B. and VII.A.5. of Part B of Regulation No. 3, which pertain to the State's PSD program, from the approved SIP.

EPA is correcting its January 21, 1997 approval of Section I.B. of Part A of Regulation No. 3 (as in effect on September 30, 1994) to disapprove the last sentence in the definition of ''Federally enforceable'' which states that any provision, standard or regulation not required by the Act is not to be submitted as part of the SIP and shall not be Federally enforceable.

EPA is amending 40 CFR 52.320(c)(15) to remove the reference to House Bill 1109, which was incorrectly listed as being approved in EPA's October 5, 1979 Colorado rulemaking (see 44 FR 57409).

Last, EPA is amending 40 CFR 52.320(c)(8) to reinstate the Colorado SIP approval promulgated on March 2, 1976 (see 41 FR 8958) that was incorrectly replaced in a September 23, 1980 rulemaking (45 FR 62984).

EPA is making these corrections pursuant to section 110(k)(6) of the Act.

[4] Note that the provision in 40 CFR 52.320(c)(10) promulgated on October 5, 1979 was renumbered as 40 CFR 52.320(c)(15) on June 27, 1980. See 45 FR 43411.

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

V. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) 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. 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 corrections promulgated herein remove certain provisions from the SIP. However, regardless of EPA's final action, these provisions still apply as a matter of State law, and thus, EPA's action does not affect any existing requirements applicable to small entities. Also, EPA's action does not impose any new Federal requirements. Therefore, EPA certifies that this correction action does not have a significant impact on a substantial number of small entities.

C. 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 corrections promulgated do 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 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

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. 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**. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

E. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by May 26, 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 must 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, Particulate matter, Reporting and recordkeeping requirements.

Dated: March 5, 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 revising paragraphs (c)(8), (c)(15), and (c)(72)(i)(D) to read as follows:

§ 52.320 Identification of plan.

* * * * *

(c) * * *

(8) On June 7, 1974, the Governor submitted five Air Quality Maintenance Area designations.

* * * * *

(15) On July 23, 1979, the Governor submitted House Bill 1090 and Senate Bill 1 as part of the plan.

* * * * *

(72) * * *

(i) * * *

(D) Regulation No. 3, Air Contaminant Emissions Notices, 5 CCR 1001–5, revisions adopted 8/18/94, effective 9/30/94, as follows: Part A (with the exception of the last sentence in the definition of ''Federally enforceable'' in Section I.B.22 and with the exception of Section IV.C.) and Part B (with the exception of Sections V.B. and VII.A.5.). This version of Regulation No. 3, as incorporated by reference here, supersedes and replaces all versions of Regulation No. 3 approved by EPA in previous actions.

* * * * *

[FR Doc. 98–7640 Filed 3–24–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300632; FRL–5779–3]

RIN 2070–AB78

Titanium Dioxide; Exemption from the Requirement of a Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes an exemption from the requirement of a tolerance for residues of titanium dioxide when used as an inert ingredient (UV protectant) in microencapsulated formulations of lambda-cyhalothrin. Zeneca AgProducts requested this tolerance exemption under the Federal Food, Drug and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (Pub. L. 104–170).

DATES: This regulation is effective March 25, 1998. Objections and requests for hearings must be received by EPA on or before April 24, 1998.