

section 112(l) to approve programs to limit potential to emit of HAP directly under section 112(l) prior to this revision to Subpart E. The EPA is therefore approving Pinal's synthetic minor program now so that Pinal may begin to issue federally enforceable synthetic minor permits as soon as possible.

The EPA believes that Pinal's synthetic minor program meets the approval criteria specified in the June 28, 1989 **Federal Register** notice and in section 112(l)(5) of the Act. Please refer to the Technical Support Document for a thorough analysis of the June 28, 1989 criteria and the statutory criteria of section 112(l)(5) as applied to Pinal's synthetic minor program.

The EPA has evaluated the submitted rules and has determined that they are consistent with the CAA, EPA regulations, and EPA policy. Therefore, Pinal County Air Quality Control District Code of Regulations Chapter 1, Article 3, section 1-3-140, Definitions, subsections 5, 15, 21, 32, 33, 35, 50, 51, 58, 59, 103, and 123; Chapter 3, Article 1, section 3-1-081, Permit conditions, subsection (A)(8)(a); Chapter 3, Article 1, section 3-1-084, Voluntarily Accepted Federally Enforceable Emissions Limitations; Applicability; Reopening; Effective Date; and Chapter 3, Article 1, section 3-1-107, Public Participation, are being approved under section 110(k)(3) of the CAA as meeting the requirements of section 110(a) and Part D and under section 112(l) of the CAA as meeting the requirements of section 112(l)(5).

Pinal has already begun to issue permits containing voluntarily accepted limits pursuant to the regulations listed above. If the District followed its own procedures, each of these permits was subject to public notice and prior EPA review. Therefore, EPA will consider all voluntarily accepted limits in District permits that were processed in a manner consistent with the District regulations being acted upon today and the five June 28, 1989 criteria to be federally enforceable with the promulgation of this rule provided that any such permits containing the voluntarily accepted limits that the District wishes to make federally enforceable are submitted to EPA and accompanied by documentation that the procedures approved today have been followed. The EPA will expeditiously review any individual permits so submitted to ensure their conformity to the program requirements.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future implementation plan. Each request for

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

The EPA is publishing this notice without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in a separate document in this **Federal Register** publication, EPA is proposing to approve the SIP revision and section 112(l) submittal should adverse or critical comments be filed. This action will be effective July 3, 1995, unless by June 1, 1995, adverse or critical comments are received.

If 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. If no such comments are received, the public is advised that this action will be effective July 3, 1995.

Regulatory Process

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 population of less than 50,000.

Application for limits under Pinal's synthetic minor provisions is voluntary and therefore this approval under sections 110 and 112 of the Act does not create any new requirements. Therefore, because the federal SIP-approval and section 112(l) 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 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 OMB has exempted this action from review under Executive Order 12866.

List of Subjects in 40 CFR Part 52

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

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

Dated: March 28, 1995.

Felicia Marcus,

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 D—Arizona

2. Section 52.120 is amended by adding paragraphs (c)(71) to read as follows:

§ 52.120 Identification of plan.

* * * * *

(c) * * *

(71) New and amended regulations for the following agencies were submitted on August 15, 1994 by the Governor's designee.

(i) Incorporation by reference.

(A) Pinal County Air Quality Control District.

(1) Chapter 1, Article 3, section 1-3-140, subsections 5, 15, 21, 32, 33, 35, 50, 51, 58, 59, 103, and 123, adopted on November 3, 1993; Chapter 3, Article 1, section 3-1-081(A)(8)(a), adopted on November 3, 1993; Chapter 3, Article 1, section 3-1-084, adopted on August 11, 1994; and Chapter 3, Article 1, section 3-1-107, adopted on November 3, 1993.

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BILLING CODE 6560-50-W

40 CFR Part 52

[MS-20-1-6562a; FRL-5173-9]

Approval and Promulgation of Implementation Plans; Mississippi: Approval of Revisions to Construction and Operation Permit Regulations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving revisions to the Mississippi State Implementation Plan (SIP) to allow the State of Mississippi to issue Federally enforceable state operating permits (FESOP). On January 26, 1994, the State of Mississippi through the Mississippi Department of Environmental Quality (MDEQ) submitted a SIP revision fulfilling the requirements necessary for a state FESOP program to become Federally enforceable. In order to extend the Federal enforceability of Mississippi's FESOP program to hazardous air pollutants (HAP), EPA is also approving Mississippi's FESOP program pursuant to section 112 of the Clean Air Act as amended in 1990 (CAA) so that the State may issue FESOP for HAP.

DATES: This final rule will be effective July 3, 1995 unless adverse or critical comments are received by June 1, 1995. If the effective date is delayed, timely notice will be published in the **Federal Register**.

ADDRESSES: Written comments should be addressed to Scott Miller, at the EPA Regional Office listed below. Copies of the documents relative to this action are available for public inspection during normal business hours at the following locations. The interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the visiting day.

Air and Radiation Docket and Information Center (Air Docket 6102), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460

Environmental Protection Agency, Region 4, Air Programs Branch, 345 Courtland Street, NE, Atlanta, Georgia 30365

Mississippi Department of Environmental Quality, Bureau of Air Quality Control, Air Quality Division, Post Office Box 10385, Jackson, Mississippi 39285

FOR FURTHER INFORMATION CONTACT: Carla Pierce, Title V, Regional Program Manager, Air Programs Branch, Air, Pesticides & Toxics Management Division, Region 4, Environmental Protection Agency, 345 Courtland Street, NE., Atlanta, Georgia 30365. The telephone number is 404/347-2864.

SUPPLEMENTARY INFORMATION: On January 26, 1994, the State of Mississippi through the MDEQ submitted a SIP revision designed to make certain permits issued under Mississippi's existing minor source operating permit program Federally enforceable pursuant to EPA requirements as specified in a **Federal**

Register notice, "Requirements for the preparation, adoption, and submittal of implementation plans; air quality, new source review; final rules," (see 54 FR 22274, June 28, 1989). The State will continue to issue permits which are not Federally enforceable under its existing minor source operating permit rules as it has done in the past. The SIP revision which is the subject of today's rulemaking adds additional requirements to the State's current minor source operating permit program which allows the State to issue FESOP. This voluntary SIP revision allows EPA and citizens under the CAA to enforce terms and conditions of Mississippi's FESOP program. Operating permits that are issued under the State's FESOP program that is approved into the State SIP and under section 112(l) will provide federally enforceable limits to an air pollution source's potential to emit. Limiting of a source's potential to emit through federally enforceable operating permits can affect a source's applicability to federal regulations such as title V operating permits, New Source Review (NSR) preconstruction permits, Prevention of Significant Deterioration (PSD) preconstruction permits for criteria pollutants and federal air toxics requirements mandated under section 112 of the CAA.

In the aforementioned June 28, 1989, **Federal Register** notice, EPA listed five criteria necessary to make a State's minor source operating permit program Federally enforceable and, therefore, approvable into the SIP. This revision satisfies the five criteria for Federal enforceability of the State's FESOP program.

The first criteria for a state's operating permit program to become Federally enforceable is that the permit program that the state wishes to be Federally enforceable must be approved into the SIP. On January 26, 1994, the State of Mississippi submitted through MDEQ a SIP revision designed to meet the five criteria for Federal enforceability. Today's action will approve these regulations into the Mississippi SIP, thereby, meeting the first criteria for Federal enforceability.

The second criteria for a state's operating permit program to become Federally enforceable is that the regulations approved into the SIP impose a legal obligation that operating permit holders adhere to the terms and limitations of such permits. Mississippi's regulations meet this criteria in Regulation APC-S-2, Section II of the State regulations by requiring the following:

In addition to the requirements contained herein, no permit shall be issued unless the

applicant has complied with applicable requirements including * * * and additional relevant Rules and Regulations promulgated by the Commission and/or Permit Board.

Hence, the second criteria for Federal enforceability is met.

The third criteria necessary for a state's operating permit program to be Federally enforceable is that the state operating permit program require that all emissions limitations, controls, and other requirements imposed by such permits will be at least as stringent as any other applicable limitations and requirements contained in the SIP or enforceable under the SIP, and that the program may not issue permits that waive, or make less stringent, any limitations or requirements contained in or issued pursuant to the SIP, or that are otherwise "Federally enforceable" (e.g. standards established under sections 111 and 112 of the Act). Mississippi satisfies this criteria in two regulations included in the State's SIP submittal. APC-S-2, Section II.B.5 requires that all permits to construct or operate shall specify in their application the air emission rate for each air pollutant subject to regulation under the Federal Clean Air Act that can be reasonably expected to be emitted from a facility. In addition, Regulation APC-S-2, Section VI.E.4 provides that the granting of a permit shall not relieve an air pollution source of the responsibility to comply with other applicable requirements of the permitting regulation or other applicable regulations or law. Taken together, these two regulations satisfy the third criteria for Federal enforceability.

The fourth criteria for a state's operating permit program to become Federally enforceable is that limitations, controls, and requirements in the operating permits are quantifiable, and otherwise enforceable as a practical matter. While a determination of what is practically enforceable will generally differ based on process type and emissions, the State has included several regulations designed to ensure that permit limitations are enforceable as a practical matter. APC-S-2, Section VII.B.2 requires that when performing stack tests to determine compliance with an applicable regulation that the results be expressed in units consistent with the emission standard of the applicable regulation for which the source is attempting to show compliance. In addition, this regulation requires that the stack test demonstration be reported in "units of mass per time" of the applicable regulation. Regulation APC-S-2, Section XI, provides that MDEQ may require in any permit the installation of

sampling ports with access and the installation, maintenance and use of monitoring equipment as well as be required to maintain records to show compliance with applicable emission standards. Therefore, the Mississippi FESOP program satisfies the fourth criteria for Federal enforceability.

The fifth criteria for a state's operating permit program to become Federally enforceable is to provide EPA and the public with timely notice of the proposal and issuance of such permits, and to provide EPA, on a timely basis, with a copy of each proposed (or draft) and final permit intended to be federally enforceable. This process also must provide for an opportunity for public comment on the permit applications prior to issuance of the final permit. Regulation APC-S-2, Section V provides a 30 day opportunity for public comment period as well as the opportunity for a public hearing on any application where MDEQ believes there is sufficient interest. Regulation APC-S-2, Section V.C provides that "the Permit Board may provide notice to the public and provide opportunity for public comment on any application for a Construction Permit or Operating Permit." EPA notes that any permit which has not gone through an opportunity for public comment and EPA review in the Mississippi FESOP program will not be Federally enforceable.

In addition to requesting approval into the SIP, Mississippi has also requested approval of its FESOP program under section 112(l) of the Act for the purpose of creating Federally enforceable limitations on the potential to emit of HAP through the issuance of FESOP. Approval under section 112(l) is necessary because the proposed SIP approval discussed above only extends to the control of criteria pollutants. Federally enforceable limits on criteria pollutants (i.e., VOC's or PM-10) may have the incidental effect of limiting certain HAP listed pursuant to section 112(b).¹ However, section 112 of the Act provides the underlying authority for controlling all HAP emissions.

EPA believes that the five approval criteria for approving FESOP programs into the SIP, as specified in the June 28, 1989, **Federal Register** notice, are also appropriate for evaluating and approving the programs under section 112(l). The June 28, 1989, notice does not address HAP because it was written prior to the 1990 amendments to section

112, not because it establishes requirements unique to criteria pollutants.

In addition to meeting the criteria in the June 28, 1989, notice, a FESOP program that addresses HAP must meet the statutory criteria for approval under section 112(l)(5). Section 112(l) allows EPA to approve a program only if it: (1) Contains adequate authority to assure compliance with any section 112 standards or requirements; (2) provides for adequate resources; (3) provides for an expeditious schedule for assuring compliance with section 112 requirements; and (4) is otherwise likely to satisfy the objectives of the CAA.

EPA plans to codify the approval criteria for programs limiting potential to emit of HAP, such as FESOP programs, through amendments to Subpart E of Part 63, the regulations promulgated to implement section 112(l) of the CAA. (See 58 FR 62262, November 26, 1993.) EPA currently anticipates that these regulatory criteria, as they apply to FESOP programs, will mirror those set forth in the June 28, 1989, notice. The EPA currently anticipates that since FESOP programs approved pursuant to section 112(l) prior to the planned Subpart E revisions will have been approved as meeting these criteria, further approval actions for those programs will not be necessary.

EPA believes it has authority under section 112(l) to approve programs to limit potential to emit of HAP directly under section 112(l) prior to this revision to Subpart E. Section 112(l)(5) requires the EPA to disapprove programs that are inconsistent with guidance required to be issued under section 112(l)(2). This might be read to suggest that the "guidance" referred to in section 112(l)(2) was intended to be a binding rule. Even under this interpretation, EPA does not believe that section 112(l) requires this rulemaking to be comprehensive. That is, it need not address every possible instance of approval under section 112(l). EPA has already issued regulations under section 112(l) that would satisfy any section 112(l)(2) requirement for rulemaking. Given the severe timing problems posed by impending deadlines set forth in "maximum achievable control technology" (MACT) emission standards under section 112 and for submittal of title V permit applications, EPA believes it is reasonable to read section 112(l) to allow for approval of programs to limit potential to emit prior to promulgation of a rule specifically addressing this issue. EPA is therefore approving Mississippi's FESOP program

so that Mississippi may begin to issue FESOP as soon as possible.

EPA believes that Mississippi's FESOP program meets the approval criteria specified in the June 28, 1989 **Federal Register** notice and in section 112(l)(5) of the CAA. As discussed previously in this notice, Mississippi's FESOP program meets the five criteria necessary for Federal enforceability.

Regarding the statutory criteria of section 112(l)(5) referred to above, EPA believes Mississippi's FESOP program contains adequate authority to assure compliance with section 112 requirements because the third criterion of the June 28, 1989, notice is met, that is, because the program does not allow for the waiver of any section 112 requirement. Sources that become minor through a permit issued pursuant to this program would still be required to meet section 112 requirements applicable to non-major sources.

Regarding the requirement for adequate resources, EPA believes Mississippi has demonstrated that it can provide for adequate resources to support the FESOP program. EPA expects that resources will continue to be adequate to administer that portion of the State's minor source operating permit program under which FESOP will be issued since Mississippi has administered a minor source operating permit program for several years. EPA will monitor Mississippi's implementation of its FESOP to ensure that adequate resources are in fact available. EPA also believes that Mississippi's FESOP program provides for an expeditious schedule for assuring compliance with section 112 requirements. This program will be used to allow a source to establish a voluntary limit on potential to emit to avoid being subject to a CAA requirement applicable on a particular date. Nothing in Mississippi's FESOP program would allow a source to avoid or delay compliance with a CAA requirement if it fails to obtain an appropriate federally enforceable limit by the relevant deadline. Finally, EPA believes it is consistent with the intent of section 112 and the CAA for states to provide a mechanism through which sources may avoid classification as a major source by obtaining a Federally enforceable limit on potential to emit.

With the addition of these provisions, Mississippi's FESOP program satisfies all the requirements listed in the June 28, 1989, **Federal Register** notice. EPA is approving this revision to the State of Mississippi's SIP thus making the State's FESOP program Federally enforceable.

¹ The EPA intends to issue guidance addressing the technical aspects of how these criteria pollutant limits may be recognized for purposes of limiting a source's potential to emit of HAP to below section 112 major source levels.

Final Action

In this action, EPA is approving the Mississippi FESOP program. 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 this **Federal Register** publication, EPA is proposing to approve the SIP revision should adverse or critical comments be filed. This action will be effective July 3, 1995 unless, within 30 days of its publication, adverse or critical comments are received. 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. If no such comments are received, the public is advised that this action will be effective July 3, 1995.

The Agency has reviewed this request for revision of the federally-approved SIP for conformance with the provisions of the 1990 Amendments enacted on November 15, 1990. EPA has determined that this action conforms with those requirements.

Under section 307(b)(1) of the CAA, 42 U.S.C. 7607(b)(1), petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 3, 1995. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for 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) of the CAA, 42 U.S.C. 7607(b)(2).) The Office of Management and Budget has exempted this action from review under Executive Order 12866.

Nothing in this action shall be construed as permitting or allowing or establishing a precedent for any future request for a 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, 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 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).

List of Subjects in 40 CFR Part 52

Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Lead, Nitrogen dioxide, Intergovernmental relations, Particulate matter, Ozone and Sulfur oxides.

Dated: March 1, 1995.

Patrick M. Tobin,

Acting Regional Administrator.

Part 52 of chapter I, title 40, 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 Z—Mississippi

2. Section 52.1270 is amended by adding paragraph (c)(25) to read as follows:

§ 52.1270 Identification of plan.

* * * * *

(c) * * *

(25) Revisions to minor source operating permit rules submitted by the Mississippi Department of Environmental Quality on January 26, 1994.

(i) Incorporation by reference.

(A) Regulation APC-S-2, effective January 9, 1994.

(ii) Other material. None.

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BILLING CODE 6560-50-P

40 CFR Part 52

[KY-86-1-6932a; FRL-5189-6]

Approval and Promulgation of Implementation Plans State: Kentucky; Approval of Revisions to State Implementation Plan Regarding Emission Statements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving the State Implementation Plan (SIP) revision submitted by the Commonwealth of Kentucky through the Natural Resources and Environmental Protection Cabinet (Cabinet) for the purpose of implementing an emission statement program. The SIP was submitted by the Cabinet on January 15, 1993. As a result of EPA comments, the Cabinet submitted another SIP on December 29, 1994, to satisfy the Federal requirements for an emission statement program.

DATES: This final rule will be effective June 16, 1995 unless adverse or critical comments are received by June 1, 1995. If the effective date is delayed, timely notice will be published in the **Federal Register**.

ADDRESSES: Written comments on this action should be addressed to Scott Southwick at the EPA Regional Office listed below.

Copies of the documents relative to this action are available for public inspection during normal business hours at the following locations. The interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the visiting day.

Air and Radiation Docket and Information Center (Air Docket 6102), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.
Environmental Protection Agency, Region 4, Air Programs Branch, 345 Courtland Street, NE., Atlanta, Georgia 30365.

Division for Air Quality, Department for Environmental Protection, Natural Resources and Environmental Protection Cabinet, 316 St. Clair Mall, Frankfort, Kentucky 40601.

FOR FURTHER INFORMATION CONTACT: Scott Southwick, Regulatory Planning and Development Section, Air Programs Branch, Air, Pesticides & Toxics Management Division, Region 4