Assessment

The regulatory evaluation in the NPRM stated that the proposed action might have an economic effect on LOOP (depending upon what final limit of liability was established), but that no effect was anticipated on the general private sector, consumers, or Federal, state or local governments. Only two comments were received that addressed the economic effects of this action.

The first comment was from LOOP, Inc., which stated: ''OPA's liability limit plays an important part in LOOP's insurance costs. When the OPA limit is reduced, it will most probably result in a lowering of the total insurance premiums paid by LOOP. These reduced costs will enable LOOP to be more competitive and could be reflected in lower rates for service, thus benefiting oil importers and, ultimately, American consumers of oil products such as gasoline.''

The Department recognizes that LOOP's business activity is to receive crude oil cargoes from offshore VLCC and ULCC tankers and transfer those cargoes ashore (via seafloor pipeline), an activity in which it competes with local lightering companies that provide a similar transfer service using small tankers (typically 80,000 deadweight tons or smaller). LOOP's original limit of liability under the Deepwater Ports Act was $50 million; in 1980 the liability limit was established at $150 million. OPA 90's default limit of liability of $350 million raised LOOP's insurance costs. This rulemaking establishes $62 million as the appropriate limit of liability for LOOP. It is noted that the limit of liability of typical lightering vessels (against which LOOP competes) is less than $40 million.

The second comment was from Petroport, Inc., which is planning to develop a deepwater port 35 miles offshore of Freeport, Texas. Petroport's comment discussed the economic effect of establishing limits of liability for deepwater ports on a port-by-port basis rather than a single, universal limit for all deepwater ports. This comment stated: ''Petroport is concerned that if the Department establishes a limit only for LOOP at this time and requires separate rulemakings for future deepwater ports, then its own deepwater port, and other such facilities, would be placed at a severe competitive disadvantage. The Department inadvertently would create uncertainty in the market, could possibly discourage, and certainly would delay, other deepwater port ventures through the creation of unnecessary regulatory burdens.''

Petroport, Inc., was also concerned that a new deepwater port would have to operate under OPA 90's default $350 million limit of liability until completion of a rulemaking to establish a lower, more-appropriate limit. Petroport, Inc., was further concerned that the port-by-port approach would impede development of other deepwater ports, thereby creating a noncompetitive monopoly for LOOP.

The Department disagrees that the port-by-port approach for setting individual limits of liability would discourage or delay the overall development of a deepwater port. The deepwater port licensing process (found in 33 CFR Part 148) already requires, among other things, submittal of an environmental analysis which, in turn, must evaluate spill sizes and the possibility of pollution incidents resulting from personnel and equipment failures, natural calamities and casualties, etc. The environmental analysis submittal will allow the Department timely development of an appropriate limit of liability concurrently with the overall processing of the license application. Therefore, this action will not delay development of any new deepwater port project nor does it impose any new or undue regulatory burden on an applicant.

The Department also disagrees that any delays in development of a deepwater port foster a noncompetitive monopoly for LOOP. Even though LOOP is the sole deepwater port in the United States, it does not benefit from a monopolistic position in the market: LOOP's primary competition comes from lightering companies, not from the presence (or absence) of other deepwater ports. Other deepwater ports will be in a similar competitive situation with local lightering companies.

The Department concludes that, although this action may improve LOOP's competitiveness as an individual company, the overall competitiveness of oil transfer business activity will not be significantly affected. Therefore, the anticipated impact of this rulemaking does not warrant a full Regulatory Analysis or Evaluation.

National Environmental Policy Act

The Department has determined that this rulemaking is administrative in nature and therefore is categorically excludable from further environmental assessment.

List of Subjects in 33 CFR Part 137

Claims; Harbors; Insurance; Oil pollution.

For the reasons discussed in the preamble, the Department amends 33 CFR part 137 as follows:

SUBCHAPTER M—MARINE POLLUTION FINANCIAL RESPONSIBILITY AND COMPENSATION

PART 137—DEEPWATER PORT LIABILITY FUND

1. The authority citation for 33 CFR part 137 is revised to read as follows:

Authority: 33 U.S.C. 1509(a), 1512(a), 1517(j)(1)), 2704; 49 CFR 1.46.

2. Subpart G is added as follows:

Subpart G—Limits of Liability

Sec.
137.601 Purpose.
137.603 Limits of Liability.

Subpart G—Limits of Liability

This subpart sets forth the limits of liability for U.S. deepwater ports in accordance with section 1004 of the Oil Pollution Act of 1990 (33 U.S.C. 2704).

§ 137.603 Limits of Liability.

(a) The limits of liability for U.S. deepwater ports will be established by the Secretary of Transportation on a port-by-port basis, after review of the maximum credible spill and associated costs for which the port would be liable. The limit for a deepwater port will not be less than $50 million or more than $350 million.

(1) The limit of liability for the LOOP deepwater port licensed and operated by Louisiana Offshore Oil Port, Inc., is $62,000,000.

(2) [Reserved]

(b) [Reserved]

Dated: July 31, 1995.

Federico Peña,

Secretary of Transportation.

[FR Doc. 95–19212 Filed 8–3–95; 8:45 am]

BILLING CODE 4910–62–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MO–18–1–6024A; FRL–5263–9]

Approval and Promulgation of Implementation Plans; State of Missouri

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: This document takes final action to approve the State

Implementation Plan (SIP) submitted by the state of Missouri for the purpose of bringing about the attainment of the National Ambient Air Quality Standard (NAAQS) 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 (Doe Run-Buick).

DATES: This action will be effective October 3, 1995 unless by September 5, 1995 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 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

The Doe Run Company acquired the primary lead facility near Bixby, Missouri (Doe Run-Buick), on November 16, 1986. Doe Run produced primary lead throughout 1987 and part of 1988. Violations of the NAAQS for lead were recorded in the first two calendar quarters of 1988. In the later part of 1988, Doe Run ceased operating the Doe Run-Buick facility as a primary smelter. Subsequent to 1988, various parts of the facility were operated intermittently to support production at Doe Run's Herculaneum, Missouri, primary smelter. Though air quality monitors indicated that ambient concentrations exceeded 1.5 $\mu g/m^3$ for some 24-hour periods, the quarterly lead standard was not violated during this intermittent operating scenario. Doe Run continues to utilize various pieces of equipment associated with the primary operation in conjunction with the company's colocated secondary lead smelting operation which began production in 1991. Although the most recent violations of the lead NAAQS occurred during the first two calendar quarters of 1988, there were no enforceable limitations which precluded the facility from operating in a fashion that had previously contributed to violations of the standard.

On November 5, 1990, the EPA issued a call for a revision to the Missouri SIP in response to the 1988 violations of the NAAQS for lead in the vicinity of Doe Run-Buick. The SIP revision was due by December 31, 1991. On November 6, 1991, EPA promulgated a nonattainment designation for the area surrounding the Doe Run-Buick facility under the authority of sections 107(d)(1) and (5) of the Clean Air Act (CAA). Upon promulgation of the nonattainment designation, a state must prepare a revision to the SIP in accordance with the requirements of section 172 of the CAA, showing how the area will be brought into attainment. As a result of EPA's promulgation of the nonattainment designation, a full Part D SIP revision for Doe Run-Buick became due on July 6, 1993.

On July 2, 1993, the state of Missouri submitted an SIP revision addressing the applicable Part D requirements of the CAA relating to lead for the Doe Run-Buick smelter. The submission provided control measures to be implemented if the primary smelting facility resumed operations. The SIP also provided some restrictions on the use of the primary blast furnace and the refinery facilities used in conjunction with the secondary smelting operations. The July 1993 SIP revision was adopted by the Missouri Air Conservation Commission (MACC), after proper notice and public hearing, on June 29, 1993.

In a letter dated September 30, 1993, EPA informed the state that the proposed Special Provisions amendment to Missouri rule 10 CSR 10–6.120 was not approvable. The proposed amendment would allow the sinter plant to be operated in conjunction with the secondary smelting operation. As the modeling analysis of the current mode of operations did not include emissions from the primary smelter's sinter machine, there was no demonstration of attainment for the proposed operating scenario.

On October 7, 1993, EPA notified the state that the SIP revision lacked several elements necessary to meet EPA's completeness criteria, and that it contained several elements which were not approvable. In an effort to resolve these problems, a meeting was held on October 18 and 19, 1993, among representatives from EPA, MDNR, and the Doe Run Company. In a November 15, 1993, letter, MDNR committed to make the needed corrections to the SIP and amend 10 CSR 10–6.120, and submit them to EPA by April 1994. In December 1993, EPA determined that sufficient progress was not being made in rectifying the deficiencies in the Buick SIP. A finding of incompleteness was sent to the Governor of Missouri on January 4, 1994.

The required changes to the SIP were adopted by the MACC at a public hearing held on March 31, 1994. Final changes to Missouri rule 10 CSR 10–6.120 were adopted by the MACC, after proper notice and public hearing, on April 28, 1994, and became effective on August 28, 1994.

The state submitted supplemental material to EPA on June 30, 1994. This subsequent submittal still lacked the plot plan showing the location of the fencing installed around the Buick facility, which was one deficiency previously noted by EPA. It was also noted that the Consent Order contained an error in the wording of Contingency Measure number 2. The correct wording had been included in a February 23, 1994, letter from EPA, forwarding our comments on the draft Consent Order, during the state's public comment period. The inclusion of the needed language was agreed upon at a meeting between MDNR staff and EPA on March 22, 1994. However, due to clerical error, the language in the March 31, 1994, Consent Order was incorrect. A new Consent Order, which included the correct language, was signed by the MACC on September 29, 1994, and submitted to EPA on November 23, 1994, along with the missing plot plan. EPA deemed the SIP revision complete on December 15, 1994. The finding of completeness stopped the section 179 sanctions clock initiated by EPA's January 4, 1994, finding of incompleteness.

The July 2, 1993, SIP, as revised and adopted in March 1994, and the revised September 29, 1994, Consent Order, satisfy the Part D requirements of the CAA. The revised plan also contains a control strategy to be implemented if the primary smelting facility resumes operation. Dispersion modeling demonstrates that these control measures would result in attainment of the NAAQS for lead. As the area is currently attaining the lead NAAQS, the attainment date is the effective date of the SIP—March 31, 1994. The amendments to Missouri rule 10 CSR 10–6.120 contain emission limits for stack sources and fugitive sources for both the current mode of operation (the secondary smelter), and emission limits effective upon resumption of the smelter's primary production of lead.

II. Criteria for Approval

This SIP revision was reviewed using the criteria established by the CAA. The requirements for all SIPs are contained in section 110(a)(2) of the CAA. Subpart 1 of Part D of Title I of the CAA, and in particular section 172(c), specifies the provisions necessitated by designation of an area as nonattainment for any of the NAAQS. Further guidance and criteria are set forth in Subpart 5 of Part D, the ''General Preamble for the

Implementation of Title I of the Clean Air Act Amendments of 1990'' (57 FR 13498), and in the ''Addendum to the General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990'' (58 FR 67748).

III. Review of State Submittal

A. Control Strategy

The 1992 emissions inventory (EI) is the baseline EI for this SIP revision. The SIP includes a list of control measures, which are to be installed and implemented before the Buick primary smelter is operated to process lead concentrate and produce primary lead. As an additional control measure, Missouri amended rule 10 CSR 10–6.120 to include emission and throughput limits for the secondary smelting operation. Air dispersion modeling was used to determine that the controls were sufficient to attain the lead NAAQS.

Appendix F of the SIP contains the June 24, 1993, Consent Order which sets forth the administrative requirements for the implementation of the control measures. Appendix G contains amended Missouri rule 10 CSR 10–6.120, which establishes *enforceable* emission and throughput limits for both the primary smelting operation and the secondary smelting operation.

B. Attainment Demonstration

Section 192(a) of the CAA requires that SIPs must provide for attainment of the lead NAAQS as expeditiously as practicable, but not later than five years from the date of an area's nonattainment designation. The lead nonattainment designation for the area surrounding the Doe Run-Buick facility was effective on January 6, 1992; therefore, the latest attainment date permissible by statute would be January 6, 1997. As the area is currently attaining the lead NAAQS, the attainment date is the effective date of the SIP, March 31, 1994. This meets the statutory requirement.

The Industrial Source Complex Long-Term Model (ISCLT2) was used to demonstrate attainment and maintenance of the lead NAAQS for the two operating scenarios. The procedures recommended in EPA's *Guideline on Air Quality Models (Revised),* EPA 450/2–78–027R, July 1986, and *Supplement A to the Guideline on Air Quality Models (Revised),* EPA 450/2–78–027R, July 1987, were followed.

C. EI and Air Quality Data

Section 172(c)(3) of the CAA requires that nonattainment plan provisions include a comprehensive, accurate, current inventory of actual emissions from all sources of relevant pollutants in the nonattainment area.

The 1992 emissions inventory is the baseline EI for this SIP revision. This inventory was quantified through stack testing, worker exposure data, evaluation of equipment and procedures, EPA emission estimation methods, and engineering judgement. The attainment scenario EIs were derived from the baseline inventory.

The state submittal provides a historical summary of the air quality from the third calendar quarter of 1982 through the fourth calendar quarter of 1992. Since the second calendar quarter of 1988, at which time the primary smelting operation ceased, there have been no exceedances of the quarterly lead standard at any of the monitoring locations.

D. Reasonably Available Control Measures (RACM) (Including Reasonably Available Control Technology (RACT))

The submittal must contain provisions to ensure that RACM (including RACT) are implemented (see section 172(c)(1) of the CAA). See 57 FR 13549 and 58 FR 67748 for EPA's interpretation of RACM and RACT requirement.

A 1991 six-volume study conducted by Fluor Daniel, Inc. represents an RACT survey of the Buick facility. The report contains a study of various process technology, and a review of the existing facilities and operating practices. The controls at the Buick smelter were found to be RACT for all stack and process fugitive emission sources.

An RACM survey was conducted in accord with 57 FR 18072, EPA's guidance with respect to the selection of fugitive dust control measures. Three of the five suggested measures were found to be applicable to the Buick facility. The SIP adequately documents the reasons for which each measure was selected or rejected. Each selected measure is included in the Buick Work Practice Manual and, in accord with the June 24, 1993, Consent Order found in Appendix F of the SIP, will be implemented upon the resumption of lead concentrate processing and primary lead production.

E. Reasonable Further Progress (RFP)

The SIP must provide for RFP [see section 172(c)(2) of the Act]. The control measures for the Buick smelter are to be in place and operational before the smelter resumes the primary production of lead as set forth in the July 24, 1993, Consent Order found in Appendix F of the SIP. EPA believes this meets the requirements for RFP for lead SIPs, as discussed in the ''Addendum to the General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990'' (58 FR 67748).

F. New Source Review (NSR)

Missouri rule 10 CSR 10–6.020 identifies the current specific descriptions of the lead nonattainment areas in Missouri. These areas include the city of Herculaneum in Jefferson County, and the Dent, Liberty, and Arcadia townships in Iron County. 10 CSR 10–6.020 is utilized in conjunction with 10 CSR 10–6.060 which requires a permit for construction of, or major modification to, an installation with potential to annually emit 100 tons or more of a nonattainment pollutant, or a permit for a modification with potential to annually emit 100 tons or more of a nonattainment pollutant. Because these provisions include requirements for all nonattainment areas and are not limited to lead, EPA is acting on the provisions in a separate rulemaking.

G. Contingency Measures

As provided in section 172(c)(9) of the CAA, all nonattainment area SIPs that demonstrate attainment must include contingency measures. Contingency measures should consist of other available measures that are not part of the area's control strategy. These measures must take effect without further action by the state or EPA, upon a determination that the area has failed to meet RFP or attain the lead NAAQS by the applicable attainment date.

The contingency measures included in the July 2, 1993, SIP submittal were determined to be inadequate to address possible air quality violations at the Buick facility for both the primary and secondary smelting operations. EPA notified the state, in an October 7, 1993, letter, that the SIP revision did not contain contingency measures which adequately addressed the requirements of section 172(c)(9). EPA requested that contingency measures be developed which would address sources that modeling indicates contribute to maximum predicted concentrations. MDNR and Doe Run agreed to the required changes at meetings held October 18 and 19, 1993. The changes to the SIP were adopted by the MACC, after proper notice and public hearing, on March 31, 1994.

The contingency measures in the SIP will be invoked if, beginning with the calendar quarter following the attainment date, an exceedance of the lead NAAQS is recorded. MDNR will

notify Doe Run-Buick of the exceedance, and implementation of all of the contingency measures will begin within 60 days from Doe Run's receipt of that notification.

H. Enforceability

All measures and other elements in the SIP must be enforceable by the state and EPA (see sections 172(c)(6), 110(a)(2)(A), and 57 FR 13556). The state submittal includes a Consent Order entered into by the state and the Company which contains all of the control and contingency measures, with enforceable dates for implementation.

The submittal also includes an amendment to Missouri rule 10 CSR 10–6.120 which establishes emission limits for all stack emissions and production limits from the lead production processes for each operating scenario. Missouri rule 10 CSR 10–6.120 contains provisions which are applicable to other lead smelters in the state. EPA proposes approval of this rule only as it relates to Doe Run-Buick. Any EPA actions on this rule with regard to other lead smelters will occur through separate **Federal Register** rulemakings.

A Buick Work Practice Manual is also included with the SIP revision. The Work Practice Manual serves as an enforcement document for the state and EPA. These work practices are designed to limit the fugitive emissions at the facility, and are enforced through recordkeeping requirements. Noncompliance with the established work practices is a violation of Missouri rule 10 CSR 10–6.120. EPA approves the Work Practice Manual with the understanding that any change to the Work Practice Manual requires a revision to the Missouri SIP.

IV. Implications of This Action

This SIP revision will significantly impact the current SIP. The modeling performed in support of the SIP revision indicates that the emissions control strategy will result in attainment of the NAAQS for lead upon resumption of primary lead production. The modeling also indicates that, while operating as a secondary smelter, no additional controls are required to ensure that emissions remain below the NAAQS for lead. In addition, Missouri rule 10 CSR 10–6.120 has been amended such that emission limits for all stack sources and production limits for lead production processes have been established for each operating scenario.

EPA ACTION: By this action EPA approves Missouri's July 2, 1993; June 30, 1994; and November 23, 1994, submittals. This SIP revision meets the requirements of section 110 and Part D of the Clean Air Act and 40 CFR Part 51.

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 notice that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on this action serving as a proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time.

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)).

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

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 and any affected local governments have 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. 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.

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 October 3, 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, Lead, Reporting and recordkeeping requirements.

Dated: July 11, 1995.

Dennis Grams, P.E.,

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)(89) to read as follows:

§ 52.1320 Identification of plan.

* * * * *

(c) * * *

(89) In submittals dated July 2, 1993; June 30, 1994; and November 23, 1994, the Missouri Department of Natural Resources (MDNR) submitted a State Implementation Plan (SIP) to satisfy Federal requirements for an approvable nonattainment area lead SIP for the Doe Run primary and secondary smelter near Bixby, Missouri (Doe Run-Buick). Although Missouri rule 10 CSR 10–6.120 contains requirements which apply statewide to primary lead smelting operations, EPA takes action on this rule insofar as it pertains to the Doe Run-Buick facility. Plan revisions to address the other lead smelters in the state are under development.

(i) Incorporation by reference.

(A) Revised regulation 10 CSR 10–6.120 (section (2)(C), section (4)) entitled Restriction of Emissions of Lead from Primary Smelter-Refinery Installations, effective August 28, 1994.

(B) Consent Order, entered into between the Doe Run Company and MDNR, dated July 2, 1993.

(C) Consent Order amendment, signed by the Doe Run Company on August 30, 1994, and by MDNR on November 23, 1994.

(ii) Additional material.

(A) The Doe Run-Buick Work Practice Manual submitted on July 2, 1993. EPA approves the Work Practice manual with the understanding that any subsequent changes to the Work Practice Manual will be submitted as SIP revisions.

(B) Revisions to the Doe Run-Buick Work Practice Manual submitted on June 30, 1994.

[FR Doc. 95–19215 Filed 8–3–95; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Part 52

[WVA10–1–5918a; FRL–5265–7]

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

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving a 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_X) at or above specified actual emission threshold levels. This program applies to certain stationary sources within the West Virginia counties of Putnam, Kanawha, Cabell, Wayne, Wood, and Greenbrier. The intended effect of this action is to approve a regulation for annual reporting of actual emissions by sources that emit VOC and/or NO_X, within the counties listed above, in accordance with the 1990 Clean Air Act (CAA). This action is being taken under section 110 of the CAA.

DATES: This action will become effective September 18, 1995 unless notice is received on or before September 5, 1995 that adverse or critical comments will be submitted. If the effective date is delayed, timely notice will be published in the **Federal Register**.

ADDRESSES: Comments must be mailed to Marcia L. Spink, Associate Director (3AT00), Air Programs, 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 following location: Environmental Protection Agency, Region III, Air, Radiation, and Toxics Division, 841 Chestnut Building, Philadelphia, PA 19107; and the West Virginia Office of Air Quality, 1558 Washington Street, East, Charleston, West Virginia, 25311.

FOR FURTHER INFORMATION CONTACT: Marcia L. Spink, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107, (215) 597–4713.

SUPPLEMENTARY INFORMATION: On August 10, 1993, the West Virginia Office of Air Quality (WVOAQ) submitted a SIP revision to EPA. This revision would add West Virginia Regulation Title 45, Series 29, ''Rule Requiring the Submission of Emission Statements for Volatile Organic Compounds and Oxides of Nitrogen Emissions,'' consisting of Subsections: 1. General; 2. Definitions; 3. Applicability; 4. Compliance Schedule; 5. Emission Statement Requirements; 6. Enforceability; and 7. Severability, effective July 7, 1993 in the State of West Virginia to the West Virginia SIP.

I. Background

The air quality planning and SIP requirements for ozone nonattainment and transport areas are set out in subparts I and II of Part D of Title I of the Clean Air Act, as amended by the Clean Air Act Amendments of 1990. EPA published a ''General Preamble'' describing EPA's preliminary views on how it intends to review SIP's and SIP revisions submitted under Title I of the CAA, including those State submittals for ozone transport areas within the States (see 57 FR 13498 (April 16, 1992) (''SIP: General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990''), 57 FR 18070 (April 28, 1992) (''Appendices to the General Preamble''), and 57 FR 55620 (November 25, 1992) (''SIP: NO_X Supplement to the General Preamble'')).

EPA also issued a draft guidance document describing the requirements for the emission statement programs discussed in this action, entitled ''Guidance on the Implementation of an Emission Statement Program'' (July, 1992). The Agency is also conducting a rulemaking process to modify title 40, part 51 of the CFR to reflect the requirements of the emission statement program.

Section 182 of the Act sets out a graduated control program for ozone nonattainment areas. Section 182(a) sets out requirements applicable in marginal ozone nonattainment areas, which are also made applicable by section 182 (b), (c), (d), and (e) to all other ozone nonattainment areas. Among the requirements in section 182(a) is a program for stationary sources to prepare and submit to the State each year emission statements certifying their actual emissions of VOCs and NO_X. This section of the Act provides that the States are to submit a revision to their SIPs by November 15, 1992 establishing this emission statement program.

If a source emits either VOC or NO_X at or above the designated minimum reporting level, the other pollutant should be included in the emission statement, even if it is emitted at levels below the specified cutoffs.

States may waive, with EPA approval, the requirement for an emission statement for classes or categories of sources with less than 25 tons per year of actual plant-wide NO_X or VOC emissions in nonattainment areas if the class or category is included in the base year and periodic inventories and emissions are calculated using emissions factors established by EPA (such as those found in EPA publication AP–42) or other methods acceptable to EPA.

At minimum, the emission statement data should include:

—Certification of data accuracy;

—Source identification information;

—Operating schedule;