

Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[NE-011-1011; FRL-5655-8]

Approval and Promulgation of Implementation Plans; State of Nebraska

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: With this action, the EPA is proposing to approve the Omaha lead emission control plan submitted by the state of Nebraska on August 28, 1996. The plan was submitted by the state to satisfy certain requirements under the Clean Air Act (CAA) (the Act) to reduce lead emissions sufficient to bring the Omaha area into attainment with the lead National Ambient Air Quality Standard (NAAQS).

Due to certain complications and delays related to the development and submission of the state's plan, the EPA is also announcing with this document the availability for review of a draft Federal Implementation Plan (FIP), which reduces lead emissions in the Omaha lead nonattainment area. A Federal plan will be promulgated in the absence of an approvable state plan.

DATES: Comments must be received on or before January 3, 1997.

ADDRESSES: Comments on the proposed approval of the state plan, and/or requests for additional information on this proposal, or copies of the draft FIP may be mailed to: Josh Tapp, Environmental Protection Agency, Air Branch, 726 Minnesota Avenue, Kansas City, Kansas 66101.

FOR FURTHER INFORMATION CONTACT: Josh Tapp at (913) 551-7606 or Royan Teter at (913) 551-7609.

SUPPLEMENTARY INFORMATION:

I. Background

Currently, the only significant source of lead contributing to violations of the lead NAAQS is a primary lead refinery

owned and operated by the American Smelting and Refining Company (Asarco). The refinery purifies lead bullion from a purity of approximately 97 percent to 99.9 percent lead. The facility's refining capacity is approximately 120,000 short tons of refined lead per year.

The original Omaha lead State Implementation Plan (SIP) was approved by the EPA on August 3, 1987 (52 FR 28694). The required control measures were in place by February 1988. Controls included improved methods for unloading baghouse dust, improved ventilation in the refinery building, pavement of open areas, and limits on production to 90 percent of maximum. Later that same year, several violations of the lead standard were recorded.

Because of continuing violations of the standard, the EPA made a call for a lead SIP revision in August 1990. On January 6, 1992, the EPA designated the area surrounding the facility as nonattainment for lead. (See 56 FR 56694, dated November 6, 1991.) The actual area designated as nonattainment for lead is located in the downtown area of the city of Omaha, Nebraska. The northern boundary of the nonattainment area is defined by Avenue H and the Iowa-Nebraska border. The western boundary of the nonattainment area is defined by Eleventh Street. The eastern boundary of the nonattainment area is defined by the Missouri River. The southern boundary of the nonattainment area is defined by Jones Street. As a result of this designation, the SIP submission date was extended to July 6, 1993, but the state was required to meet the additional requirements in part D of title I of the CAA.

Early in 1991, Asarco undertook a study to develop an emissions inventory based upon field studies and the use of two independently based air quality models (receptor and dispersion). This approach was necessary to more clearly identify which of the facility's processes were contributing to violations of the lead NAAQS so as to focus the control strategy development on the appropriate sources. A similar study was already underway at another facility in East Helena, Montana.

On July 6, 1993, Asarco submitted a control strategy to the EPA and the Nebraska Department of Environmental Quality (NDEQ). The primary control

measure in this strategy focused on the control of fugitive emissions from the refinery building by utilizing a total enclosure and installing a sophisticated ventilation system equipped with high efficiency fabric filtration systems (baghouses).

Due to the late control strategy submission by Asarco, the state was unable to make the required SIP submission by July 6, 1993. The EPA sent a letter to the Governor of Nebraska on August 2, 1993, notifying him that the state had failed to make the required submission. This document initiated sanctions clocks in accordance with section 179 of the CAA and the FIP clock in accordance with section 110 of the CAA.

Under section 179 of the CAA, the EPA must impose sanctions on a nonattainment area for which the state has failed to submit a plan which has been determined complete by the EPA. The first of two sanctions must be implemented within 18 months after the date of the finding (or in this case, not later than January 2, 1995), and the second sanction must be implemented within 6 months after the implementation of the first sanction (or in this case, not later than August 2, 1995).

On August 4, 1994, (59 FR 39832), the EPA published a rulemaking which identifies the order of sanctions as follows: the first sanction to be imposed is the 2:1 offset sanction which requires 2:1 offsets for emission increases of the nonattainment pollutant from certain new or modified major sources within the nonattainment area; the second sanction to be imposed is the highway funding sanction. Under this sanction, Federal highway funds are withheld from the nonattainment area, unless the funds are for exempt projects.

Furthermore, section 110(c) of the Act obligates the EPA to promulgate a FIP within two years of a finding that the state has failed to submit the required plan. The EPA must approve a plan submitted by the state in order to stop the FIP clock.

The state transformed Asarco's July 6, 1993, control strategy into an enforceable Compliance Order and submitted it to the EPA with supporting documentation on December 22, 1993. Shortly thereafter, Asarco filed an Administrative Appeal of the Order. The legal effect of the Appeal under

state law was to stay enforcement of the Compliance Order pending resolution of the Administrative Appeal. Because of the stay, the EPA determined that the SIP was incomplete, by letter dated June 24, 1994.

On June 2, 1995, the Director issued a decision on the Appeal and on June 21, 1995, the state submitted a plan which was revised in accordance with the Director's decision.

The EPA reviewed this plan and found it complete on July 13, 1995, stopping the 2:1 offset sanction and stopping the Federal highway funding sanction clock prior to its expiration on August 2, 1995.

On June 30, 1995, Asarco filed a petition for review of the Compliance Order with the District Court of Lancaster County, Nebraska. On November 15, 1995, prior to the Court's decision on Asarco's June 30 appeal, Asarco submitted to the state a revised control strategy which relies on a partial shutdown and reconfiguration of the facility. The state revised Compliance Order 1520 on June 6, 1996, to reflect the revised control strategy and submitted it to the EPA on August 28, 1996. Although Asarco's appeal is still pending, the EPA is proposing action on the August 28, 1996, submittal by the state of Nebraska.

However, due to the fact that the state's submission of an enforceable plan has been delayed significantly beyond the deadlines mandated by the Act, and because the appeal is still pending, the EPA is announcing the availability for public review of a draft FIP which addresses lead emissions in the Omaha lead nonattainment area. Should Nebraska's latest submission become unenforceable or otherwise be rendered unapprovable, the EPA intends to promulgate a FIP to bring the area into attainment as soon as practicable. Prior to promulgation of a FIP, the EPA would issue a notice of proposed rulemaking, and consider any comments submitted as a result of that document, prior to taking final action.

II. Criteria for Approval

The state's June 6, 1996, submission 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 control strategy must contain provisions to ensure that Reasonably Available Control Technology (RACT), including Reasonably Available Control Measures (RACM), for area sources are implemented (see section 172(c)(1) of the CAA). See 57 FR 13549 and 58 FR 67748 for the EPA's interpretation of RACM and RACT requirements.

The state's selection of control strategies for the SIP was based on an evaluation of controls provided to the state by Asarco and its contractors. In this study, Asarco evaluated 15 fugitive emission control strategies and 42 process and stack-related control strategies. Asarco selected what it considered to be the most implementable and cost-effective options from this list which would bring the area into attainment with the lead NAAQS. The state concurred with Asarco's assessment that these controls constituted RACT. Detailed information regarding Asarco's control option selection process can be found in the EPA's TSD.

The attainment modeling assisted Asarco and the state in focusing the control strategy by indicating which sources or groups of sources were the greatest contributors to the ambient concentrations. In this case, emission rates were not necessarily correlated with the magnitude of the monitor impact. In other words, some of these sources had relatively low emissions rates, but they had a high propensity for impacting ambient air near the facility. Four of the largest contributors to ambient air concentrations which are the focus of the control strategy are: (1) The refinery building emissions; (2) the residue department fugitive emissions; (3) the bismuth department fugitive emissions; and (4) outdoor roadway and stockpile fugitive emissions.

The refinery building is the primary production site for lead at the affected facility. This building as it is currently constructed contains uncontrolled roof monitors, open air louvers along the east and west side of the building, and is open at the north end. Lead emissions from processes occurring within the building are permitted to escape from these openings. This plan will require the shutdown of the refinery department and the associated doré department,

thereby eliminating all emissions from these processes.

The main function of the residue department is to reprocess by-product materials such as softener skims, caustic skims, doré slag and reverb black slag. Residue department emissions originate mainly from the cupola furnace and residue kettle.

This plan will require the installation of a secondary hood over the top of the cupola furnace to capture fugitive emissions which escape during furnace charging and smelting. Additionally, existing ventilation hoods and ductwork which control emissions during tapping of the cupola furnace are required to be replaced with a ventilation system which provides more effective emissions capture. The residue kettle ventilation system is also required to be replaced with a ventilation system which provides more effective capture of emissions.

The main function of the bismuth department is to facilitate the recovery of bismuth and doré by removing lead oxide otherwise known as "litharge." Two cupel furnaces in the bismuth department facilitate much of this recovery. Emissions originate from furnace process gases which escape capture by local exhaust hoods. Other sources of emissions include: furnace charging, litharge skimming, litharge handling, and metal tapping. This plan requires the replacement of existing local exhaust hoods with a ventilation design which provides more effective emissions capture. Automatic dampers and temperature controls are required to be installed for the cupel furnaces to ensure adequate furnace ventilation and to prevent the overheating and overpressurizing of the furnaces. Water-cooled vibrating tables which allow litharge skimming to be controlled at a slow, steady rate are also required and will result in reduced process emissions.

Finally, the plan requires compliance with state and federally approved work practices to minimize fugitive emissions. The work practice manuals were submitted as part of the plan. Fugitive emissions occur throughout the affected facility and originate from several types of sources. Outdoor stockpiles, lead laden roadways, and baghouse unloading are three major fugitive sources contributing to ambient air lead concentrations. Outdoor stockpiles contribute to high ambient lead concentrations from wind entrainment. Roadways contribute to high ambient lead concentrations from vehicle track-out and from traffic-induced reentrainment of lead dust on roads. Baghouse unloading involves the

handling of fine lead dust which is readily reentrained by wind and mechanical activity.

The Administrative Order and associated work practices require that the use of outdoor stockpiles be minimized, and that tarps or chemical stabilizers and concrete road barriers be used to maintain stockpile integrity and to minimize related fugitive emissions. The plan also requires that in-plant roadways be swept frequently in order to remove lead dust from trafficways. Finally, it requires special procedures to be followed for other critical activities such as baghouse unloading. The work practices for baghouse unloading require the use of vacuum ports prior to opening baghouse cellar doors. They also require baghouses to be unloaded under light wind conditions only, and they require the use of wind screens for the unloading of the smelter baghouse.

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 portions of Omaha was effective on January 6, 1992; therefore, the latest attainment date permissible by statute is January 6, 1997.

The Industrial Source Complex Short-Term Model was used to demonstrate attainment and maintenance of the lead NAAQS. The procedures recommended in the 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 with the exception that volume source parameters for Asarco stockpiles were varied according to wind direction. These exceptions were approved by the EPA prior to the completion of the modeling. See the TSD for more information.

C. Emission Inventory 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.

As was mentioned in the section entitled "Background," Asarco, the state, and the EPA undertook a comprehensive study to develop an accurate baseline emission inventory and dispersion model. This inventory was quantified through stack testing, evaluation of equipment and procedures, the EPA emission

estimation methods, and engineering judgment. Receptor modeling was used to confirm its accuracy. The attainment emission inventory was derived from the baseline inventory with the control strategy applied.

The state submittal provides a historical summary of the air quality data for the Omaha area collected from 1984 through the most current quarter.

D. Reasonable Further Progress (RFP)

The SIP must provide for RFP (see section 172(c)(2) of the Act). Paragraph 11 of the state's Compliance Order specifies an implementation schedule which requires a logical stepwise implementation of emissions control projects. This schedule results in a steady decrease of lead emissions through the implementation of the last projects which are scheduled to be completed by December 31, 1996. The EPA believes that the RFP demonstration meets the requirements of section 172(c)(2) and the relevant guidelines in the "Addendum to the General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990" (58 FR 67748).

E. New Source Review (NSR)

Section 172(c)(5) requires that nonattainment areas be subject to the NSR permitting requirements of section 173. Nebraska NSR regulations were originally approved pursuant to part D of the Act on July 23, 1984. The 1990 Amendments to the Act added other requirements pursuant to the review and approval of new and modified sources. Nebraska incorporated these requirements into its regulations, and the EPA approved this SIP revision on January 4, 1995 (60 FR 372). Therefore, the state's rules presently meet the requirements of sections 172(c)(5) and 173.

The state also has NSR provisions governing minor sources and "minor" modifications at major sources. These provisions were recently updated by the state and approved pursuant to section 110 of the Act, in conjunction with action on the part D NSR rules as noted above.

F. Contingency Measures

As provided in section 172(c)(9) of the CAA, all nonattainment area SIPs must include contingency measures. Contingency measures should consist of other specific measures that are not part of the area's control strategy. These measures must take effect without further action by the state or the 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 established in item 19 of the state's Compliance Order were increased street sweeping and significant production cuts. The state will invoke the measure requiring increased frequency of street sweeping if, at any time after the effective date of the Order, Asarco fails to make reasonable progress on the implementation of control measures designed to attain the standard. The state will invoke both contingency measures if, beginning with the calendar quarter following the attainment date, an exceedance of the lead NAAQS is recorded. NDEQ will notify Asarco if contingency measures must be implemented. Implementation of the specified contingency measures is required to begin within 60 days from Asarco's receipt of such notification.

In paragraph 20 of the Compliance Order, the state established a provision that prohibited Asarco from causing a violation of the lead NAAQS after the attainment date. This provision means that any violation of the NAAQS caused by Asarco after the attainment date would also be a violation of the Order. The reasons stated below, the EPA proposes to take no action on this provision of the Compliance Order.

In the case of ambient violations recorded after the attainment date, the contingency measures required by section 172(c)(9), described above, must take effect "without further action" by the state or the EPA. The specific contingency measures described in Paragraph 19 of the Compliance Order are designed to address that requirement. However, Paragraph 20 would require not only that the standard is exceeded, but that Asarco has caused the violation. In addition, Paragraph 20 does not state specific measures which must be taken if that provision is violated. Therefore, it does not meet the requirements of section 172(c)(9).

Because the EPA has determined that the specific measures in Paragraph 19 are adequate to meet the part D contingency measure requirements, the EPA proposes to approve those measures and to take no action on Paragraph 20. The effect of this action would be that the specific contingency measures in Paragraph 19 would be enforceable by the EPA, and Paragraph 20 would not. The EPA also requests comment on whether there is any other basis for approval of Paragraph 20. In particular, the EPA requests comment on the following: (1) Whether Paragraph 20 is needed to meet any applicable provision of section 110 or subpart 1 of part D of the Act; and (2) whether

Paragraph 20 is otherwise appropriate for inclusion in the SIP.

Although the EPA is not proposing to approve the provision in Paragraph 20, we note that the state may adopt and implement the provision to the extent authorized by state law. Section 116 of the Act provides that states may adopt requirements, including additional requirements which are not addressed by the Act, concerning control of air pollution if: (1) The requirement is not preempted or otherwise prohibited by specified provisions of the Act; and (2) the provision is no less stringent than requirements in effect under specified provisions of the Act. The EPA believes that the state's requirement meets the requirements of section 116.

G. Enforceability

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

As mentioned earlier, a Work Practice Manual was included in the state's submission as an integral part of the enforceable plan which achieves attainment of the standard. 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 the state's Compliance Order. The EPA approves the Work Practice Manual with the understanding that any change to the Work Practice Manual requires a revision to the Nebraska SIP.

As noted above, Asarco has challenged one provision of the state's Compliance order in state court. The challenge is limited to the provision regarding future violations of the NAAQS, on which the EPA is proposing no action. Asarco does not challenge any other portion of the Order, and the EPA believes that the Order continues in force under state law. The EPA believes that the legal challenge will not affect the enforceability of the portions of the Order proposed for approval. The EPA requests comments on this issue.

IV. Implications of This Action

This SIP revision will significantly revise 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 by January 1, 1997.

V. Proposed Action

By this action the EPA proposes to approve Nebraska's August 28, 1996, submittal. This proposed SIP revision meets the requirements of section 110 and Part D of Title I of the Clean Air Act and 40 CFR part 51.

All public comments received will be addressed prior to final rulemaking. 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.

VI. Administrative Requirements

A. 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 Executive Order 12866 review.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, the 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, the 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, the Administrator 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 the 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)).

C. Unfunded Mandates

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 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 proposed 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 preexisting requirements under state or local law, and imposes no 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, Incorporation by reference, Intergovernmental relations, Lead, Particulate matter, Reporting and recordkeeping requirements.

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

Dated: November 14, 1996.

Dennis Grams,

Regional Administrator.

[FR Doc. 96-30473 Filed 12-3-96; 8:45 am]

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40 CFR Part 52

[MD037-3008, MD037-3009; FRL-5659-6]

Approval and Promulgation of Air Quality Implementation Plans; State of Maryland; Enhanced Motor Vehicle Inspection and Maintenance Program; Extension of Comment Period and Commitment Letter Time Frame

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed Rule; extension of the comment period and commitment letter time frame.