

the correction request, the reasons for the denial will be provided to the requester.

#### **§ 1415.40 Appeals from correction denials.**

(a) When amendment of records has been denied by the General Counsel, the requester may file an appeal in writing. This appeal should be directed to the Executive Director, Assassination Records Review Board, 600 E Street, NW., 2nd Floor, Washington, DC 20530. The appeal letter must specify the record subject to the appeal, and state why the denial of amendment by the General Counsel is erroneous. The Executive Director or his representative will respond to such appeals within thirty working days (subject to extension by the Executive Director for good cause) after the appeal letter has been received in the Review Board's offices.

(b) The appeal determination, if adverse to the requester in any respect, will:

- (1) Explain the basis for denying amendment of the specified records;
- (2) Inform the requester that he or she may file a concise statement setting forth reasons for disagreeing with the Executive Director's determination; and
- (3) Inform the requester of his or her right to pursue a judicial remedy under 5 U.S.C. 552a(g)(1)(A).

#### **§ 1415.45 Disclosure of records to third parties.**

Records subject to the Privacy Act that are requested by a person other than the individual to whom they pertain will not be made available except in the following circumstances:

- (a) Release is required under the Freedom of Information Act in accordance with the Review Board's FOLA regulations, 36 CFR part 1410;
- (b) Prior consent for disclosure is obtained in writing from the individual to whom the records pertain; or
- (c) Release is authorized by 5 U.S.C. 552a(b) (1) or (3) through (11).

#### **§ 1415.50 Fees.**

A fee will not be charged for search or review of requested records, or for correction of records. When a request is made for copies of records, a copying fee will be charged at the same rate established for FOLA requests. See 36 CFR 1410.35 However, the first 100 pages will be free of charge.

#### **§ 1415.55 Exemptions.**

The following records are exempt from disclosure under this regulation:

- (a) Review Board records specifically authorized under criteria established by an Executive Order to be kept secret in the interest of national defense or

foreign policy, and that are in fact properly classified pursuant to such Executive Order;

(b) Review Board records related solely to the internal personnel rules and practices of the Review Board;

(c) Review Board records specifically exempted from disclosure by statute (other than 5 U.S.C. 552), provided that such statute:

(1) Requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or

(2) Establishes particular criteria for withholding or refers to particular types of matters to be withheld;

(d) Inter-agency or intra-agency memoranda or letters which would not be available by law to a party other than an agency in litigation with the Review Board

Dated: July 31, 1995.

**David G. Marwell,**

*Executive Director, Assassination Records Review Board.*

[FR Doc. 95-19173 Filed 8-3-95; 8:45 am]

BILLING CODE 6820-TD-M

## **ENVIRONMENTAL PROTECTION AGENCY**

### **40 CFR Part 52**

[IA-17-1-6983; FRL-5273-2]

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

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

**ACTION:** Proposed rule.

**SUMMARY:** The EPA proposes to approve the State Implementation Plan (SIP) revision submitted by the state of Iowa for the purpose of establishing a voluntary operating permit program. This program provides sources an alternative to the Clean Air Act (CAA) Title V program.

This action also proposes to establish a mechanism for creating Federally enforceable limitations under section 112(l). This authorizes Iowa to issue Federally enforceable operating permits that address both criteria pollutants (regulated under section 110 of the CAA) and hazardous air pollutants (HAP) (regulated under section 112).

**DATES:** Comments on this proposed rule must be received in writing by September 5, 1995.

**ADDRESSES:** Comments may be mailed to Christopher D. Hess, Environmental Protection Agency, Air Branch, 726 Minnesota Avenue, Kansas City, Kansas 66101.

**FOR FURTHER INFORMATION CONTACT:** Christopher D. Hess at (913) 551-7213.

**SUPPLEMENTARY INFORMATION:** On December 8, 1994, the Director of the Iowa Department of Natural Resources (IDNR) submitted a request to revise the Iowa State Implementation Plan (SIP). The EPA sent a letter of completeness to the state on December 22, 1994.

#### **I. Purpose of the Revision**

The state has created new regulations in Iowa Administrative Code 567-22.200-208 to create a voluntary operating permit program. This program has been specifically designed to provide an alternative to Title V operating permits for eligible sources throughout the state.

In accordance with 40 CFR part 70, air pollution sources defined as "major" or otherwise subject to the part 70 regulations are required to obtain and adhere to the conditions of a Title V permit. These Title V permits contain numerous requirements as well as a fee on all emissions up to 4,000 tons per year (TPY).

In Federal terminology, sources with potential and actual emissions under the thresholds of major (e.g., less than 100 tons per year of a regulated air pollutant) are considered minor sources. Sources which limit and restrict their potential and actual emissions to levels below the major level are referred to as "synthetic minors," because these sources would not be minor sources without accepting certain limitations to thus be eligible as minor sources.

This voluntary operating permit program proposed by the state of Iowa is designed to enable sources to become minor and thus avoid the administrative requirements and associated fees of a Title V permit.

The term "voluntary" is used to describe this program because sources which do not want to limit their operations may continue to operate at or above "major" levels. However, this will require a Title V permit. For those sources which voluntarily restrict their operations, this program provides an alternative that is administratively and financially beneficial to sources, and promotes maintenance of air quality standards by reducing emissions of air pollution throughout the state.

#### **II. Criteria for Approval**

The terms and conditions of the state's voluntary operating permit program may be considered Federally enforceable if the state's submittal meets the criteria outlined in the **Federal Register** notice dated June 28, 1989 (54 FR 27275). The state's request for approval pursuant to section 112(l) must

also fulfill these criteria. The cited notice describes five criteria.

A. The program is submitted to and approved by EPA into the SIP.

The state correctly submitted this revision to the EPA and subsequently received a letter of completeness. Also, the EPA is proposing approval of this revision into the SIP.

B. The SIP imposes a legal obligation that operating permit holders adhere to the terms and limitations of such permits, including revisions, and provide that permits that do not conform to the operating permit program requirements and the requirements of EPA's underlying regulations will be deemed not Federally enforceable.

The state's rules do require terms and conditions to operate; emission limitations and standards that ensure compliance; a certified statement that each emissions unit is in compliance; and monitoring, recordkeeping, and reporting requirements that ensure compliance with the terms and conditions of the permit.

Moreover, pursuant to section 22.206, each permit must contain a statement that the permittee shall comply with all conditions of the permit, and that failure to comply with the permit is grounds for enforcement action. This action may include termination or revocation and immediate requirement to obtain a Title V permit.

The director shall specifically designate as not Federally enforceable any terms and conditions of the permit that are not required under the Act or under any of its applicable requirements.

C. The permit program requires that all emissions limitations, controls, and other requirements will be at least as stringent as any other applicable limitations and requirements contained in the SIP or enforceable under the SIP. Furthermore, the permit 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.

The state rules specifically provide in section 22.206(2)(c) that all emissions limitations, all controls, and all other requirements included in a voluntary permit shall be at least as stringent as any other applicable limitation or requirement in the SIP or enforceable under the SIP. Furthermore, the state rules provide in section 22.206(2)(d) that the director shall not issue a permit that waives any limitation or requirement under the SIP or that is otherwise Federally enforceable.

D. The limitations, controls, and requirements in the permits are permanent, quantifiable, and otherwise enforceable as practical matter. The state rules provide that the limitations, controls, and requirements in a voluntary operating permit shall be permanent, quantifiable, and otherwise enforceable. While the rule does not presently conform to the Federal requirements as set forth in section V, the state has indicated that it will amend this provision.

E. The permits are issued subject to public participation which includes the timely notice of proposal and issuance of these permits. This also includes providing to EPA a copy of each draft and final permit intended to be Federally enforceable. This process must also provide for an opportunity for comment on the permit applications prior to issuance of the final permit.

In rule 22.205(1)b, the state outlines adequate procedures for public participation. These procedures set forth requirements for public notice, including notifying both the public and the Administrator before issuing or renewing a permit. The state will use newspapers with a general circulation, as well as a state publication to provide this notice. The rule requires at least 30 days will be provided for public comment.

In a letter to the EPA dated February 16, 1995, the state has further clarified that it commits to provide EPA with timely notice of proposed and final permits within 60 days of an action by the IDNR.

### III. Delegation of 112(l) Authority

In a letter to the EPA dated April 25, 1995, the state of Iowa has also requested approval of the voluntary operating permit program under section 112(l) of the Act. This enables any limitation on potential-to-emit of HAP to be enforceable by EPA. In other words, by incorporating the voluntary operating permit program into the SIP and approving the 112(l) program while requiring that permittees comply with such permits, any violation of such a permit will be enforceable under the Act and will be subject to EPA enforcement.

The criteria for establishing Federally enforceable limitations for criteria pollutants pursuant to section 110 of the Act, are the same criteria the EPA uses in approving state operating permit programs to establish Federally enforceable limitations for HAPs pursuant to section 112 of the Act. As outlined in section II of this notice, the state has satisfied the criteria contained in the June 1989 **Federal Register** notice

for creating Federally enforceable limitations on potential to emit.

Moreover, the state must also meet the requirements of section 112(l). In a letter dated March 1, 1995, from Larry Wilson, Director, IDNR, to Dennis Grams, Administrator, EPA Region VII, these requirements have been addressed and met as described in the following paragraphs.

*A. Adequate Authority.* Section 112(l)(5)(A) of the Act requires adequate authority within the program to ensure compliance with each applicable standard, regulation, or requirement established by the Administrator by all sources in the state. The state's letter of March 1, 1995, cites the state's authority that fulfills this requirement.

*B. Adequate Resources.* Section 112(l)(5)(B) further requires that adequate resources must be available to implement the program. The state submitted a resource demonstration on November 15, 1993, for the Title V program that also addressed the voluntary permit program. EPA has determined that the state, in that submittal, has demonstrated that adequate resources are available to implement the voluntary permit program. It should be noted, however, that this determination is for the voluntary permit program only. It does not affect EPA's proposed interim approval of the Title V program, or the EPA's finding as to the adequacy of the resources available for implementation of that program.

*C. Implementation Schedule.* Section 112(l)(5)(C) requires that the state submit an expeditious schedule for implementing the program and ensuring compliance by the affected sources. The state submitted a schedule for implementing section 112 requirements on November 15, 1993, that satisfies this requirement.

*D. Ability to Take Enforcement Action.* The state's Title V submittal of November 15, 1993, includes an opinion by the Iowa Attorney General that the state has the legal authority to take civil and enforcement action against any source regulated under section 112 of the Act.

Based on the fulfillment of the above criteria, the EPA is therefore proposing approval of the voluntary operating permit program for the control of air toxics that allow sources to limit their potential-to-emit of HAPs.

### IV. Additional Program Description

In section II of this notice, the state's rules were only discussed insofar as they generally met the criteria outlined in the cited **Federal Register** notice. In this section, various provisions of the

rules are discussed in order to provide a fuller description of the state's regulations that comprise the voluntary operating permit program.

A. *Eligibility.* In order to qualify for a voluntary permit, a source must successfully demonstrate that:

1. Potential and actual emissions will be less than 100 tons per year of regulated pollutants per 12-month rolling period;

2. Potential and actual emissions of each HAP will be less than 10 tons per 12-month rolling period;

3. Potential and actual emissions of all HAPs will be less than 25 tons per 12-month rolling period.

In other matters concerning eligibility, subrule 22.201(2) lists exceptions for sources seeking a voluntary operating permit. Although a source may meet the criteria cited in a-c above, any affected source subject to Title IV, those required to obtain a Title V permit as a source category pursuant to 70.3, or a solid waste incinerator unit is not eligible for a voluntary permit.

Additionally, sources subject to a New Source Performance Standard, National Emissions Standards for Hazardous Air Pollutants, or section 112 of the Act are only eligible for a voluntary permit until April 20, 1999. Once the deferment period for these sources has expired, these sources will be required to obtain a Title V permit.

B. No source may operate without a properly issued Title V or voluntary operating permit.

C. Although the rules state that sources must apply by March 1, 1995, the state provided public notice and exercised a subsequent rulemaking to rescind this date. The state now intends to establish a new date once this SIP revision approving the voluntary permit program becomes effective.

D. Standard application information is required of all sources seeking a voluntary permit. The rule specifies that the information must be sufficient to evaluate the source and its predicted and actual emissions.

The permit must also contain identifying information about the owner and a description of source processes and products by two digit Standard Industrial Classification Code. Required information includes listing equipment, monitoring devices, limitations on source operations, and the calculations used by the source in providing this information.

E. Sources with a voluntary operating permit shall be exempt from Title V operating permit fees.

F. A voluntary operating permit may be denied if the director determines any of the following conditions: a source is

not in compliance with any applicable requirement; an applicant submits false information; or an applicant is unable to certify compliance with applicable requirements.

If a voluntary permit is denied, the source shall apply for a Title V operating permit and shall be subject to enforcement action for operating without a Title V permit. This fulfills part 70 requirements which require all major sources subject to Title V to receive a corresponding permit. If an otherwise major source in Iowa does not have a valid voluntary permit, it is subject to Title V.

G. If a source's application for and receipt of a construction permit renders the source ineligible for a voluntary permit (e.g., increased emissions above the eligibility threshold), the source must then apply for a Title V permit. Once again, the source is subject to enforcement action for operating without a Title V permit.

The terms and conditions of an issued construction permit shall be incorporated into a voluntary permit at the time of renewal for the voluntary permit, assuming that the construction permit did not render the source ineligible as discussed in the paragraph above. Sources are required to provide copies of all construction permits issued during the term of the voluntary operating permit.

#### V. *Approvability Issues*

EPA's analysis of the state's rules has revealed four deficiencies which must be corrected before EPA can give final approval to this SIP revision. The state has agreed to these amendments and has developed revised rules that are expected to be adopted by June 1995. These amendments are as follows.

A. The EPA has previously informed the state of the need to revise the definition of "12-month rolling period" in 22.201(1). As currently written, the term in this rule is ambiguous and may not be enforceable as a practical matter. The state has therefore drafted a revised rule that provides the following definition: "\* \* \* a period of 12 consecutive months determined on a rolling basis with a new 12-month period beginning on the first day of each calendar month."

B. The second item concerns 22.201(1)a-d. As currently written, the rule is not consistent with the requirements for Prevention of Significant Deterioration or for construction permitting. In response to EPA comments, the state has developed an amendment that declares fugitive emissions of each regulated air pollutant from a stationary source shall not be

considered in determining the potential-to-emit unless the source belongs to a source category listed in IAC 567-22. Fugitives must be counted for purposes of 112(l).

C. The EPA has requested that 22.201(2)a be revised to read that sources required to obtain a Title V permit under 22.101(1)e (source categories) are not eligible for a voluntary operating permit. This revision is necessary because the EPA is requiring some non-major section 112 sources to obtain a Title V permit with no deferral provisions.

D. The EPA has advised the state that the provisions of 22.206(2)(c) must be revised to provide that permit limitations, controls, and requirements must be enforceable as a practical matter.

#### VI. *EPA Action*

The EPA is soliciting public comments on this notice and on issues relevant to EPA's proposed action. Comments will be considered before taking final action. Interested parties may participate in the Federal rulemaking procedure by submitting written comments to the address above.

The reader may also request the Technical Support Document (TSD) which examines this revision in more extensive detail. The TSD may be requested in accordance with the information provided in the "Addresses" section.

As addressed in section II of this notice, the EPA has determined that this proposed revision meets the five criteria of the June 28, 1989, **Federal Register** notice for Federal enforceability.

In order for the EPA to take final action on this SIP revision, the state must submit revised rules addressing the approvability issues outlined in section V of this notice.

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)).

#### *Unfunded Mandates*

Under sections 202, 203, and 205 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must undertake various actions in association with proposed or final rules that include a Federal mandate that may result in estimated costs of \$100 million or more to the private sector, or to state, local, or tribal governments in the aggregate.

Through submission of this SIP or plan revision, the state and any affected local or tribal governments have elected to adopt the program provided for under sections 110 and 112 of the CAA. These rules may bind state, local, and tribal governments to perform certain actions and also require the private sector to perform certain duties. To the extent that the rules being proposed for approval by this action will impose no new requirements, such sources are already subject to these regulations under state law. Accordingly, no additional costs to state, local, or tribal governments, or to the private sector, result from this action. EPA has also determined that this proposed action does not include a mandate that may result in estimated costs of \$100 million or more to state, local, or tribal governments in the aggregate or to the private sector.

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

#### **List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting

and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

**Authority:** 42 U.S.C. 7401-7671q.

Dated: June 29, 1995.

**Dennis Grams,**

*Regional Administrator.*

[FR Doc. 95-19000 Filed 8-3-95; 8:45 am]

BILLING CODE 6560-50-P

#### **40 CFR Part 52**

[MO-18-1-6024b; FRL-5264-1]

#### **Approval and Promulgation of Implementation Plans; State of Missouri**

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

**ACTION:** Proposed rule.

**SUMMARY:** The EPA proposes to approve the State Implementation Plan (SIP) revision submitted by the state of Missouri for the purpose of bringing about the attainment of the National Ambient Air Quality Standard for lead. The SIP was submitted by the state to satisfy certain Federal requirements for an approvable nonattainment area lead SIP for the Doe Run primary and secondary lead smelter near Bixby, Missouri. In the final rules section of the **Federal Register**, the EPA is approving the state's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision amendment and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this proposed rule, no further activity is contemplated in relation to this rule. If the EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this document. Any parties interested in commenting on this document should do so at this time.

**DATES:** Comments on this proposed rule must be received in writing by September 5, 1995.

**ADDRESSES:** Comments may be mailed to Lisa V. Haugen, Environmental Protection Agency, Air Branch, 726 Minnesota Avenue, Kansas City, Kansas 66101.

**FOR FURTHER INFORMATION CONTACT:** Lisa V. Haugen at (913) 551-7877.

**SUPPLEMENTARY INFORMATION:** See the information provided in the direct final rule which is located in the rules section of the **Federal Register**.

Dated: July 11, 1995.

**Dennis Grams, P.E.,**

*Regional Administrator.*

[FR Doc. 95-19216 Filed 8-3-95; 8:45 am]

BILLING CODE 6560-50-P

#### **40 CFR Part 52**

[WV10-1-5918b; FRL-5265-8]

#### **Approval and Promulgation of Air Quality Implementation Plans; State of West Virginia—Emission Statement Program**

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

**ACTION:** Proposed rule.

**SUMMARY:** EPA proposes to approve the State Implementation Plan (SIP) revision submitted by the State of West Virginia. This revision consists of an emission statement program for stationary sources which emit volatile organic compounds (VOCs) and/or nitrogen oxides (NO<sub>x</sub>) specified actual emission threshold levels. This program applies to stationary sources within the counties of Putnam, Kanawha, Cabell, Wayne, Wood, and Greenbrier. The SIP revision was submitted by the State to satisfy the Clean Air Act's requirements for an emission statement program as part of the ozone SIP for the State of West Virginia. In the Final Rules section of this **Federal Register**, EPA is approving the State's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial SIP revision and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this proposed rule, no further activity is contemplated in relation to this rule. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this 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.

**DATES:** Comments must be received in writing by September 5, 1995.

**ADDRESSES:** Written comments on this action should be addressed to Marcia L. Spink, Associate Director, Air Programs (3AT00), U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air, Radiation, and Toxics