

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, SO₂ 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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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_x), 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_x, 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

publish another final rule addressing the public comments. Adverse comments were received regarding the direct final rule and USEPA, therefore, withdrew the direct final rule on September 15, 1994 (59 FR 47263). This final rule addresses the comments that were received during the public comment period and announces USEPA's final action regarding the base year ozone precursor emissions inventory for Lake and Porter Counties.

II. Public Comments

The following discussion summarizes the comments received regarding the emissions inventory. All comments were submitted by a single commentor, Bethlehem Steel Corporation.

Comment

Bethlehem Steel Corporation notes that the base year emissions inventory developed by IDEM used a VOC emission factor of 1.246 pounds VOC per ton of sinter to estimate sinter plant windbox emissions for all steel plants except Inland Steel (an emission factor of 0.359 pounds VOC per ton of sinter was used for the sinter plant windbox emissions at this steel plant). This produced a total VOC emission rate of 43,480.5 pounds per day (3,783.77 tons per year) for this source category. Bethlehem Steel Corporation notes that sampling of Bethlehem Steel Corporation's sinter plant exhaust emissions, conducted to support the preparation of 1993 emission statements, has led to the conclusion that the actual VOC emission rate for Bethlehem Steel Corporation's sinter plant windbox exhausts is approximately 0.15 pounds VOC per ton of sinter. Given the significant magnitude of the VOC emissions from this source category, the commentor believes the emissions inventory must be changed to take into account the measured emission rate. The commentor further recommends that other steel plants, in particular US Steel, should be requested to forward measured sinter plant windbox emission rates to further correct the base year emissions inventory.

Comment

Bethlehem Steel Corporation raises a concern regarding the conversion of calculated annual emissions to ozone season daily emissions. The commentor notes that, for sinter plants with single sinter strands operating over 90 percent of the available hours in a year, the assumption that the non-operating hours each year are outside of the ozone season day is a reasonable assumption. However, for the US Steel plant, where

each sinter plant is operated only 1,877 hours per year, the assumption that each plant emits 4.66 times its annual average daily emissions during the ozone season will significantly overestimate the likely ozone season daily emissions. It is unlikely that all three of US Steel's sinter plants would be operated on the same schedule during the ozone season. If actual 1990 ozone season operating information can not be obtained from US Steel, the three sinter plants should be treated as one for the purposes of calculating ozone season daily emissions. This would change the total ozone season daily VOC emission rate (using the 1.246 pounds VOC per ton of sinter emission rate) from 27,285 pounds per day to 9,039.3 pounds per day without reducing the reported annual emissions.

Comment

Bethlehem Steel Corporation notes that the VOC emissions from coke oven underfiring have been measured for the Bethlehem Steel facility and it has been found that the level of VOC emissions depend significantly upon the condition of the individual battery. The 1993 VOC emission rate for this source type was found to be 46.43 tons per year. IDEM's 1990 base year emissions inventory credits these sources with emissions of 2,339 tons VOC per year. The commentor believes that similar overestimates are present for other coke oven batteries addressed in the emissions inventory.

Comment

Bethlehem Steel Corporation notes that other changes may be needed in the inventory based on actual emission measurements. Due to the shortness of the comment period for the direct final/proposed rulemaking, however, the commentor was unable to itemize other recommended emission changes. Bethlehem Steel Corporation recommends that the USEPA consider using actual emission measurements instead of assumed emission rates for the steel plants.

Based on the above comments, Bethlehem Steel Corporation recommends that the USEPA disapprove Indiana's 1990 base year ozone precursor emissions inventory for Lake and Porter Counties.

III. State Response

The IDEM has prepared responses to the comments presented above and has requested that these responses be included in the record of this rulemaking. The following summarizes IDEM's responses as conveyed in a

September 12, 1994 letter from IDEM to the USEPA.

First, IDEM notes that the 1990 base year emission inventory was intended by the Clean Air Act (Act) to be a "snapshot in time", a tool to be used by IDEM as it develops its attainment strategies. Bethlehem Steel's information, if accurate, may not be relevant to the 1990 baseline operating conditions. Particularly for a facility as complicated as a steel mill, it is extremely difficult to establish a perfect inventory for a specific time period. When IDEM submitted the final inventory in January 1994, it represented IDEM's best effort, developed in accordance with USEPA procedures and incorporating an opportunity for public comment, for quantifying 1990 emissions. IDEM believes that the emission factors that it used for sinter plants were the appropriate ones based on USEPA guidance.

Second, although the base year inventory was the subject of public review with opportunity for public comments during the State's development process, the commentor did not raise the above issues. A properly noticed public hearing was held in Gary, Indiana on July 1, 1993. The commentor did not make any comments during that hearing, nor were written comments filed by the State's comment deadline of July 9, 1993. If the commentor had major concerns about the accuracy of the inventory developed by IDEM, the State's public comment process was the appropriate mechanism for raising those concerns.

Third, the primary issue raised by the commentor relates to the emission factors used to quantify emissions from one operation at the mill—the sinter plant. The method used to quantify the emissions from this particular type of facility is an extremely complex issue, for which there is considerable uncertainty, variation in time, and difference of approach.

IDEM has commenced a State rulemaking to develop controls for emissions of VOC. As part of that rulemaking process, IDEM will directly raise the issue of emission factors with the steel companies and other interested parties. The results of that effort may lead IDEM to request a change in the 1990 base year emissions inventory. IDEM, however, does not at this time have sufficient information to conclude that changes in the 1990 base year emissions inventory are appropriate.

IV. USEPA Response

With regard to the commentor's comments summarized in II. above, it is

noted that the USEPA encourages the use of site-specific emissions data if data acceptable to the State and the USEPA are available. The commentor should present all available sampling data and a discussion of the sampling procedures to the State for review. It is the State and not the USEPA that must determine whether these data warrant a revision to the 1990 base year emissions inventory. As noted in the State's response, the State may have some concerns regarding the acceptability of the source-specific emission factors for the sinter plant windboxes.

Nonetheless, the State is encouraged to consider the data presented by the commentor, and, if appropriate, to revise the 1990 base year emissions inventory through a SIP revision request (the emission adjustments recommended by the commentor, if accepted by the State, would warrant a SIP revision). The rulemaking process that has been initiated by the State is the appropriate forum for resolving this issue and should be completed in a timeframe that minimizes the need for related SIP revisions in the State's reasonable further progress and demonstration of attainment SIP currently under development by the State.

The USEPA agrees with the State that the most appropriate time to have adjusted the emissions inventory was during the State's public review period. Requesting disapproval of the emissions inventory based on data collected more than one year after the public review period is needlessly disruptive to the State's SIP development process. USEPA agrees with the State that the State used the best available data at the time the emissions inventory was prepared. Therefore, the USEPA disagrees with the commentor that the emissions inventory should be disapproved now that new data may have come to light. The USEPA fully expects some base year emission inventories to be revised after-the-fact through follow-up quality assurance checks and input of improved emission factors. Many States are pursuing such emissions inventory improvements. The USEPA does not wish to discourage such quality assurance efforts through disapproval of emission inventory SIP revisions based on emission factor changes made after the adoption and submittal of the base year emission inventories.

With regard to the conversion of annual emissions to ozone season daily emissions, IDEM assumed for this source category that emissions occur uniformly throughout the year. Therefore, no distinction was made

between hourly emission rates within the summer months (the months assumed to be associated with high ozone concentrations) and those from other months. Given the lack of season-specific and day-specific data, the approach taken by the State is acceptable. The fewer hours of sinter plant operation during 1990 at the US Steel facility would logically have led to higher per hour emission rates when annual emissions were converted to daily emissions by dividing the annual emissions by the hours of operation. IDEM's conversion procedures are acceptable to the USEPA.

V. Final Rulemaking Action

The State of Indiana has met the requirements of the Act for the submittal of a base year ozone precursor emissions inventory. The USEPA approves Indiana's 1990 base year ozone precursor emissions inventory for Lake and Porter Counties. It is noted, however, that the State of Indiana will consider the issues raised by Bethlehem Steel Corporation, and may, dependent on the extent of the revisions needed in the emissions inventory, submit another base year emissions inventory SIP revision request in the future.

This action has been classified as a Table 2 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214-2225), as revised by an October 4, 1993 memorandum from Michael H. Shapiro, Acting Assistant Administrator for Air and Radiation. The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866 review.

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 any 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.*, 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 economic 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 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 impose any new requirements, I certify that it does not have a significant impact on small entities. Moreover, due to the nature of the Federal-State relationship under the Act, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of State action. The Act forbids the USEPA to base its actions concerning SIPs on such grounds. *Union Electric Co. v. U.S. E.P.A.*, 427 U.S. 246, 256-66 (1976).

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 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, Nitrogen dioxide, Ozone, Volatile organic compounds.

Dated: December 23, 1994.

Valdas V. Adamkus,
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 P—Indiana

2. Section 52.777 is amended by adding paragraph (j) to read as follows:

§ 52.777 Control strategy: Photochemical oxidants (hydrocarbons).

* * * * *

(j) The base year ozone precursor emission inventory requirement of section 182(a)(1) of the Clean Air Act, as amended in 1990, has been satisfied for Lake and Porter Counties, Indiana.

[FR Doc. 95-148 Filed 1-3-95; 8:45 am]

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