

US EPA ARCHIVE DOCUMENT

Therefore, no action is required under the Unfunded Mandates Act.

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

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 impose any new requirements, I certify 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 Clean Air Act, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of the State action. The Clean Air Act forbids USEPA to base its actions concerning SIPs on such grounds. *Union Electric Co. v. USEPA*, 427 U.S. 246, 256-66 (S.Ct. 1976); 42 U.S.C. 7410(a)(2).

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 9, 1996. 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

Air pollution control, Incorporation by reference, Sulfur oxides.

Note: Incorporation by reference of the State Implementation Plan for the State of Indiana was approved by the Director of the Federal Register on July 1, 1982.

Dated: November 21, 1995.

Valdas V. Adamkus,
Regional Administrator.

For the reasons stated in the preamble, 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 P—Indiana

2. Section 52.770 is amended by adding paragraph (c)(103) to read as follows:

§ 52.770 Identification of plan.

* * * * *

(c) * * *

(103) On August 25, 1995, the State submitted regulations adopted by the Indiana Air Pollution Control Board as part of title 326 of the Indiana Administrative Code for incorporation into the Indiana sulfur dioxide State Implementation Plan.

(i) Incorporation by reference.

(A) 326 Indiana Administrative Code 7-4-13(3); Dearborn County sulfur dioxide emission limitations; effective May 18, 1995. Published in the *Indiana Register*, Volume 18, Number 9, June 1, 1995.

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40 CFR Part 52

[NE-8-1-7206a; FRL-5344-2]

Approval and Promulgation of Implementation Plans; State of Nebraska

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The state of Nebraska operates a Federally approved State Implementation Plan (SIP) that includes a Class II operating permit program for minor sources (those not subject to Title V). This revision will clarify and strengthen the Class II operating permit program and other miscellaneous rule changes.

DATES: This action is effective April 9, 1996 unless by March 11, 1996 adverse or critical comments are received.

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

FOR FURTHER INFORMATION CONTACT: Christopher D. Hess at (913) 551-7213.
SUPPLEMENTARY INFORMATION: In February 1994, the state of Nebraska

submitted an SIP revision to create a Class II operating permit program for minor sources (those not subject to Title V). This revision became effective on March 6, 1995 (see 60 FR 372-375).

During the period after the initial state submission, the state proposed several miscellaneous revisions to clarify and strengthen the Class II operating permit program. These revisions were adopted by the Environmental Quality Council on December 2, 1994, and signed by the Governor on May 29, 1995. The state subsequently requested a revision to the SIP on June 14, 1995, under the signature of Randolph Wood, designee of the Governor. This rulemaking addresses those revisions.

Additionally, in a rulemaking published on January 4, 1995 (60 FR 372), one chapter of the state's regulations was inadvertently not submitted with the incorporation by reference material. Thus, this rulemaking now incorporates Chapter 25, "Nitrogen Oxides (Calculated as Nitrogen Dioxide); Emissions Standards for Existing Stationary Sources" of Title 129.

Significant Features of the SIP Revision

A. Modifications for Class II and Construction Permits

1. Consistent with Federal regulations, the state now exempts sources subject only to 112(r) of the Act from the responsibility to obtain a Class II operating permit (5:002.02C). (Section 112(r) requires prevention of accidental release plans.) Sources subject to 112(r) are still required to comply with that section's provisions but will not be required to also obtain a state permit. This relieves approximately 500 sources, otherwise not regulated under the Act, from obtaining Class II permits.

2. The state has revised Title 129 to provide that Class II sources have the same exemptions and mechanisms for meeting the requirement to obtain an operating permit available to them as do Class I (Title V) sources in 5:003:01 and 02. These changes are necessary because those provisions in the previous rule language did not specify Class II sources, and the change makes the rule consistent for both classes of sources.

3. Pursuant to Title V, the state has developed a list and criteria for insignificant activities for Class I permits as referenced in 7:006.03. The state has revised its rules in 7:007.07 to also allow exclusion of insignificant activities from Class II permit applications.

Without the development of a list that can be used for Class II sources, emissions information would be

required for every emission point or unit at a facility, regardless of how small. This revision offers the same relief for Class II sources from unnecessary reporting as for Class I sources, and reduces the amount of information required for specified emission units or activities. However, Class II applications must still provide information necessary to determine whether an activity is subject to an applicable requirement.

4. The state has added language that states the provisions of an operating permit issued under Title 129 supersede the provisions of any previously issued operating or construction permit (8:007.06). The addition of this language prevents any misunderstanding over which provisions are applicable to a source. However, this provision does not authorize changes to prior permits which make its requirements less stringent, because rule 8:015.01 requires that permit requirements must be at least as stringent as any applicable requirement including conditions of any prior permit.

5. Concerning expired permits, the state has reworded rule 12:003 to provide that the conditions of an expired permit shall continue until a new permit is issued or until the application for a new permit is denied.

6. With respect to construction permits in rule 17:001.01, the state has consolidated the applicability provisions previously contained in separate rules into the construction permit rule. This is consistent with EPA requirements for programs to review the air quality impact of proposed new sources and modifications as specified in section 110(a)(2)(C) of the Act.

B. Provisions Regulating Incinerators and Class II Permits

1. The state has tightened its requirement that refuse incinerators obtain operating permits in rule 5:001.02B. The revision provides that residential incinerators are exempt if they are used to dispose of wastes generated on site.

2. The state has added a requirement that nonresidential refuse incinerators obtain a construction permit in rule 17:001.02. An exemption is provided for residential incinerators on property with five or less dwellings which dispose of wastes generated on site.

3. The incinerator emission standards in Chapter 22 are amended to apply to both new and existing refuse incinerators. The former rule applied only to existing incinerators.

The EPA believes these revisions are approvable because they strengthen the existing SIP and are consistent with the

relevant requirements of section 110(a)(2) of the Act.

C. Updating and Adopting Federal Regulations

1. The state has revised rule 19:01 to update its incorporation of Prevention of Significant Deterioration regulations as found in 40 CFR part 52.21 as amended through June 3, 1994.

2. Nebraska has incorporated by reference the Federal regulation on General Conformity. This regulation applies to Federal projects in nonattainment areas and requires such projects to conform to the state SIP. At this time, the regulation would only apply to the lead nonattainment area in Omaha.

The EPA is not acting on the Nebraska General Conformity rule in Chapter 40 as part of this rulemaking, but will act on it in a separate rulemaking.

D. Administrative Restructuring of Title 129

In the previously approved version of Title 129, Chapters 40 through 44 addressed various administrative matters such as appeal procedures and the responsibility to comply with Title 129. The state now consolidates these requirements into one chapter (41). No actual change in the content has been made from the previously approved SIP.

EPA Action

EPA is taking final action to approve revisions submitted June 14, 1995, for the state of Nebraska. All revisions discussed in this notice are considered approvable by the EPA. The reader should note in the rulemaking portion of this document EPA's provision clarifying that any nonconforming permit requirements may be deemed not Federally enforceable.

For a complete understanding of the state's submission and EPA's analysis, the reader may request the "Technical Support Document (TSD) for a Revision to the Nebraska State Implementation Plan (SIP) concerning the Class II Operating Permit Program" dated August 30, 1995.

The EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in a separate document in the Federal Register publication, the EPA is proposing to approve the SIP revision should adverse or critical comments be filed.

If the EPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent notice that will withdraw the final action. All public comments received will then be addressed in a

subsequent final rule based on this action serving as a proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time.

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.

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.

SIP approvals under section 110 and subchapter I, Part D of the Clean Air Act (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, EPA 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 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)).

This action has been classified as a Table 3 action for signature by the Regional Administrator under the procedures published in the Federal Register on January 19, 1989 (54 FR 2214–2225), as revised by a July 10, 1995, memorandum from Mary Nichols, Assistant Administrator for Air and Radiation. The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866 review.

Unfunded Mandates

Under sections 202, 203, and 205 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must undertake various actions in association with proposed or final rules that include a Federal mandate that may

result in estimated costs of \$100 million or more to the private sector, or to state, local, or tribal governments in the aggregate.

Through submission of this SIP revision, the state has elected to adopt the program provided for under section 110 of the CAA. These rules may bind state and local governments to perform certain actions and also require the private sector to perform certain duties. To the extent that the rules being finalized for approval by this action will impose new requirements, sources are already subject to these regulations under state law. Accordingly, no additional costs to state or local governments, or to the private sector, result from this final action. EPA has also determined that this final action does not include a mandate that may result in estimated costs of \$100 million or more to tribal, state, or local governments in the aggregate or to the private sector.

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 April 9, 1996. 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, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: November 22, 1995.

Dennis Grams,

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 CC—Nebraska

2. Section 52.1420 is amended by adding paragraph (c)(43) to read as follows:

§ 52.1420 Identification of plan.

* * * * *

(c) * * *

(43) On June 14, 1995, the Director of the Nebraska Department of Environmental Quality submitted revisions to the State Implementation Plan (SIP) to modify the Class II operating permit program.

(i) Incorporation by reference.

(A) Revised rules “Title 129—Nebraska Air Quality Regulations,” effective May 29, 1995. This revision applies to chapters 5, 7, 12, 17, 19, 25, 41 and deletes chapters 42, 43 and 44.

(ii) Additional material.

(A) None.

3. Section 52.1424 is added to read as follows:

§ 52.1424 Operating permits.

Emission limitations and related provisions which are established in Nebraska operating permits as Federally enforceable conditions shall be enforceable by EPA. The EPA reserves the right to deem permit conditions not Federally enforceable. Such a determination will be made according to appropriate procedures and be based upon the permit, permit approval procedures, or permit requirement which do not conform with the operating permit program requirements or the requirements of EPA underlying regulations.

[FR Doc. 96–2830 Filed 2–8–96; 8:45 am]

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40 CFR Part 52

[NV23–1–7219a; FRL–5338–8]

Clean Air Act Approval and Promulgation of Title V, Section 507, Small Business Stationary Source Technical and Environmental Compliance Assistance Program for Nevada

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action on revisions to the Nevada State Implementation Plan. On May 3, 1995 EPA published the Notice of Proposed Rulemaking to partially approve and partially disapprove the State Implementation Plan (SIP) revision submitted by the State of Nevada for the purpose of establishing a Small Business Stationary Source Technical and Environmental Compliance Assistance Program (PROGRAM). The cause of the proposed disapproval has since been corrected by the State. Thus, EPA is finalizing approval of these

revisions into the Nevada SIP under provisions of the CAA regarding EPA action on SIP submittals and plan requirements for establishing a PROGRAM.

DATES: This action is effective on April 9, 1996 unless adverse or critical comments are received by March 11, 1996. If the effective date is delayed, a timely notice will be published in the Federal Register.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal business hours at the following locations: U.S. Environmental Protection Agency, 75 Hawthorne Street, San Francisco, CA 94105.

U.S. Environmental Protection Agency, Air Docket 6102, 401 “M” Street SW., Washington, DC 20460.

Nevada Division of Environmental Protection, Bureau of Air Quality, 123 West Nye Lane, Room 123, Carson City, NV 89710.

FOR FURTHER INFORMATION CONTACT: R. Michael Stenberg, A–1, U.S. Environmental Protection Agency, 75 Hawthorne Street, San Francisco, CA 94105, (415) 744-1182.

SUPPLEMENTARY INFORMATION:

1. Background

Implementation of the provisions of the Clean Air Act (CAA), as amended in 1990, will require regulation of many small businesses so that areas may attain and maintain the national ambient air quality standards (NAAQS) and reduce the emission of air toxics. Small businesses frequently lack the technical expertise and financial resources necessary to evaluate such regulations and to determine the appropriate mechanisms for compliance. In anticipation of the impact of these requirements on small businesses, the CAA requires that States adopt a Small Business Stationary Source Technical and Environmental Compliance Assistance Program (PROGRAM), and submit this PROGRAM as a revision to the Federally approved SIP. In addition, the CAA directs the Environmental Protection Agency (EPA) to oversee these small business assistance programs and report to Congress on their implementation. The requirements for establishing a PROGRAM are set out in Section 507 of Title V of the CAA. In February 1992, EPA issued *Guidelines for the Implementation of Section 507 of the 1990 Clean Air Act Amendments*, in order to delineate the Federal and State roles in meeting the new statutory provisions and as a tool to provide