

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 November 27, 1995.

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

This action has been classified as a Table 3 action for signature by the Regional Administration under the procedures published in the Federal Register on January 19, 1989 (54 FR 2214-2225), as revised by a July 10, 1995, memorandum from Mary Nichols, Assistant Administrator for Air and Radiation. The office of Management and Budget (OMB) has exempted this regulatory action from review under Executive Order 12866.

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 November 27, 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).)

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.

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 state implementation plan or plan revision, the State has elected to adopt the program provided for under Section 110 of the Clean Air Act. These rules may bind the State government to perform certain actions and also require the private sector to perform certain duties. To the extent that the rules being approved by this action would impose no new requirements, such sources are already subject to these regulations under State law. Accordingly, no additional costs to the State government, or to the private sector, result from this action. EPA has also determined that this final action does not include a mandate that may result in estimated costs of \$100 million or more to the State government in the aggregate or to the private sector.

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, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Sulfur oxides.

Dated: August 23, 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 S—Kentucky

2. Section 52.920 is amended by adding paragraph (c)(81) to read as follows:

##### § 52.920 Identification of plan.

\* \* \* \* \*

(c) \* \* \*

(81) Revisions to air permit rules submitted by the Kentucky Natural Resources and Environmental Protection Cabinet on December 29, 1994.

(i) Incorporation by reference. Revised Rule 401 KAR 50:035, "Permits", Sections 1 through 7, effective September 28, 1994.

(ii) Other material. None.

[FR Doc. 95-23963 Filed 9-26-95; 8:45 am]

BILLING CODE 6560-50-P

#### 40 CFR Part 52

[IL78-2-6839; FRL-5274-9]

#### Final Promulgation of Revisions to the New Source Review State Implementation Plan; Illinois

**AGENCY:** United States Environmental Protection Agency (USEPA).

**ACTION:** Final rule.

**SUMMARY:** The USEPA approves a requested State Implementation Plan (SIP) revision submitted by the State of Illinois for the purpose of meeting requirements of the Clean Air Act, as amended in 1990 (amended Act) with regard to new source review (NSR) in areas that have not attained the National ambient air quality standards (NAAQS). The requested revision was submitted by the State to satisfy certain Federal requirements for an approvable nonattainment new source review SIP for Illinois.

**EFFECTIVE DATE:** October 27, 1995.

**ADDRESSES:** Copies of the State's submittal and other information are available for inspection during normal business hours at the following location:

United States Environmental Protection Agency, Region 5, Air and Radiation Division, Regulation Development Branch, 77 West Jackson Boulevard, Chicago, Illinois 60604.

A copy of these SIP revisions is available for inspection at the following location:

Office of Air and Radiation (OAR) Docket and Information Center (Air Docket 6102), room M1500, United States Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, (202) 260-7548.

**FOR FURTHER INFORMATION CONTACT:** Jennifer Buzucky, Environmental

Protection Specialist, or Genevieve Nearmyer, Environmental Engineer, Permits and Grants Section, Regulation Development Branch (AR-18J), United States Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Anyone wishing to come to the Region 5 offices should first contact Ms. Buzucky at (312) 886-3194 or Ms. Nearmyer at (312) 353-4761. Reference file IL78-2-6839.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

The air quality planning requirements for nonattainment NSR are set out in part D of title I of the Clean Air Act (Act). The USEPA has issued a "General Preamble" describing its preliminary views on how USEPA intends to review SIPs and SIP revisions submitted under part D, including those State submittals containing nonattainment area NSR SIP requirements (see 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 part D advanced in this proposal and the supporting rationale. The USEPA is currently developing a proposed rule to assist the implementation of the changes under the amended Act in the new source review provisions in parts C and D of title I of the Act. The USEPA anticipates that the proposed rule will be published for public comment in mid-1995. If USEPA has not taken final action on States' NSR submittals by that time, USEPA may refer to the proposed rule as the most authoritative guidance available regarding the approvability of the submittals. USEPA expects to take final action to promulgate a rule to implement the parts C and D changes sometime during 1995. Upon promulgation of those regulations, USEPA will review the NSR SIPs of all States to determine whether additional SIP revisions are necessary.

Prior to USEPA approval of a State's NSR SIP submission, the State may continue permitting only in accordance with the new statutory requirements for permit applications completed after the relevant SIP submittal date. This policy was explained in transition guidance memoranda from John Seitz dated March 11, 1991 and September 3, 1992.

As explained in the March 11 memorandum, USEPA does not believe Congress intended to mandate the more stringent title I NSR requirements during the time provided for SIP development. States were thus allowed to continue to issue permits consistent

with requirements in their current NSR SIPs during that period, or apply 40 CFR part 51, appendix S for newly designated areas that did not previously have NSR SIP requirements.

The September 3 memorandum also addressed the situation where States did not submit the part D NSR SIP requirements or revisions by the applicable statutory deadline. For permit applications found complete by the SIP submittal deadline, States may issue final permits under the prior NSR rules, assuming certain conditions in the September 3 memorandum are met. However, for applications completed after the SIP submittal deadline, USEPA will consider the source to be in compliance with the Act only where the source obtains from the State a permit that is consistent with the substantive new NSR part D provisions in the amended Act. USEPA believes this guidance continues to apply to permitting pending final action on NSR SIP submittals.

In a September 23, 1994, Federal Register document, USEPA proposed approval with a contingency, and disapproval in the alternative, of Illinois' NSR SIP submittal. 59 FR 48839. The USEPA received public comment on the proposal, and compiled a Technical Support Document (TSD) which describes the State's correction of the existing deficiencies contained in its NSR submittal. In this document, USEPA is taking final action to promulgate approval of Illinois' NSR SIP requirements.

##### II. Final Action and Implications

###### A. Analysis of State Submission

The USEPA received comments from one organization supporting USEPA's proposal. A copy of this comment is available in a document contained in the docket at the address noted in the ADDRESSES section above.

In USEPA's proposal, USEPA explained that the Illinois NSR submittal contained a deficiency for which USEPA proposed approval of the State's requested SIP revision with a contingency and a proposed disapproval in the alternative. This deficiency was due to written interpretations of section 203.209(b) adopted by the State in an attempt to implement the amended Act's special provisions for serious and severe ozone nonattainment areas, section 182(c)(6)-(8). The interpretations adopted by the State were deficient in that they did not ensure the Federal enforceability of any future emission reductions used for netting credits and failed to account for all emission increases occurring during the

contemporaneous period. Because the language of the rule was itself approvable, USEPA proposed to approve section 203.209(b) adopted by the State contingent upon the State's withdrawal of its interpretations of section 203.209(b). For further explanation of USEPA's rationale see proposal. 59 FR 48841-48842.

On November 10, 1994, Bharat Mathur, the Illinois Environmental Protection Agency (IEPA) Chief of the Bureau of Air, sent a letter to USEPA committing to the withdrawal of the above-mentioned interpretations. On February 2, 1995, the IEPA and the Illinois Environmental Regulatory Group filed a Joint Motion to Reconsider the Board Opinion and Order of April 22, 1993. The motion requested that the Board strike from the Opinion and Order its interpretation of section 203.209(b) of the Amended Rule.

On February 16, 1995, the correction of the deficiencies in section 203.209(b) became effective upon the Board's adoption of a Final Opinion and Order upon Reconsideration. Because the State withdrew the interpretation of section 203.209(b) adopted previously by the Board, the State has corrected the deficiency in its NSR SIP submittal. USEPA, therefore, can finally approve the State's NSR SIP.

In addition to the above deficiency, the proposal discussed additional changes of consequence to the State's NSR SIP. One such change is the substitution of a plantwide definition of source for a dual definition of stationary source. As explained in the proposal, this change will not affect the State's ability to eventually achieve attainment. 59 FR 48843. USEPA is also approving the switch from a dual to plantwide definition of stationary source.

One additional issue of importance is the applicability of control requirements for major stationary sources of particulate matter (PM) also applying to major stationary sources of PM precursors. If USEPA determines that major stationary sources of PM precursors do not significantly contribute to PM levels that exceed the NAAQS, then section 189(e) of the Act would no longer require NSR on major precursor sources. As explained in the proposal, 59 FR 48842, USEPA promulgated a final rule on October 21, 1993, finding that precursors do not significantly contribute to PM concentrations in the LaSalle nonattainment area, and proposed a rulemaking on May 25, 1994, asserting that precursors do not significantly contribute to PM concentrations in the remaining three PM nonattainment areas of Illinois: McCook, Lake Calumet

and Granite City. (See 58 FR 54291 for final PM rulemaking in LaSalle nonattainment area; 59 FR 26988 for proposed PM rulemaking in McCook, Lake Calumet and Granite City). The McCook proposal was finalized since this rulemaking on November 18, 1994. (See 59 FR 59653 for final PM rulemaking in McCook, Lake Calumet and Granite City). Because these two rulemakings evidence that PM precursors do not significantly contribute to PM concentrations in all four PM nonattainment areas of the State, USEPA is approving that NSR is no longer required on major PM precursor sources in the State of Illinois.

#### B. Final Actions

As stated above, the Illinois NSR submittal contained a deficiency for which USEPA proposed approval of the State's requested SIP revision with a contingency and a proposed disapproval in the alternative. USEPA approves Illinois' NSR submittal based upon the February 16, 1995, Board withdrawal of all interpretations of section 203.209(b). USEPA also approves the State's substitution of a plantwide definition of stationary source for a dual source definition and approves the State's ability to no longer require NSR on major PM precursor sources. USEPA approves all elements of the State's NSR SIP submitted to comply with the amended Act.

#### III. Executive Order 12866

This action has been classified as a Table 3 action for signature by the Regional Administrator under the procedures published in the Federal Register on January 19, 1989 (54 FR 2214-2225), as revised by a July 10, 1995 memorandum from Mary Nichols, 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 the SIP shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

#### IV. Regulatory Flexibility

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 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 State action. The Act forbids USEPA to base its actions concerning SIP's 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).

#### V. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, 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, 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 USEPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

USEPA has determined that the final 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 now new Federal requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

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

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations,

Lead, Nitrogen dioxide, Particulate matter, Reporting and recordkeeping requirements, Sulfur dioxide, Volatile organic compounds.

Dated: July 27, 1995.

Robert Springer,

Acting Regional Administrator.

For the reasons set out in the preamble, part 52, chapter I, title 40 of the Code of Federal Regulations is amended to read 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) (113) to read as follows:

#### § 52.720 Identification of plan.

\* \* \* \* \*

(c) \* \* \*

(113) On April 27, 1995, the Illinois Environmental Protection Agency requested a revision to the Illinois State Implementation Plan in the form of revisions to the State's New Source Review rules for sources in the Chicago and metropolitan East St. Louis ozone nonattainment areas and are intended to satisfy Federal requirements of the Clean Air Act as amended in 1990. The State's New Source Review provisions are codified at Title 35: Environmental Protection Subtitle B: Air Pollution, Chapter I: Pollution Control Board, Subchapter a: Permits and General Provisions. Part 203 Major Stationary Sources Construction and Modification is amended as follows:

(i) Incorporation by reference.

(A) Title 35: Environmental Protection, Subpart A: General Provisions, Section 203.101 Definitions, Section 203.107 Allowable Emissions, Section 203.110 Available Growth Margin, Section 203.112 Building, Structure and Facility, Section 203.121 Emission Offset, Section 203.122 Emissions Unit, Section 203.123 federally Enforceable, Section 203.126 Lowest Achievable Emission Rate, Section 203.128 Potential to Emit, Section 203.145 Volatile Organic Material, Section 203.150 Public Participation. Effective April 30, 1993.

(B) Title 35: Environmental Protection, Subpart B: Major Stationary Sources in Nonattainment Areas, Section 203.201 Prohibition, Section 203.203 Construction Permit Requirement and Application, Section 203.206 Major Stationary Source, Section 203.207 Major Modification of a

Source, Section 203.208 Net Emission Determination, Section 203.209 Significant Emissions Determination. Effective April 30, 1993.

(C) Title 35: Environmental Protection, Subpart C: Requirements for Major Stationary Sources in Nonattainment Areas, Section 203.301 Lowest Achievable Emission Rate, Section 203.302 Maintenance of Reasonable Further Progress and Emission Offsets, Section 203.303 Baseline and Emission Offsets Determination, Section 203.306 Analysis of Alternatives. Effective April 30, 1993.

(D) Title 35: Environmental Protection, Subpart H: Offsets for Emission Increases From Rocket Engines and Motor Firing, Section 203.801 Offsetting by Alternative or Innovative Means. Effective April 30, 1993. Published in the Illinois Register, Volume 17, Issue 20, May 14, 1993. [FR Doc. 95-23958 Filed 9-26-95; 8:45 am]

BILLING CODE 6560-50-F

#### 40 CFR Part 52

[TX-9-1-5222a; FRL-5266-4]

#### Approval and Promulgation of Air Quality Implementation Plans; Texas; Permit Revisions

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

**ACTION:** Direct final rule.

**SUMMARY:** This document approves revisions to Texas Air Control Board (TACB) General Rules (31 TAC Chapter 101) and Regulation VI (31 TAC Chapter 116), "Control of Air Pollution by Permits for New Construction or Modification" of the Texas State Implementation Plan (SIP). The revisions approved herein include New Source Review (NSR) definitions and provisions for permitting in nonattainment areas as required by the Clean Air Act (CAA), as amended in 1990. These 1990 CAA NSR provisions were submitted by the Governor on May 13, 1992, November 13, 1992, and August 31, 1993. This action also approves other provisions of the General Rules and Regulation VI which have been submitted and not yet acted upon by EPA. These revisions were submitted by the Governor of Texas to EPA on December 11, 1985, October 26, 1987, February 18, 1988, September 29, 1988, December 1, 1989, September 18, 1990, November 5, 1991, May 13, 1992, November 13, 1992, and August 31, 1993. With the exception of the 1990 CAA NSR provisions, none of the other

revisions being acted upon in this document were required by EPA.

**DATES:** This final rule will become effective on November 27, 1995 unless adverse or critical comments are received by October 27, 1995. If the effective date is delayed, a timely notice will be published in the Federal Register.

**ADDRESSES:** Written comments on this action should be addressed to Ms. Jole C. Luehrs, Chief, New Source Review Section, at the following address: U.S. Environmental Protection Agency, Air Programs Branch (6T-A), First Interstate Bank Building, 1445 Ross Avenue, suite 1200, Dallas, Texas 75202-2733.

Copies of documents relevant to this document may be examined at the above location or at any of the locations listed below.

U.S. Environmental Protection Agency, Air and Radiation Docket and Information Center, 401 M Street SW., Washington, DC 20460;  
Texas Natural Resource Conservation Commission, 12124 Park 35 Circle, Austin, Texas 78753.

If you wish to review these documents, please contact the person named below at least two working days in advance to schedule an appointment.

**FOR FURTHER INFORMATION CONTACT:** Stanley M. Spruiell at (214) 665-7212.

**SUPPLEMENTARY INFORMATION:** On December 11, 1985, October 26, 1987, February 18, 1988, September 29, 1988, December 1, 1989, September 18, 1990, November 5, 1991, May 13, 1992, November 13, 1992, and August 31, 1993, the Governor of Texas, after adequate notice and public hearing, submitted revisions to the Texas SIP. Specifically, the State revised TACB Regulation VI (31 TAC Chapter 116), "Control of Air Pollution by Permits for New Construction or Modification" and its General Rules (31 TAC Chapter 101). EPA has previously approved portions of certain revisions that have been submitted. In this notice, EPA is acting to approve SIP revisions that have been submitted by the Governor of Texas to EPA between December 11, 1985, and November 13, 1992, that EPA has not previously approved. EPA is also acting to approve a portion of the revision submitted August 31, 1993, more specifically, Table I of Section 116.012 (Major Source/Major Modification Emission Thresholds).

EPA has prepared a "Technical Support Document" for EPA Actions on Revisions to TACB General Rules (31 TAC Chapter 101) and Regulation VI (31 TAC CHAPTER 116), "Control of Air Pollution by Permits for New

Construction or Modification" for the revisions being acted upon in this notice. EPA has also prepared an "Annotation of Texas Air Control Board General Rules and Regulation VI, Control of Air Pollution by Permits for New Construction or Modification", as amended June 9, 1995. The annotation shows: the existing TACB Regulation VI, as amended by the TACB as of October 16, 1992; Table I in the Nonattainment Review Definitions of Regulation VI, as submitted by the Governor on August 31, 1993; revisions to the definitions in the General Rules in Section 101.1, as submitted by the Governor on May 13, 1992; sections of the General Rules and of Regulation VI that EPA believes to be in the Texas SIP; and sections of the Regulations that have been submitted to EPA by the Governor of Texas as SIP revisions but EPA has not acted upon.

Section 116.3(a)(11) of Regulation VI (previously Section 116.3(a)(13)), contains Texas' regulation for prevention of significant deterioration (PSD). This regulation was acted upon in a separate Federal Register action. The State adopted its PSD regulation on July 26, 1985, and submitted it to EPA on December 11, 1985. Additional revisions to section 116.3(a)(13) were submitted to EPA on October 26, 1987, September 29, 1988, and February 18, 1991. EPA published in the Federal Register on December 22, 1989 (54 FR 52823) a document proposing approval of the Texas PSD regulations. A document published in the Federal Register on November 4, 1986 (51 FR 40072), gave the status of the Texas visibility NSR program. EPA's approval of the PSD SIP was published in the Federal Register on June 24, 1992 (57 FR 28093). On February 18, 1991, the TACB submitted a revision to section 116.3(a)(13) to incorporate the nitrogen oxides (NO<sub>x</sub>) increments into its PSD regulations. EPA published approval of this revision in the Federal Register on September 9, 1994 (59 FR 46556). On May 8, 1992, the TACB redesignated Section 116.3(a)(13) to section 116.3(a)(11) and made minor amendments. These changes will be approved in this action.

On September 3, 1993, the TACB merged with the Texas Water Commission (TWC). The combined agency was renamed the Texas Natural Resource Conservation Commission (TNRCC). The revisions to Regulation VI which are being acted upon herein were adopted prior to the merger of the TACB and TWC. All rules and regulations, orders, permits, and other final action taken by the TACB remain in full effect unless and until revised by the TNRCC.