

receiving grants and contributing less than the required minimum of two-fifths of the approved program costs shall have until November 15, 1993 to increase their contribution to the required level.

(b) Subject to the conditions set forth below, the Regional Administrator may, at the request of the Governor of a State or the Governor's designee, or in the case of a local jurisdiction, the authorized local official, waive, for a 1-year period, all or a portion of the cost-sharing requirement of paragraph (a) of this section. The Regional Administrator may renew the waiver for no more than 2 years so long as the total waiver period does not exceed 3 years from the approval date of a state's permit program required under section 502 of the Clean Air Act (Act).

(1) The waiver may be approved on a case-by-case basis and only when a state or local government's nonfederal contribution is reduced below the required two-fifths minimum as a result of the redirection of its nonfederal air resources to meet the requirements of section 502(b) of the Act.

(2) In applying for a waiver the Governor or the Governor's designee, or in the case of a local jurisdiction, the authorized local official, must:

(i) Describe the extent of fiscal and programmatic impact on the agency's section 105 program as a result of the transfer of nonfederal resources to support the program approved by EPA under section 502(b) of the Act.

(ii) Provide documentation of the amount of the cost-sharing shortfall and the programmatic activities that would not be able to be carried out if the section 105 grant is reduced or not awarded as a result of a state or local air pollution control agency's inability to meet the cost-sharing requirements.

(iii) Assure that there is no source of funding that may reasonably be used to meet the cost-sharing requirement for the affected grant budget period; and

(iv) Assure that during the section 105 grant period the non-federal share of the program costs will not be reduced in an amount greater than that authorized by the waiver.

6. Section 35.210 is amended by adding a sentence at the end of paragraph (a) to read as follows:

**§35.210 Maintenance of effort.**

(a) \* \* \* In order for the Regional Administrator to award grants in a timely manner each fiscal year, the Regional Administrator shall compare an agency's proposed expenditure level, as detailed in the agency's application for grant assistance, to that agency's

expenditure level in the second preceding fiscal year.

\* \* \* \* \*

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**40 CFR Part 52**

[NE-6-1-6445a; FRL-5115-3]

**Approval and Promulgation of Implementation Plans and Delegation of 112(l) Authority; State of Nebraska**

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

**ACTION:** Direct final rule.

**SUMMARY:** This final action approves the State Implementation Plan (SIP) submitted by the state of Nebraska. The state's revision includes the creation of a Class II operating permit program, part D (nonattainment) new source review (NSR) rule changes, SO<sub>2</sub> rule corrections, and the use of enhanced monitoring. The creation of a Class II operating permit program enables Nebraska to have a Federally enforceable program for sources not covered by the requirements for major title V sources under the Clean Air Act Amendments (CAAA) of 1990 and part 70 of the Code of Federal Regulations.

**DATES:** This final rule is effective March 6, 1995 unless by February 3, 1995 adverse or critical comments are received. If the effective date is delayed EPA will publish timely notice in the **Federal Register**.

**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:** The state of Nebraska has operated a Federally approved SIP that has implemented the various requirements of the Clean Air Act (Act) since 1972. During the past two decades, numerous revisions and updates have been made to the SIP in response to new applicable requirements, including those requirements generated by the Act's 1990 Amendments. Title 129, Nebraska's Air Quality Regulations, has been the chief regulatory component of the currently approved SIP framework although it is supported by other state rules.

Due to the Act's title V requirements, title 129 has been revised to include permitting requirements for both title V sources and other sources regulated by the SIP. Those sources that will be regulated by the SIP will be part of a Class II operating permit program, while those sources subject to title V will be part of a Class I operating permit program. Both programs will be governed by title 129, December 17, 1993.

After submitting its title V program in November 1993, and those aspects of title 129 that support that program, the state subsequently submitted a proposed revision to the SIP on February 16, 1994. This revision specifically deals with the Class II, SIP-based operating permit program and those aspects of title 129 that support it.

Nebraska's request for a revision to the SIP also includes Part D (nonattainment) NSR changes, SO<sub>2</sub> rule corrections, use of enhanced monitoring, and other miscellaneous changes. The state has also requested approval of the Class II operating permit program pursuant to section 112(l) of the Act, which governs state programs for regulation of hazardous air pollutants.

For a complete and thorough understanding of the state's submission and EPA's analysis, the reader should consult the "Technical Support Document (TSD) for a Revision to the Nebraska State Implementation Plan (SIP) and Request for Approval under Section 112(l)" dated August 12, 1994.

**Significant Features of the SIP Revision**

*A. Definitions*

There are approximately 30 new definitions in the revised title 129. Not all of these new definitions affect the SIP, however, as some have been added for title V purposes. Nevertheless, all of the definitions are being incorporated into the SIP to ensure consistent use of terms by the state and EPA.

New definitions or significant topical changes include:

1. The definition of "Federally Enforceable" now includes applicable SIPs, permits, and any requirements in title 129 which are enforceable by the Administrator.

2. The definition of "Primary standard" and "Secondary standard" no longer directly reference section 109 of the Act, but chapter 4 of title 129 instead. This is acceptable since chapter 4 incorporates the primary and secondary standards outlined in 40 CFR 50.4-50.12.

3. The definition of "Significant" has deleted four pollutants: Asbestos,

Beryllium, Mercury and Vinyl Chloride. These four pollutants will now be regulated under section 112 (g) of the Act. In accordance with 40 CFR 51.166(b)(23)(i), three categories of pollutants have been added to this definition: Municipal waste combustor organics, Municipal waste combustor metals, and Municipal waste combustor acid gases.

4. The definition of "Major Source" incorporates the previously approved definition, and expands it in accordance with 40 CFR 70.2 and section 112 of the Act. It also defines major source for nonattainment areas and for emissions offsets. Finally, in accordance with 40 CFR 52.21 which is incorporated by reference, this also defines major source for the purposes of prevention of significant deterioration.

#### B. Ambient Air Quality Standards

Standards for total suspended particulate (TSP) have been deleted. A July 1, 1987, **Federal Register** document changed the indicator for both the primary and secondary standards from TSP to PM<sub>10</sub>. The state of Nebraska originally elected to maintain both standards, although only the standard for PM<sub>10</sub> is required. The state now deletes this TSP standard.

#### C. Class II Operating Permit Program

By making the Class II operating permit program part of the SIP and legally requiring in the SIP that permittees comply with such permits, any violation of such a permit will be enforceable under the Clean Air Act and subject to EPA enforcement. One effect of this rule is that any limitation on potential-to-emit (PTE) criteria pollutants will be recognized and be enforceable by EPA. Thus, sources may voluntarily restrict their potential emissions and be issued a Class II permit to avoid the more extensive requirements of title V.

In the **Federal Register** document dated June 28, 1989 (54 FR 27281), EPA outlines five criteria that a state must meet in order to achieve a Federally enforceable operating permit program which is approved into the SIP. These criteria apply to both the Class II program and to the request for approval under section 112(l). The state of Nebraska has met this criteria by: (1) Submitting this program for approval; (2) imposing a legal obligation that operating permit holders adhere to the terms and limitations of their permits; (3) requiring that all emissions limitations, controls, and other requirements imposed by permits will be at least as stringent as any other applicable limitations and requirements

contained in or enforceable under the SIP; (4) further requiring the limitations, controls, and requirements of the permits to be permanent, quantifiable, and otherwise enforceable as a practical matter; and (5) providing that the permits issued are subject to public participation and EPA review. The reader may consult the TSD for a fuller description of how the state has met these criteria.

#### D. Revised Thresholds

The state has revised the thresholds for minor NSR permitting so that the same thresholds apply for both Class II operating permits as well as NSR. Sources with the PTE equal to or greater than these thresholds must obtain a construction permit from the state. Sources with a PTE below these thresholds are still subject to state and Federal regulations, but are not required to have an operating or NSR permit. The following chart outlines these threshold changes (note: some thresholds have been converted from pounds per hour to an annual rate):

	Previous SIP	Current SIP
TSP <sup>1</sup> .....	43.7 TPY .....	25 TPY
PM <sub>10</sub> .....	10 TPY .....	15 TPY
SO <sub>2</sub> .....	8.76 TPY .....	40 TPY
NO <sub>x</sub> .....	9.1 TPY .....	40 TPY
VOC .....	65.7 TPY .....	40 TPY
CO .....	100 TPY .....	50 TPY
HAP .....	2.5 TPY .....	2.5 TPY
Lead .....	.....	0.6 TPY

<sup>1</sup>Although the national ambient air quality standard for TSP has been changed to PM<sub>10</sub> by EPA, Nebraska is retaining TSP increments. The threshold standard is based on 40 CFR 52.21 as are the other standards.

With respect to the three thresholds which have been increased, the state has indicated that air quality screen modeling is routinely performed for criteria pollutants before construction permits are issued. In a letter from the state dated November 7, 1994, Nebraska indicates that the evidence available from the cumulative pool of modeling results clearly demonstrates that sources with pollutant potentials, less than the new thresholds, do not threaten the maintenance of the ambient air quality standards.

#### E. 112(l) Authority

The state has also requested that the provisions of Title 129 that pertain to Class II operating permits be approved pursuant to section 112(l) of the Act. By approving the Class II permit program under section 112(l), permittees must comply with such permits relating to hazardous air pollutants, and any violation of such a permit will be

enforceable under the Clean Air Act and subject to EPA enforcement. One effect of this rule is that any limitation on PTE hazardous pollutants will be recognized and be enforceable by EPA. Thus, sources may voluntarily restrict their potential emissions and be issued a Class II permit and avoid the more extensive requirements of Title V.

In addition to meeting the criteria of the June 28, 1989, **Federal Register** document, the state has also met specific criteria for approval under 112(l) which include:

1. Adequate authority within the program to ensure compliance by all sources with each applicable standard, regulation, or requirement established by the Administrator. The state provided an Attorney General's statement which ensures necessary legal authority and compliance by all sources within the state.

2. Adequate authority to implement the program. The state has submitted copies of state statutes, regulations, and other requirements which contain the appropriate provisions demonstrating authority to implement and enforce the state rule upon approval.

3. Adequate resources to implement the program. The state has committed to provide adequate resources for this part of its program.

4. An expeditious schedule for implementing the program and ensuring compliance by the affected sources. Class II permit applications are due within 12 months of the effective date of Title 129 (December 1994).

The reader may consult the TSD for a fuller description of how the state meets the criteria for approval under 112(l).

#### F. Emissions Reporting

The state is requiring an annual emissions inventory by each July 1 which describes the emissions of the past calendar year. These inventories will include the source's administrative information (name, address, etc.), a description of the facilities and hours of operation, nature and amounts of fuel, rate of discharge, and time duration of contaminant emissions. Sources are responsible to report the actual quantity of emissions, including documentation of the measurement method, for any single regulated air pollutant in a greater quantity than one ton and for any combination of regulated air pollutants in a quantity greater than two and one-half tons.

#### G. Construction Permits

With respect to preconstruction review, Title 129 contains provisions to ensure that any construction or

modification of stationary sources will not interfere with the attainment or maintenance of a national ambient air quality standard, which meets the requirements of 40 CFR 51.160(b)(2). Title 129 also requires that sources which have failed to obtain a construction permit must meet the standards which would have been imposed if a permit had been issued. This requirement is in addition to the requirement to obtain a permit. Therefore, a source could be in violation of the requirement to obtain a permit, and, to the extent identifiable, any emission standards which would be included in a permit for the source.

With respect to preconstruction requirements in nonattainment areas, the state has added provisions in accordance with the 1990 Amendments to part D of the Act. With respect to section 173(a)(4), Title 129 provides that no permit will be issued if the source is not in compliance with the requirements of the SIP, or if the Administrator determines that the Implementation Plan is not being adequately implemented. Pursuant to 173(a)(5), the source must also complete an analysis of alternative sites, sizes, production processes, and environmental control techniques which demonstrate that the proposed construction outweighs the environmental and social costs imposed by the source. The state has demonstrated its commitment to continue submitting information from permits to the RACT/BACT/LAER Clearinghouse as required in section 173(d) in its SIP request cover letter. EPA has determined that the state meets the relevant requirements for nonattainment areas as identified in section 173 of the Act.

#### *H. Sulfur Compound Emissions; Existing Sources Emissions Standards*

The state has modified this portion of the SIP in response to EPA's request to improve enforceability. Previously, heat input was determined from the aggregate of all fuel-burning equipment on the source's premises. Subsequently, all fuel-burning equipment had to be tested to determine compliance with the plantwide SO<sub>2</sub> emission limitation. Routine or even periodic compliance determinations were expensive, and in some cases impracticable for sites with more than two or three combustion units. The state now establishes source-specific or source-category SO<sub>2</sub> emission limitations, using only the heat input contribution from sulfur-bearing fuels.

This modification conforms to the enforceability criteria methods contained in EPA's SO<sub>2</sub> Guideline

document, EPA-452/R-94-008, chapter 8.

#### *I. Open Fires Prohibitions and Exceptions*

Several modifications have been made to the SIP with respect to open fires. In title 129 the word "vegetation" replaces the word "trees" to describe those materials that should be destroyed to prevent a fire hazard.

The previous SIP granted exceptions to open burning for land clearing of roads and construction activity. As an enforcement matter, the state found its previous language did not restrict the types of materials that could be burned pursuant to construction activity.

Thus, the state has promulgated two distinct types of open burning: one for land clearing for roads and one for construction activity. This allows the state to restrict construction burning to trees, brush, vegetation, and untreated lumber which strengthens the SIP.

With written permission of the director, the state now allows the burning of straw used as a winter insulating cover on agricultural products. This activity is concentrated in the Scottsbluff area, which is monitored for PM<sub>10</sub>. In the past a variance was granted for this annual activity, but the state now adopts this new provision to recognize a practice which has never led to a violation of a PM<sub>10</sub> standard.

The state has also modified the SIP to allow the burning of materials after cleanup from a natural disaster, again with written permission of the director. The director will ensure that these activities do not contribute to violations of any air quality standards.

#### *J. Duty to Prevent Escape of Dust*

The state has modified the SIP so that normal farming practices, on-farm crop drying and handling, and animal feeding activities will not be regulated by the state so long as reasonable and practical measures are exercised to limit particulate matter. This is consistent with EPA's rural fugitive dust policy. This policy states that EPA does not require SIP control strategies due to contributions of activities such as windblown dust, dirt, and agricultural practices.

#### *K. Emission Sources; Testing; Monitoring*

The SIP adds several new test methods by incorporating by reference EPA provisions that were published since the last modification to the SIP. The SIP also specifies that test methods may also include those approved for the source which are in their respective

permit; any contained in the SIP; any issued under construction permits, PSD permits, or pursuant to an MACT standard; or any other method approved under title 129. Inclusion of these comprehensive test methods affords the state a wide range of references to address all types of emissions and sources within the state.

#### *L. Title 115*

This title describes the rules of practice and procedure within Nebraska with respect to hearings, contested cases, and rulemaking. To a large extent, EPA does not regulate the manner in which Nebraska conducts its internal proceedings except to the degree which the rules in title 115 may affect the implementation of the SIP. Hence, the rules of title 115 are approvable as part of this request for a revision to the SIP.

#### **EPA Action**

EPA is taking final action to approve revisions submitted February 16, 1994, for the state of Nebraska.

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, EPA is proposing to approve the SIP revision should adverse or critical comments be filed.

If EPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent document 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. 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 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)).

The Office of Management and Budget has exempted these actions from review under Executive Order 12866.

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 March 6, 1995. 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 10, 1994.

**William Rice,**

*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 CC—Nebraska

2. Section 52.1420 is amended by adding paragraph (c)(41) to read as follows:

#### § 52.1420 Identification of plan.

\* \* \* \* \*

(c) \* \* \*

(41) On February 16, 1994, the Director of the Nebraska Department of Environmental Quality submitted revisions to the State Implementation Plan (SIP) to create a Class II operating permit program, Part D NSR rule changes, SO<sub>2</sub> rule corrections, and the use of enhanced monitoring.

(i) Incorporation by reference.

(A) Revised rules "Title 129—Nebraska Air Quality Regulations," effective December 17, 1993. This revision approves all chapters except for parts of Chapters 5, 7, 8, 9, 10, 11, 12, 13, 14, and 15 that pertain to Class I permits; Chapter 17 as it relates to hazardous air pollutants; and excludes Chapters 23, 25, 26, 27, 28, 29, and 31.

(B) "Title 115—Rules of Practice and Procedure," effective August 8, 1993, and submitted as an SIP revision on February 16, 1994.

(ii) Additional material.

(A) Letter from Nebraska to EPA Region VII dated February 16, 1994, regarding a commitment to submit information to the RACT/BACT/LAER Clearinghouse as required in section 173(d) of the Clean Air Act.

(B) Letter from Nebraska to EPA Region VII dated June 10, 1994, regarding the availability of state operating permits to EPA and specified emissions limitations in permits.

(C) Letter from Nebraska to EPA Region VII dated November 7, 1994, regarding the increase in New Source Review (NSR) permitting thresholds.

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BILLING CODE 6560-50-P

#### 40 CFR Part 52

[IN43-3-6716; FRL-5133-4]

#### Approval and Promulgation of Implementation Plan; State of Indiana

**AGENCY:** Environmental Protection Agency.

**ACTION:** Final rule.

**SUMMARY:** On July 19, 1994, the United States Environmental Protection Agency (USEPA) published direct final rulemaking approving a 1990 base year ozone precursor emissions inventory for Lake and Porter Counties, Indiana as a revision to the Indiana State Implementation Plan (SIP). On the same day (July 19, 1994), a proposed rule was also published which established a 30-day public comment period, noting that, if adverse comments were received regarding the direct final rule, the

USEPA would withdraw the direct final rule and publish an additional final rule to address the public comments.

Adverse comments were received during the public comment period and the USEPA published a withdrawal of the direct final rule on September 15, 1994. This revised final rule summarizes the public comments and USEPA's responses and finalizes the approval of the 1990 base year ozone precursor emissions inventory for Lake and Porter Counties as a revision to the Indiana SIP.

**EFFECTIVE DATE:** This action will be effective February 3, 1995.

**ADDRESSES:** Copies of the SIP revision, public comments and USEPA's response are available for inspection at the following address: (It is recommended that you telephone Edward Doty at (312) 886-6057 before visiting the Region 5 office.) United States Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604.

**FOR FURTHER INFORMATION CONTACT:** Edward Doty, Regulation Development Section (AR-18J), Regulation Development Branch, Air and Radiation Division, United States Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, Telephone Number (312) 886-6057.

#### SUPPLEMENTARY INFORMATION:

##### I. Background Information

The 1990 base year emissions inventory for Lake and Porter Counties, Indiana discussed in this rule was submitted by the Indiana Department of Environmental Management (IDEM) on January 15, 1994. The emissions inventory submittal covers the emissions of Volatile Organic Compounds (VOC), Oxides of Nitrogen (NO<sub>x</sub>), and Carbon Monoxide (CO) for the Indiana portion of the Chicago-Northwest Indiana ozone nonattainment area. In addition to emissions from the nonattainment area, the submittal also covers VOC, NO<sub>x</sub>, and CO emissions from major stationary sources (with actual emissions for any of the covered pollutants equal to or in excess of 100 tons per year) in all counties located within 25 miles of the ozone nonattainment area.

On July 19, 1994 (59 FR 36700), USEPA published a direct final rule approving the emissions inventory as a revision of the Indiana ozone SIP. On the same day, USEPA published a proposed rule noting that if adverse comments were received regarding the direct final rule, the USEPA would withdraw the direct final rule and