

B. 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 has exempted this regulatory action from E.O. 12866 review.

C. Regulatory Flexibility

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.

This approval does not create any new requirements. Therefore, I certify that this action 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 the regulatory flexibility analysis would constitute federal inquiry into the economic reasonableness of the state action. The Act 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 (1976).

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

The EPA 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.

D. Petitions for Judicial Review

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by May 10, 1996. 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, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone, Motor vehicle pollution, Reporting and recordkeeping requirements.

Dated: January 17, 1996.

Valdas V. Adamkus,
Regional Administrator.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:
Authority: 42 U.S.C. 7401-7671q.

Subpart YY—Wisconsin

2. Section 52.2570 is amended by adding paragraph (c)(87) to read as follows:

§ 52.2570 Identification of plan.

* * * * *

(c) * * *

(87) The state of Wisconsin requested a revision to the Wisconsin State Implementation Plan (SIP). This revision is for the purpose of establishing and implementing a Clean-Fuel Fleet Program to satisfy the federal requirements for a Clean Fuel Fleet Program to be part of the SIP for Wisconsin.

(i) Incorporation by reference.

(A) Chapter 487 of the Wisconsin Administrative Code, effective June 1, 1995.

(B) Wisconsin Statutes, section 144.3714, enacted on April 30, 1992, by Wisconsin Act 302.

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[FR Doc. 96-5735 Filed 3-8-96; 8:45 am]

BILLING CODE 6560-50-P

40 CFR Part 52

[MO-30-1-7152a; FRL-5424-7]

Approval and Promulgation of Implementation Plans; State of Missouri

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: By this action the EPA gives conditional approval to the State Implementation Plan (SIP) submitted by the state of Missouri for the purpose of fulfilling the requirements set forth in the EPA's General Conformity rule. The SIP was submitted by the state to satisfy the Federal requirements in 40 CFR 51.852 and 93.151.

DATES: This action will be effective May 10, 1996, unless by April 10, 1996, adverse or critical comments are received.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal business hours at the: Environmental Protection Agency, Air Planning and Development Branch, 726 Minnesota Avenue, Kansas City, Kansas 66101; and EPA Air & Radiation Docket and Information Center, 401 M Street, SW., Washington, DC 20460.

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

SUPPLEMENTARY INFORMATION:

I. Background

Section 176(c) of the Clean Air Act (CAA), as amended (the Act), requires the EPA to promulgate criteria and procedures for demonstrating and ensuring conformity of Federal actions to an applicable implementation plan developed pursuant to section 110 and Part D of the Act. Conformity to an SIP is defined in the Act as meaning conformity to an SIP's purpose of eliminating or reducing the severity and number of violations of the National Ambient Air Quality Standards (NAAQS) and achieving expeditious attainment of such standards. The Federal agency responsible for the action is required to determine if its actions conform to the applicable SIP. On November 30, 1993, EPA promulgated the final rule (hereafter referred to as the General Conformity rule), which establishes the criteria and

procedures governing the determination of conformity for all Federal actions, except Federal highway and transit actions.

The St. Louis area was designated nonattainment for ozone and carbon monoxide (CO) in 1978. On November 6, 1991, EPA promulgated a rule which classified the St. Louis area as a moderate ozone nonattainment area, and as an unclassified nonattainment area for CO. In this same rulemaking, EPA promulgated nonattainment designations for three areas in Missouri which failed to achieve the NAAQS for lead. The nonattainment areas are identified as portions of Iron County, Missouri, in the vicinity of the Asarco primary lead smelting facility; the area surrounding the Doe Run primary/secondary lead smelter-refinery installation near Boss, Missouri; and the area in the vicinity of the Doe Run primary lead smelter in Herculaneum, Missouri. Kansas City was redesignated to attainment for ozone, and a maintenance plan was approved, in a June 23, 1992, Federal Register notice. Section 51.851 (93.151) of the General Conformity rule requires that states submit an SIP revision containing the criteria and procedures for assessing the conformity of Federal actions to the applicable SIP, within 12 months after November 30, 1993. As the rule applies to all nonattainment areas and maintenance areas, an SIP revision which addresses the requirements of the General Conformity rule became due on November 30, 1994.

II. Review of State Submittal

On February 14, 1995, the state of Missouri submitted a General Conformity SIP revision. The submission included Missouri rule 10 CSR 10-6.300 (10-6.300), which applies to all areas in the state of Missouri which are designated as nonattainment or maintenance for any criteria pollutant or standard for which there is an NAAQS. The General Conformity rule establishes the criteria for EPA approval of SIPs. See 40 CFR 51.851 and 93.151. These criteria provide that the state provisions must be at least as stringent as the requirements specified in EPA's General Conformity rule, and that they can be more stringent only if they apply equally to Federal and nonfederal entities.

The state of Missouri chose to use the model General Conformity rule developed by the State and Territorial Air Pollution Program Administrators (STAPPA)/Association of Local Air Pollution Control Officials (ALAPCO). The STAPPA/ALAPCO model rule added clarifying changes consistent

with the intent of the Federal rule. The STAPPA/ALAPCO rule also contains "more stringent" and "lateral" options which change the substance of the Federal rule. Missouri did not adopt any of these options from the model rule.

Missouri rule 10 CSR 10-6.300 was adopted by the Missouri Air Conservation Commission, after proper notice and public hearing, on January 12, 1995, and became effective on May 28, 1995. The rule applies to all areas in the state of Missouri which are designated as nonattainment or maintenance for any criteria pollutant or standard for which there is an NAAQS.

III. Conditional Approval

EPA has determined that SIP revisions which use, verbatim, the model rule developed by STAPPA/ALAPCO are not approvable. Two sentences added by STAPPA/ALAPCO as clarifying language make the model rule more stringent than the Federal General Conformity rule. Missouri rules 10 CSR 10-6.300(3)(C)4 and (9)(B)2 include this language. EPA did not make a determination as to the approvability of the language in the STAPPA/ALAPCO rule until after the state of Missouri officially submitted the required SIP revision. However, in a letter dated December 7, 1995, from David Shorr, Director, Missouri Department of Natural Resources (MDNR), to Dennis Grams, Regional Administrator, EPA, the state has committed to change the unapprovable sections and resubmit the SIP revision, within one year from December 7, 1995.

Under section 110(k)(4) of the Act, EPA may grant a conditional approval of this revision based on the state's commitment to correct deficiencies by a date certain, but not later than one year after the date of approval of the plan revision. Furthermore, section 110(k)(4) of the Act states that, should the state fail to meet its commitment, this conditional approval will convert to a disapproval. As the state has committed to correct this SIP revision within one year from December 7, 1995, EPA grants a conditional approval of the state's submittal.

EPA ACTION

By this action, EPA grants conditional approval of Missouri's February 14, 1995, submittal. This SIP revision substantially meets the requirements set forth in 40 CFR 51.851 and 93.151, except as noted above.

The 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 the Federal Register publication, the EPA is proposing to approve the SIP revision should adverse or critical comments be filed.

If the 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. 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.

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.

Conditional approvals of SIP submittals 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)).

If the conditional approval is converted to a disapproval under section 110(k), based on the state's failure to meet the commitment, it will not affect any existing state requirements applicable to small entities. Federal disapproval of the state submittal does not affect its state enforceability. Moreover, EPA's

disapproval of the submittal does not impose a new Federal requirement. Therefore, EPA certifies that this disapproval action does not have a significant impact on a substantial number of small entities, because it does not remove existing state requirements or substitute a new Federal requirement.

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 has exempted this regulatory action from E.O. 12866 review.

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, the state has elected to adopt the program provided for under section 110 of the CAA. These rules may bind state and local governments to perform certain actions and also require the private sector to perform certain duties. To the extent that the rules being finalized for approval by this action will impose new requirements, sources are already subject to these regulations under state law. Accordingly, no additional costs to state or local governments, or to the private sector, result from this final action. The 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 state or local governments in the aggregate or to the private sector. EPA has determined that these rules result in no additional costs to tribal government.

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by May 10, 1996. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review, nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to

enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: February 6, 1996.
Dennis Grams,
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 AA—Missouri

2. Section 52.1320 is amended by adding paragraph (c)(93) to read as follows:

§ 52.1320 Identification of plan.

* * * * *

(c) * * *

(93) On February 14, 1995, the Missouri Department of Natural Resources (MDNR) submitted a new rule which pertains to general conformity.

(i) Incorporation by reference.

(A) New rule 10 CSR 10-6.300, entitled Conformity of General Federal Actions to State Implementation Plans, effective May 28, 1995.

3. Section 52.1323 is amended by adding paragraph (h) to read as follows:

§ 52.1323 Approval Status.

* * * * *

(h) The state of Missouri commits to revise 10 CSR 6.300 to remove language in paragraphs (3)(C)4. and (9)(B) which is more stringent than the language in the Federal General Conformity rule. In a letter to Mr. Dennis Grams, Regional Administrator, EPA, dated December 7, 1995, Mr. David Shorr, Director, MDNR, stated:

We commit to initiating a change in the wording in the above paragraphs [paragraphs (3)(C)4. and (9)(B)] of Missouri rule 10 CSR 10-6.300, and to submit the change to EPA within one year from the date of this letter [December 7, 1995]. We intend that the change will give our rule the same stringency as the General Conformity Rule.

[FR Doc. 96-5733 Filed 3-8-96; 8:45 am]

BILLING CODE 6560-50-P

40 CFR Part 52

[OH89-1-7254a; FRL-5434-7]

Approval and Promulgation of Implementation Plans; Ohio

AGENCY: United States Environmental Protection Agency (USEPA).

ACTION: Direct final rule.

SUMMARY: This document approves a State Implementation Plan (SIP) revision for the State of Ohio for the general conformity rules. The general conformity SIP revisions enable the State of Ohio to implement and enforce the Federal general conformity requirements in the nonattainment or maintenance areas at the State or local level. General Conformity assures that federal actions conform to the State plan to attain and maintain the public health based air quality standards. The rationale for the approval and other information is provided in this document.

DATES: This action is effective May 10, 1996 unless adverse comments are received by April 10, 1996. If the effective date is delayed, timely notice will be published in the Federal Register.

ADDRESSES: Copies of the SIP revision are available for inspection at the following address: (It is recommended that you telephone Patricia Morris at (312) 353-8656 before visiting the Region 5 Office.) United States Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Patricia Morris, Regulation Development Section (AR-18J), Air Programs Branch, Air and Radiation Division, United States Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, Telephone Number (312) 353-8656.

SUPPLEMENTARY INFORMATION:

I. Background

Conformity provisions first appeared in the Clean Air Act (CAA) amendments of 1977 (Pub. L. 95-95). Although these provisions did not define the term conformity, they provided that no Federal department could engage in, support in any way or provide financial assistance for, license or permit, or approve any activity which did not conform to a SIP that has been approved or promulgated for the nonattainment or maintenance areas.

The CAA Amendments of 1990 expanded the scope and content of the