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Chief Counsel, Legislative.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MO 032-1032; FRL-5877-3]

Approval and Promulgation of Implementation Plans; State of Missouri

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The EPA is approving revisions to Missouri's federally enforceable operating permit (FESOP) program contained in Missouri rule 10 CSR 10-6.065. These revisions are designed to ease the administrative burden on the state and on affected sources without relaxing environmental requirements.

DATES: This rule is effective on September 25, 1997.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal business hours at the: Environmental Protection Agency, Air Planning and Development Branch, 726 Minnesota Avenue, Kansas City, Kansas 66101; and the EPA Air & Radiation Docket and Information Center, 401 M Street, SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Joshua A. Tapp at (913) 551-7606.

SUPPLEMENTARY INFORMATION: On March 13, 1996, Missouri submitted a request to amend the State Implementation Plan (SIP) to incorporate revisions to the FESOP program which generally affect intermediate sources. These revisions include a provision which delays the permit application deadlines by ten months for smaller intermediate sources, and a provision which allows qualifying intermediate sources to apply for general permits. Both of these revisions are designed to ease the administrative burden on the state and on intermediate sources without relaxing environmental requirements.

Additional revisions were made to clarify the meaning of the rule and

improve its enforceability. Specifically, these revisions clarify: (1) That public participation requirements are applicable; and (2) that sources are subject to enforcement action if they inappropriately apply for and obtain a general intermediate permit and it is later determined that they do not qualify. The revisions also clarify the meaning of the term "threshold level" by referencing a definition contained in a separate Missouri regulation.

Other revisions were contemporaneously made to rule 10 CSR 10-6.065. Most of these revisions affect Missouri's basic operating permit program for small sources. This program is not a federally approved program; therefore, the EPA is not acting on the revisions to the basic program.

Additional revisions affect Missouri's Title V operating permit program. These revisions were addressed in a separate action.

The EPA received no comments on its proposed approval of these revisions. For more information, the reader may refer to the EPA's proposed approval published in the **Federal Register** on August 21, 1996 at 61 FR 43202.

I. Final Action

The EPA is approving revisions to Missouri rule 10 CSR 10-6.065. Specifically, the EPA is approving sections (1), (2), (3), (5), and (7), and subsections (4)(C)-(4)(G) and (4)(I)-(4)(Q) which pertain to the intermediate permit program. The EPA is taking no action on subsections (4)(A), (4)(B), and (4)(H) of Missouri rule 10 CSR 10-6.065 which pertain to Missouri's basic operating permit program. The EPA has taken separate action on revisions to sections of rule 10 CSR 10-6.065 which pertain to Missouri's Title V operating permit program including sections (1), (2), (3), (6), and (7).

Subsequent to the revision approved here, Missouri has revised rule 10 CSR 10-6.065 to update references to its "Definitions" rule, and to modify insignificant activity provisions in its intermediate operating permit program which is contained in rule 10 CSR 10-6.065. The EPA approved these revisions and incorporated them by reference into the SIP in a **Federal Register** document dated May 14, 1997 (see 62 FR 26405). This action is now codified in 40 CFR 52.1320(c)(96).

Rather than incorporate by reference into the SIP this earlier version of the Missouri Code of State Regulations which also contains the revisions approved today, the EPA is amending 40 CFR 52.1320(c)(96) to clarify that the state rules incorporated by reference at

40 CFR 52.1320(c)(96) include the revisions approved today.

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 the SIP shall be considered separately in light of specific technical, economic, and environmental factors, and in relation to relevant statutory and regulatory requirements.

II. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866 review.

B. Regulatory Flexibility Act

SIP approvals under section 110 and subchapter I, part D of the CAA do not create any new requirements but simply approve requirements that the state is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, the Administrator certifies that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-state relationship under the CAA, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The CAA forbids the EPA to base its actions concerning SIPs on such grounds (*Union Electric Co. v. U.S. E.P.A.*, 427 U.S. 246, 256-66 (S.Ct. 1976); 42 U.S.C. 7410(a)(2)).

C. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, the EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to state, local, or tribal governments in the aggregate; or to private sector, of \$100 million or more. Under section 205, the 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 the 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 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 preexisting 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.

D. Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A) as added by the Small Business Regulatory Enforcement Fairness Act of 1996, the EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the General Accounting Office prior to publication of this rule in today's **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 CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 27, 1997. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review, nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Reporting and recordkeeping requirements.

Dated: August 6, 1997.

Martha R. Steincamp,

Acting Regional Administrator.

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. 7401–7671q.

Subpart AA—Missouri

2. Section 52.1320 is amended by revising paragraph (c)(96) to read as follows:

§ 52.1320 Identification of plan.

* * * * *

(c) * * *

(96) Revisions to the Missouri SIP submitted by the Missouri Department of Natural Resources on March 13, 1996, and August 6, 1996, pertaining to its intermediate operating permit program. The EPA is not approving provisions of the rules which pertain to the basic operating permit program.

(i) Incorporation by reference.

(A) Regulations 10 C.S.R. 10–6.020, Definitions and Common Reference Tables, effective June 30, 1996; and 10 C.S.R. 10–6.065, Operating Permits, effective June 30, 1996, except sections (4)(A), (4)(B), and (4)(H).

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 70

[MO 030–1030; FRL–5877–2]

Approval and Promulgation of Implementation Plans; State of Missouri

AGENCY: EPA.

ACTION: Final rule.

SUMMARY: The EPA is taking final action to approve revisions to Missouri's State Implementation Plan (SIP) concerning Missouri's rule 10 CSR 10–6.110, "Submission of Emission Data, Emission Fees, and Process Information". This rule also clarifies the requirements for the payment of emission fees to support Missouri's Title V Operating Permit Program and was submitted as part of the state's plan to comply with Title V of the Clean Air Act (CAA).

DATES: This rule is effective on September 25, 1997.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal business hours at the: Environmental Protection Agency, Air Planning and Development Branch, 726 Minnesota Avenue, Kansas City, Kansas 66101; and the EPA Air & Radiation Docket and Information Center, 401 M Street, SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Stan Walker at (913) 551–7494.

SUPPLEMENTARY INFORMATION: On March 5, 1997 at 62 FR 1000, the EPA proposed to approve amendments to Missouri rule 10 CSR 10–6.110, "Emission Data, Emission Fees, and Process Information." These revisions clarify the requirements for the payment of emission fees to support Missouri's

Title V Operating Permit Program and were submitted as part of the state's plan to comply with Title V of the CAA. Region VII received no comment on the proposed rulemaking.

I. Approval of Revisions to Missouri's SIP

Revisions to the rule include modifications to procedures for collecting, recording, and submitting emission data and process information on state-supplied Emission Inventory Questionnaires (EIQ) and Emission Statement forms, or in a format satisfactory to the Director. This is necessary so the state can calculate emissions for state air resource planning.

An amendment to the rule also establishes approved methods that can be used to calculate emission factors and establishes procedures for adjusting emission fees. Also, the amendment revises the terms "contaminant" and "pollution" to provide consistency with the definitions in 10 CSR 10–6.020.

II. Revisions to Missouri's Part 70 Operating Permits Program

One amendment to Missouri rule 10 CSR 10–6.110 changes section (1), "Applicability," to include a provision that all installations required to obtain permits under 10 CSR 10–6.060 or 10 CSR 10–6.065 (Missouri's construction and operating permit program) file an EIQ as outlined in the reporting frequency table in subsection (2)(E). The purpose of the change is to remove exemptions that were not intended by the Missouri legislature. This rule requires subject facilities to submit emission information and emission fees, and makes emission data available to the public.

The revision to Section (5) of Missouri rule 10 CSR 10–6.110 clarifies language related to payment of fees by charcoal kilns to reflect provisions concerning charcoal kiln fees in the Missouri statute. For additional information, please refer to the Technical Support Document for this rulemaking.

III. Final Action

The EPA is taking final action to approve revisions to Missouri's SIP concerning Missouri's rule 10 CSR 10–6.110, "Submission of Emission Data, Emission Fees, and Process Information," and to approve revisions to Missouri's Title V program.

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 the SIP shall be considered separately in light of specific