§ 52.1879 Review of new sources and modifications.

* * * * *

(e) *Approval*—The USEPA is approving exemption requests submitted by the State of Ohio on March 18, November 1, and November 15, 1994, from the requirements contained in Section 182(f) of the Clean Air Act. This approval exempts the following counties in Ohio from the NO_X-related general and transportation conformity provisions; and nonattainment area NSR for new sources and modifications that are major for NO_X: Clinton, Columbiana, Delaware, Franklin, Jefferson, Licking, Mahoning, Preble, Stark, and Trumbull. This approval also exempts the following counties in Ohio from the NO_X-related general conformity provisions, nonattainment area NSR for new sources and modifications that are major for NO_X, NO_X RACT; and a demonstration of compliance with the enhanced I/M performance standard for NO_X: Ashtabula, Butler, Clermont, Cuyahoga, Geauga, Hamilton, Lake, Lorain, Medina, Portage, Summit and Warren. If, prior to redesignation to attainment, a violation of the ozone NAAQS is monitored in the Canton, Cincinnati, Cleveland, Columbus, Youngstown, and Steubenville areas, Preble County and Clinton County, the exemptions from the requirements of Section 182(f) of the Act in the applicable area(s) shall no longer apply.

3. Section 52.1885 is amended by adding new paragraph (x) to read as follows:

§ 52.1885 Control strategy: Ozone.

* * * * *

(x) *Approval*—The USEPA is approving exemption requests submitted by the State of Ohio on March 18, November 1, and November 15, 1994, from the requirements contained in Section 182(f) of the Clean Air Act. This approval exempts the following counties in Ohio from the NO_X-related general and transportation conformity provisions, and nonattainment area NSR for new sources and modifications that are major for NO_X: Clinton, Columbiana, Delaware, Franklin, Jefferson, Licking, Mahoning, Preble, Stark, and Trumbull. This approval also exempts the following counties in Ohio from the NO_X-related general conformity provisions, nonattainment area NSR for new sources and modifications that are major for NO_X, NO_X RACT, and a demonstration of compliance with the enhanced I/M performance standard for NO_X: Ashtabula, Butler, Clermont, Cuyahoga, Geauga, Hamilton, Lake, Lorain, Medina, Portage, Summit, and Warren. If, prior to redesignation to attainment, a violation of the ozone NAAQS is monitored in the Canton, Cincinnati, Cleveland, Columbus, Youngstown, and Steubenville areas, Preble County and Clinton County, the exemptions from the requirements of Section 182(f) of the Act in the applicable area(s) shall no longer apply.

[FR Doc. 95–17211 Filed 7–12–95; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 52

[IL101–1–6689a; FRL–5249–9]

Approval and Promulgation of Implementation Plans; Illinois

AGENCY: Environmental Protection Agency (USEPA).

ACTION: Direct final rule.

SUMMARY: The USEPA is approving the Particulate Matter contingency measures State implementation plan (SIP) revisions submitted by the State of Illinois on July 29, 1994. The USEPA made a finding of completeness in a letter dated December 9, 1994. This submittal addresses the Federal Clean Air Act requirement to submit contingency measures for particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers (PM) for the areas designated as nonattainment for the PM National Ambient Air Quality Standards (NAAQS). In the proposed rules section of this **Federal Register**, USEPA is proposing approval of and soliciting public comment on this requested SIP revision. If adverse comments are received on this action, USEPA will withdraw this final rule and address the comments received in response to this action in a final rule on the related proposed rule which is being published in the proposed rules section of this **Federal Register**. A second public comment period will not be held. Parties interested in commenting on this action should do so at this time.

DATES: This final rule is effective September 11, 1995 unless notice is received by August 14, 1995 that someone wishes to submit adverse comments. If the effective date is delayed, timely notice will be published in the **Federal Register**.

ADDRESSES: Copies of the State's submittal and other information are available for inspection at the following address: (It is recommended that you telephone David Pohlman at (312) 886–3299 before visiting the Region 5 Office.) U.S. Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Written comments can be mailed to: J. Elmer Bortzer, Chief, Regulation Development Section (AR–18J), Regulation Development Branch, Air and Radiation Division, U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: David Pohlman (312) 886–3299.

SUPPLEMENTARY INFORMATION:

I. Background

The four Illinois PM nonattainment areas are: (1) Lyons Township in Cook County; (2) The area in Cook County bounded on the north by 79th Street, on the west by interstate 57 between Sibley Boulevard and Interstate 94 and by Interstate 94 between Interstate 57 and 79th Street, on the south by Sibley Boulevard, and on the east by the Illinois/Indiana State line; (3) Oglesby, LaSalle County including the following townships ranges and sections: T32N, R1E, S1; T32N, R2E, S6; T33N, R1E, S24; T33N, R1E, S25; T33N, R2E, S30; T33N, R2E, S31; and T33N, R1E, S36; and (4) Granite City Township and Nameoki Township in Madison County. These nonattainment areas will be referred to in this notice as the McCook, Lake Calumet, LaSalle, and Granite City nonattainment areas, respectively. These areas were designated nonattainment for PM and classified as moderate under sections 107(d)(4)(B) and 188(a) of the Clean Air Act, upon enactment of the Clean Air Act Amendments of 1990. See 56 FR 56694 (Nov. 6, 1991); 40 CFR 81.314. The air quality planning requirements for moderate PM nonattainment areas are set out in subparts 1 and 4 of part D, Title I of the Clean Air Act. The USEPA has issued a ''General Preamble'' describing USEPA's preliminary views on how USEPA intends to review SIPs and SIP revisions submitted under Title I of the Clean Air Act, including those State submittals containing moderate PM nonattainment area SIP requirements (see generally 57 FR 13498 (April 16, 1992) and 57 FR 18070 (April 28, 1992)). Because USEPA is describing its interpretations here only in broad terms, the reader should refer to the General Preamble for a more detailed discussion of the interpretations of Title I advanced in this action and the supporting rationale.

The 1990 Amendments to the Clean Air Act made significant changes to the Clean Air Act. References herein are to the Clean Air Act, as amended (the Act). The Clean Air Act is codified, as

amended, in the U.S. Code at 42 U.S.C. Sections 7401, et seq. Subpart 1 contains provisions applicable to nonattainment areas generally and Subpart 4 contains provisions specifically applicable to PM nonattainment areas. At times, Subpart 1 and Subpart 4 overlap or conflict. The USEPA has attempted to clarify the relationship among these provisions in the ''General Preamble'' and, as appropriate, in today's action and supporting information.

Those States containing initial moderate PM nonattainment areas were required to submit, among other things, several provisions by November 15, 1991. These provisions are described in USEPA's rulemaking on the LaSalle moderate PM nonattainment area SIP (58 FR 54291, October 21, 1993) and in the rulemaking on the McCook, Lake Calumet, and Granite City moderate PM nonattainment areas SIP (59 FR 59653, November 18, 1994). Such States were also required to submit contingency measures by November 15, 1993 (see 57 FR 13543). These measures must become effective, without further action by the State or USEPA, upon a determination by USEPA that the area has failed to achieve reasonable further progress (RFP) or to attain the PM NAAQS by the applicable statutory deadline. See section 172(c)(9) and 57 FR 13510–13512 and 13543–13544.

II. Analysis of State Submittal

Section 110(k) of the Act sets out provisions governing USEPA's review of SIP submittals (see 57 FR 13565–13566). The Illinois Environmental Protection Agency (IEPA) submitted a requested SIP revision to the USEPA with a letter dated July 29, 1994. The submittal contains revisions to Title 35 of the Illinois Administrative Code (IAC), Parts 106 and 212. Specifically, the following sections are added:

Subpart J: Culpability Determinations

Section 106.930	Applicability
Section 106.931	Petition for Review
Section 106.932	Response and Reply
Section 106.933	Notice and Hearing
Section 106.934	Opinion and Order

Subpart U: Additional Control Measures

Section 212.700	Applicability
Section 212.701	Contingency Measure Plans, Submittal and Compliance Date
Section 212.702	Determination of Contributing Sources
Section 212.703	Contingency Measure Plan Elements
Section 212.704	Implementation
Section 212.705	Alternative Implementation

A. Procedural Requirements

The Act requires States to observe certain procedural requirements in developing implementation plans and plan revisions for submission to USEPA. Section 110(a)(2) of the Act provides that each implementation plan submitted by a State must be adopted after reasonable notice and public hearing. Section 110(l) of the Act similarly provides that each revision to an implementation plan submitted by a State under the Act must be adopted by such State after reasonable notice and public hearing. Also section 172(c)(7) of the Act requires that plan provisions for nonattainment areas meet the applicable provisions of section 110(a)(2).

The USEPA also must determine whether a submittal is complete and therefore warrants further USEPA review and action (see Section 110(k)(1) and 57 FR 13565). The USEPA's completeness criteria for SIP submittals are set out at 40 CFR part 51, appendix V. The USEPA attempts to make completeness determinations within 60 days of receiving a submission. However, a submittal is deemed complete by operation of law if a completeness determination is not made by USEPA six months after receipt of the submission.

The State of Illinois, after providing adequate notice, held a public hearing on February 22, 1994, regarding the PM contingency measures. Following the public hearing, the contingency measure rules were adopted by the Illinois Pollution Control Board on June 23, 1994, and published in the Illinois Register on July 22, 1994. The State rules became effective on July 11, 1994.

The submittal was reviewed by USEPA to determine completeness in accordance with the completeness criteria set out at 40 CFR part 51, appendix V. The submittal was found to be complete and a letter dated December 9, 1994, was sent to the State indicating the completeness of the submittals and the next steps to be taken in the review process.

B. Contingency Measures

The Clean Air Act requires States containing PM nonattainment areas to adopt contingency measures that will take effect without further action by the State or USEPA upon a determination by USEPA that an area failed to make RFP or to timely attain the applicable NAAQS, as described in section 172(c)(9). See generally 57 FR 13510–13512 and 13543–13544. Pursuant to section 172(b), the Administrator has established a schedule providing that states containing initial moderate PM nonattainment areas shall submit SIP revisions containing contingency measures no later than November 15, 1993. (See 57 FR 13543, n. 3.)

The General Preamble further explains that contingency measures for PM should consist of other available control measures, beyond those necessary to meet the core moderate area control requirement to implement reasonably available control measures (see Clean Air Act sections 172(c)(1) and 189(a)(1)(C)). Based on the statutory structure, USEPA believes that contingency measures must, at a minimum, provide for continued progress toward the attainment goal during the interim period between the determination that the SIP has failed to achieve RFP/provide for timely attainment of the NAAQS and the additional formal air quality planning following the determination (57 FR 13511).

Section 172(c)(9) of the Act specifies that contingency measures shall ''take effect * * * without further action by the State, or the [USEPA] Administrator.'' USEPA has interpreted this requirement (in the General Preamble at 57 FR 13512) to mean that no further rulemaking activities by the State or USEPA would be needed to implement the contingency measures. In general, USEPA expects all actions needed to affect full implementation of the measures to occur within 60 days after USEPA notifies the State of its failure to attain the standard or make RFP.

The USEPA recognizes that certain actions, such as notification of sources, modification of permits, etc., may be needed before some measures could be implemented. However, States must show that their contingency measures can be implemented with minimal further administrative action on their part and with no additional rulemaking action such as public hearing or legislative review.

The Illinois PM contingency measure rules require sources in PM nonattainment areas with actual annual source-wide emissions of PM of at least 15 tons per year to submit, by November 15, 1994, two levels of contingency measure plans. The Level I contingency plans are to contain measures that would reduce total annual source-wide fugitive emissions of PM by at least 15 percent. The Level II plans are to contain measures to reduce fugitive PM emissions by 25%. The rules require that these plans become Federally enforceable permit conditions.

Following a monitored exceedance of the 24 hour PM NAAQS, IEPA will determine the source or sources which

are likely to have contributed to the exceedance. Depending on the magnitude of the monitored exceedance, IEPA will require culpable sources to implement either Level I or Level II contingency plans within 90 days.

Upon a finding by USEPA that an area has failed to attain the PM NAAQS, all sources in that PM nonattainment area subject to the rules would be required to implement Level II measures within 60 days.

C. Enforceability Issues

All measures and other elements in the SIP must be enforceable by the State and USEPA (see Sections 172(c)(6), 110(a)(2)(A) and 57 FR 13556). The USEPA criteria addressing the enforceability of SIPs and SIP revisions were stated in a September 23, 1987 memorandum (with attachments) from J. Craig Potter, Assistant Administrator for Air and Radiation, et al. (see 57 FR 13541). State implementation plan provisions also must contain a program to provide for enforcement of control measures and other elements in the SIP [see section 110(a)(2)(C)].

The specific measures contained in the Illinois contingency plan are addressed above. The Illinois regulations, as included in the SIP, are legally enforceable by IEPA. Also, the specific Level I and Level II contingency plans will be enforceable by IEPA as operating permit conditions. Further, after culpable sources are determined the State will revise operating permits to include additional control measures and these Federally enforceable operating permits will be submitted to USEPA. The USEPA believes that the State's existing air enforcement program will be adequate to enforce PM contingency plans.

III. Final Action

The USEPA approves Illinois' PM contingency measure rules, submitted by IEPA on July 29, 1994. This submittal addressed PM contingency measure plans that were due on November 15, 1993. The State rules require two levels of contingency measures which would be triggered either by a monitored exceedance of the PM NAAQS or by a finding by USEPA that an area has failed to attain the PM NAAQS. Culpable sources would be determined, the State would revise operating permits to include additional control measures, and these Federally enforceable operating permits would be submitted to USEPA.

The USEPA is publishing this action without prior proposal because USEPA views this action as a noncontroversial revision and anticipates no adverse comments. However, USEPA is publishing a separate document in this **Federal Register** publication, which constitutes a ''proposed approval'' of the requested SIP revision and clarifies that the rulemaking will not be deemed final if timely adverse or critical comments are filed. The ''direct final'' approval shall be effective on September 11, 1995, unless USEPA receives adverse or critical comments by August 14, 1995. If USEPA receives comments adverse to or critical of the approval discussed above, USEPA will withdraw this approval before its effective date by publishing a subsequent **Federal Register** document which withdraws this final action. All public comments received will then be addressed in a subsequent action. Please be aware that USEPA will institute another comment period on this action only if warranted by significant revisions to the rulemaking based on any comments received in response to today's action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, USEPA hereby advises the public that this action will be effective on September 11, 1995.

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 has exempted this regulatory action from Executive Order 12866 review.

Nothing in this action should be construed as permitting, allowing or establishing a precedent for any future request for revision to any SIP. USEPA shall consider each request for revision to the SIP in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Under Section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, the USEPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. Under Section 205, the USEPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires the USEPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

The USEPA has determined that the approval action promulgated today does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector.

This Federal action approves pre-existing requirements under State or local law, and imposes no new Federal requirements. Accordingly, no additional costs to State, local, or tribal governments, or the private sector, result from this action.

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 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 September 11, 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, Incorporation by reference, Intergovernmental relations, Particulate matter.

Dated: June 14, 1995.

David Kee,

Acting 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 O—Illinois

2. Section 52.720 is amended by adding paragraph (c)(111) to read as follows:

§ 52.720 Identification of plan.

* * * * *

(c) * * *

(111) On July 29, 1994, Illinois submitted regulations which require adoption and implementation of particulate matter contingency measures for Illinois' four moderate particulate matter nonattainment areas. Sources in the nonattainment areas which emit at least 15 tons of particulate matter must submit two levels of contingency measures, which will then become Federally enforceable. Sources will be required to implement the contingency measures if an exceedance of the National Ambient Air Quality Standard for Particulate Matter is measured, or if the United States Environmental Protection Agency finds that an area has failed to attain the National Ambient Air Quality Standards.

(i) Incorporation by reference.

Illinois Administrative Code Title 35: Environmental Protection, Subtitle B: Air Pollution, Chapter I: Pollution Control Board;

(A) Part 106 Hearings Pursuant to Specific Rules, Section 106.930—Applicability, Section 106.931—Petition for Review, Section 106.932—Response and Reply, Section 106.933—Notice and Hearing, Section 106.934—Opinion and Order. Amended at 18 Ill. Reg. 11579–11586. Effective July 11, 1994.

(B) Part 212 Visible and Particulate Matter Emissions, Section 212.700—Applicability, Section 212.701—Contingency Measure Plans, Submittal and Compliance Date, Section 212.702—Determination of Contributing Sources, Section 212.703—Contingency Measure Plan Elements, Section 212.704—Implementation, Section 212.705—Alternative Implementation. Added at 18 Ill. Reg. 11587–11606. Effective July 11, 1994.

[FR Doc. 95–17216 Filed 7–12–95; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 52

[IL123–1–6976a; FRL 5252–7]

Approval and Promulgation of Implementation Plans; Illinois

AGENCY: United States Environmental Protection Agency (USEPA).

ACTION: Direct final rule.

SUMMARY: The USEPA approves the March 28, 1995, Illinois State Implementation Plan (SIP) revision request which consists of a variance for P & S, Incorporated's (P & S) facility, located in Wood Dale, DuPage County, Illinois, from 35 Illinois Administrative Code (IAC) 218.586, the regulations for Stage II vapor recovery. This variance begins on November 1, 1994, and will ultimately expire on April 1, 1996. The granting of this variance is approvable because P & S has demonstrated that immediate compliance with the requirements at issue would impose an arbitrary and unreasonable hardship. USEPA made a finding of completeness on the SIP submittal on May 17, 1995. In the proposed rules section of this **Federal Register**, USEPA is proposing approval of and soliciting public comment on this requested SIP revision. If adverse comments are received on this action, USEPA will withdraw this final rule and address the comments received in response to this action in a final rule on the related proposed rule which is being published in the proposed rules section of this **Federal Register**. Please be aware that USEPA will institute another rulemaking notice on this action only if warranted by significant revision to the rulemaking based on any comments received in response to today's action. Parties interested in commenting on this action should do so at this time.

DATES: This final rule is effective September 11, 1995 unless an adverse comment is received by August 14, 1995. If the effective date of this action is delayed due to adverse comments, timely notice will be published in the **Federal Register**.

ADDRESSES: Written comments should be sent to: J. Elmer Bortzer, Chief, Regulation Development Section, Regulation Development Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Copies of the Illinois submittal are available for public review during normal business hours, between 8 a.m. and 4:30 p.m., at the above address. A copy of this SIP revision is also available for inspection at: Office of Air and Radiation (OAR), Docket and Information Center (Air Docket 6976), Room 1500, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Mark J. Palermo, Regulation Development Section, Regulation Development Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604. Telephone: (312) 886–6082.

SUPPLEMENTARY INFORMATION: On January 12, 1993, USEPA approved Illinois's Stage II vapor recovery rules (35 Ill. Adm. Code 218) as a revision to the Illinois SIP for ozone, applicable to the Chicago ozone nonattainment area (Cook, DuPage, Kane, Lake, McHenry, Will Counties and Aux Sable and Goose Lake Townships in Grundy County and Oswego Township in Kendall County). These regulations satisfy section 182(b)(3) of the Clean Air Act as amended in 1990, which requires certain ozone nonattainment areas to require specified gasoline dispensing facilities to install and operate Stage II vapor recovery equipment. Stage II vapor recovery systems are designed to control and capture at least 95 percent of the Volatile Organic Compound (VOC) vapors emitted during the refueling of motor vehicles. Among these Stage II requirements is the provision that certain gasoline dispensing facilities, such as P & S's facility in Wood Dale, Du Page County, Illinois, must install Stage II vapor recovery equipment no later than November 1, 1994.

The Illinois Department of Transportation (IDOT) is currently upgrading the roads surrounding the P & S facility. It is anticipated that the construction of the roadway will require P & S's facility to relocate its underground storage tanks. Completion of the construction of the roadway is anticipated in early 1996. Installation of the Stage II vapor recovery equipment before the completion of the upgrading of the roadway and the relocation of the facility's tanks would mean that the facility would then be required to install the Stage II vapor recovery equipment twice, both before and after moving the tanks.