

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 USEPA to base its actions concerning SIPs on such grounds. *Union Electric Co. v. USEPA*, 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 USEPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to the private sector, of \$100 million or more. Under Section 205, the USEPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires the USEPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

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

This Federal action will relieve requirements otherwise imposed under the Act, and hence does not impose any federal intergovernmental mandate, as defined in section 101 of the Unfunded Mandates Act. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

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 April 12, 1996. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purpose 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 Act).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Conformity, Oxides of nitrogen, Ozone, Transportation conformity.

Dated: January 23, 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 O—Illinois

2. Section 52.726 is amended by adding paragraph (l) to read as follows:

§ 52.726 Control Strategy: Ozone.

* * * * *

(l) Approval—The United States Environmental Protection Agency is approving under section 182(b)(1) of the Clean Air Act the exemption of the Chicago severe, ozone nonattainment area from the build/no-build and less than-1990 interim transportation conformity oxides of nitrogen requirements as requested by the State of Illinois in a June 20, 1995 submittal. In light of the modeling completed thus far and considering the importance of the OTAG process and attainment plan modeling efforts, USEPA grants this NO_x waiver on a contingent basis. As the OTAG modeling results and control recommendations are completed in 1996, this information will be incorporated into attainment plans being developed by the LADCO States. When these attainment plans are submitted to USEPA in mid-1997, these new modeling analyses will be reviewed to determine if the NO_x waiver should be continued, altered, or removed. USEPA's rulemaking action to reconsider the initial NO_x waiver may occur simultaneously with rulemaking action on the attainment plans. The USEPA also reserves the right to require NO_x emission controls for transportation sources under section 110(a)(2)(D) of the Act if future ozone modeling demonstrates that such controls are needed to achieve the ozone standard in downwind areas. The Chicago severe ozone nonattainment area includes the Counties of Cook, DuPage, Grundy (Aux Sable and Gooselake Townships), Kane, Kendall

(Oswego Township), Lake, McHenry, and Will.

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40 CFR Part 52

[MS15-1-6252a; MS20-2-9605a; FRL-5400-9]

Clean Air Act Approval and Promulgation of Revisions to the Mississippi State Implementation Plan (SIP)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving revisions to the Mississippi State Implementation Plan (SIP) submitted on June 14, 1991, and January 26, 1994, by the State of Mississippi through the Department of Environmental Quality (MDEQ). These SIP revisions incorporate changes to Regulation APC-S-1 "Air Emission Regulations for the Prevention, Abatement, and Control of Air Contaminants". The proposed revisions specify prohibited open burning practices and set conditions for which open burning practices may occur. These SIP revisions change the open burning restriction policy to be more consistent with federal regulations as specified in 40 CFR parts 257 and 258.

DATES: This action is effective April 12, 1996, unless notice is received by March 13, 1996, that someone wishes to submit adverse or critical comments. If the effective date is delayed, timely notice will be published in the Federal Register.

ADDRESSES: Written comments should be addressed to: Scott M. Martin, Regulatory Planning and Development Section, Air Programs Branch, Air, Pesticides & Toxics Management Division, Region 4 Environmental Protection Agency, 345 Courtland Street NE., Atlanta, Georgia 30365.

Copies of the documents relative to this action are available for public inspection during normal business hours at the following locations. The interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the visiting day.

Air and Radiation Docket and Information Center (Air Docket 6102), U.S. Environmental Protection Agency, 401 M Street SW., Washington DC 20460.
Environmental Protection Agency, Region 4 Air Programs Branch, 345

Courtland Street, Atlanta, Georgia 30365.
Mississippi Department of Environmental Quality, Bureau of Pollution Control, Air Quality Division, P.O. Box 10385, Jackson, Mississippi 39289-0385.

FOR FURTHER INFORMATION CONTACT: Mr. Scott M. Martin, Regulatory Planning and Development Section, Air Programs Branch, Air Pesticides and Toxics Management Division, Region 4 Environmental Protection Agency, 345 Courtland Street NE., Atlanta, Georgia 30365. The telephone number is (404) 347-3555 ext. 4216.

SUPPLEMENTARY INFORMATION: On June 14, 1991, and January 26, 1994, MDEQ submitted revisions to the Mississippi SIP incorporating changes to Regulation APC-S-1, "Air Emission Regulations for the Prevention, Abatement and Control of Air Contaminants." The proposed revisions specify prohibited open burning practices and set conditions for which open burning practices may occur. These SIP revisions change the open burning restriction policy to be consistent with federal regulations as specified in 40 CFR 257. Public hearings for these revisions were held on March 27, 1991, and November 24, 1993, and became state effective May 28, 1991, and January 9, 1994, respectively. The major revisions are described below:

Section 1. General

1. Paragraph one was revised by deleting Section 49 17 17, Mississippi Code of 1972, recompiled, and adding Miss. Code Ann. § 49-17-17.

2. Paragraph two "Exceptions" was deleted and paragraph three was renumbered as two. A new paragraph three was added. This paragraph states, "In the event of a conflict between any of the requirements of these regulations and/or applicable requirements of any other regulation or law, the more stringent requirements shall be applied."

Section 2. Definitions

1. The following definitions were added:

- 10. "Excess (or excessive) emission"
- 16. "Opacity"
- 24. "Recreational area"
- 25. "Residential area"
- 26. "Shutdown" relating to fuel burning equipment
- 29. "Soot blowing"
- 31. "Startup" relating to fuel burning equipment
- 34. "Upset"

2. The State revised the following definitions to meet EPA policy:

- 7. "Air pollution"

- 8. "Atmosphere"
- 13. "Modification"
- 15. "Open burning"
- 17. "Particulate matter emissions"
- 19. "PM-10 emissions"
- 21. "Process weight"
- 23. "Standard conditions"

3. The following definition was deleted:

- 22. "Ringelmann Chart"

The section was also re-alphabetized and renumbered to simplify finding definitions.

Section 3. Specific Criteria for Sources of Particulate Matter

1. Paragraph 1(a) was revised to give a reference paragraph for allowed exceptions to the forty (40) percent opacity rule.

2. Paragraph 1(c) was deleted. Paragraph 1(d) was then renumbered as 1(c), and edited to add 60 percent opacity and to delete references to Ringelmann Smoke Chart.

3. Paragraph 4(a) was deleted and replaced by new paragraphs 4(a)(1), 4(a)(2), 4(a)(3) which detail limits to emissions from fuel burning installations.

4. Paragraph 6(a) was replaced with a new paragraph which gives the formula to be used when calculating the particulate emission rate from a manufacturing process.

5. Paragraph 6(b) was revised to add an effective date of January 25, 1972.

6. Paragraph 7 was revised to state that open burning is prohibited with exceptions for the infrequent burning of agricultural waste, silvicultural waste, land clearing debris, emergency cleanup operations, and ordinance.

7. Paragraphs 7(b), 7(c), 7(d), 7(e), 7(f), 7(h), 7(i), 7(j), 7(k), and 7(l) which listed exceptions to open burning restrictions were deleted.

Section 6. New Sources

1. Paragraph 4. Infectious Waste Incineration was added. This paragraph details the conditions with which all infectious waste incinerators which incinerate only wastes generated on site and are installed after December 9, 1993, must comply.

2. Paragraph 4b Commercial Incinerators was added. This paragraph details the requirements for infectious waste incinerators which incinerate wastes generated off site.

Section 8. Provisions for Hazardous Air Pollutants

1. EPA is not acting on this section because these regulations are federally enforceable through 40 CFR Part 61.

Section 9. Stack Height Considerations

1. The paragraph titled Exemptions From Rules and Regulations which discussed emission exemptions during upsets and maintenance was deleted. Exceptions to the rule are now detailed in Section 10.

Section 10. Provisions for Upsets, Startups, and Shutdowns

1. This section is being adopted. Paragraph 1. Upsets, states what circumstances must be met so that an upset will constitute an affirmative defense to an enforcement action brought for noncompliance with emission standards or other requirements.

2. Paragraph 2. Startups and Shutdowns, states that emission limitations applicable to normal operation apply during startups and shutdowns and list exceptions to this rule.

3. Paragraph 3. Maintenance, lists factors that a source must demonstrate to show that maintenance constitutes an affirmative defense to an enforcement action brought for noncompliance with emission standards or other requirements.

These provisions are consistent with EPA and Clean Air Act requirements.

Final Action

EPA is approving the above referenced revisions to the Mississippi SIP. This action is being taken without prior proposal because the EPA views this as a noncontroversial amendment and anticipates no adverse comments. However, in a separate document in this Federal Register publication, the EPA is proposing to approve the SIP revision should adverse or critical comments be filed. This action will be effective April 12, 1996, unless, by March 13, 1996, adverse or critical comments are received.

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. If no such comments are received, the public is advised that this action will be effective April 12, 1996.

Under section 307(b)(1) of the Clean Air Act (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 April 12, 1996. 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)).

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 E.O. 12866 review.

Nothing in this action shall be construed as permitting or allowing or establishing a precedent for any future request for a revision to any state implementation plan. Each request for revision to the state implementation plan 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 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) and 7410(k)(3).

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 state implementation plan or plan revision, the State and any affected local or tribal governments have elected to adopt the program provided for under section 110 of the CAA. These rules may bind State, local and tribal governments to perform certain duties. EPA has examined whether the rules being approved by this action will impose any mandate upon the State, local or tribal governments either as the owner or operator of a source or as a regulator, or would impose any mandate upon the private sector. EPA's 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. Therefore, this final 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.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: November 1, 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 Z—Mississippi

2. Section 52.1270, is amended by adding paragraph (c)(27) to read as follows:

§ 52.1270 Identification of plan.

* * * * *

(c) * * *
(27) Amendments to Regulation APC-S-1 "Air Emission Regulations for the Prevention, Abatement, and Control of Air Contaminants" to be consistent with federal regulations as specified in 40 CFR Part 257.

(i) Incorporation by reference. Regulation APC-S-1 "Air Emission Regulations for the Prevention, Abatement, and Control of Air Contaminants" effective January 9, 1994, except SECTION 8. PROVISIONS FOR HAZARDOUS AIR POLLUTANTS.

(ii) Additional Material. None.

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40 CFR Part 52

[NE-7-1-71549; FRL-5399-7]

Approval and Promulgation of Implementation Plans; State of Nebraska

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: By this action the EPA gives full approval to the State Implementation Plan (SIP) submitted by the state of Nebraska 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 is effective April 12, 1996 unless by March 13, 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: Section 176(c) of the Clean Air Act, 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