occurrences (with a minimum of eight) under the corresponding code during the previous fiscal year with charges ranked from the highest rate billed to the lowest rate billed and the charge falling at the 75th percentile as the maximum amount to be paid.

(d) Payments made in accordance with this section shall constitute payment in full. Accordingly, the provider or agent for the provider may not impose any additional charge for any services for which payment is made by VA.

4. Section 17.128 is revised to read as follows:

§ 17.128 Allowable rates and fees.

When it has been determined that a veteran has received public or private hospital care or outpatient medical services, the expenses of which may be paid under § 17.120 of this part, the payment of such expenses shall be paid in accordance with §§ 17.55 and 17.56 of this part.

(**Authority**: Section 233, Pub. L. 99–576)

[FR Doc. 97–19156 Filed 7–21–97; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[IL145–1, IL152–1; FRL–5861–4]

Approval and Promulgation of Implementation Plan; Illinois Designation of Areas for Air Quality Planning Purposes; Illinois

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: On November 14, 1995, May 9, 1996, June 14, 1996, and February 3, 1997, the State of Illinois submitted a State Implementation Plan (SIP) revision request to meet commitments related to the conditional approval of Illinois' May 15, 1992, SIP submittal for the Lake Calumet (SE Chicago), McCook, and Granite City, Illinois, Particulate Matter (PM) nonattainment areas. The EPA is proposing limited approval and limited disapproval of the portion of the SIP revision request that applies to the Granite City area because it does not correct all of the deficiencies of the May 15, 1992 submittal, as discussed in the November 18, 1994, conditional approval notice. This action entails approval of the submitted regulations into the Illinois SIP for their strengthening effect, and disapproval of the submittal for not meeting all of the commitments of the conditional approval. All of the deficiencies were corrected, except that Illinois failed to provide an opacity limit for coke oven combustion stacks which is reflective of their mass limits. No action is being taken on the submitted plan corrections for the Lake Calumet and McCook areas at this time. They will be addressed in separate rulemaking actions.

On March 19, 1996, and October 15, 1996, Illinois submitted a request to redesignate the Granite City area to attainment for PM. The EPA is also proposing disapproval of this request because the area does not have a fully approved implementation plan.

DATES: Written comments on this proposed rule must be received on or before August 21, 1997.

ADDRESSES: Written comments should be mailed to: J. Elmer Bortzer, Chief, Regulation Development Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Copies of the State submittal and EPA's analysis of it are available for inspection at: Regulation Development Section, Regulation Development Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: David Pohlman, Environmental Scientist, Regulation Development Section, Regulation Development Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–3299.

SUPPLEMENTARY INFORMATION:

I. Background

Under section 107(d)(4)(B) of the Clean Air Act (Act), as amended on November 15, 1990 (amended Act), certain areas (''initial areas'') were designated nonattainment for PM. Under section 188 of the amended Act these initial areas were classified as ''moderate''. The initial areas include the Lake Calumet, McCook, and Granite City, Illinois, PM nonattainment areas. (See 40 CFR 81.314 for a complete description of these areas.) Section 189 of the amended Act requires State submission of a PM SIP for the initial areas by November 15, 1991. Illinois submitted the required SIP revision for the Lake Calumet, McCook, and Granite City, Illinois, PM nonattainment areas to EPA on May 15, 1992. Upon review of Illinois' submittal, EPA identified several concerns. Illinois submitted a letter on March 2, 1994, committing to satisfy all of these concerns within one year of final conditional approval. On May 25, 1994, the EPA proposed to conditionally approve the SIP. Final conditional approval was published on November 18, 1994, and became effective on December 19, 1994. The final conditional approval allowed the State until November 20, 1995 to correct the five stated deficiencies:

1. Invalid emissions inventory and attainment demonstration, due to failure to include emissions from the roof monitors for the Basic Oxygen Furnaces (BOFs) and underestimated emissions from the quench towers at Granite City Steel (GCS).

2. Failure to adequately address maintenance of the PM National Ambient Air Quality Standards (NAAQS) for at least 3 years beyond the applicable attainment date.

3. Lack of an opacity limit on coke oven combustion stacks.

4. Lack of enforceable emissions limit for the electric arc furnace (EAF) roof vents at American Steel Foundries.

5. The following enforceability concerns:

a. Section 212.107, Measurement Methods for Visible Emissions could be misinterpreted as requiring use of Method 22 for sources subject to opacity limits as well as sources subject to limits on detectability of visible emissions.

b. Inconsistencies in the measurement methods for opacity, visible emissions, and ''PM'' in section 212.110, 212.107, 212.108, and 212.109.

c. Language in several rules which exempts sources with no visible emissions from mass emissions limits.

The Illinois Environmental Protection Agency (IEPA) held a public hearing on the proposed rules on January 5, 1996. The rules became effective at the State level on May 22, 1996, and were published in the Illinois Register on June 7, 1996. Illinois made submittals to meet the commitments related to the conditional approval on November 14, 1995, May 9, 1996, June 14, 1996, and February 3, 1997. At this time, the EPA is only acting on the portions of those submittals that pertain to the Granite City PM nonattainment area conditional approval, including the following new or revised rules in 35 Ill. Adm. Code:

Part 212: Visible and Particulate Matter Emissions

Subpart A: General

212.107 Measurement Method for Visible Emissions

212.108 Measurement Methods for PM–10 Emissions and Condensible PM–10 Emissions

212.109 Measurement Methods for Opacity

212.110 Measurement Methods for Particulate Matter

Subpart L: Particulate Matter Emissions

212.324 Process Emission Units in Certain Areas

Subpart N: Food Manufacturing

212.362 Emission Units in Certain Areas

Subpart O: Stone, Clay, Glass and Concrete Manufacturing

212.425 Emission Units in Certain Areas

Subpart R: Primary and Fabricated Metal Products and Machinery Manufacture

212.443 Coke Plants
212.446 Basic Oxygen Furnaces
212.458 Emission Units in Certain Areas

Subpart S: Agriculture

212.464 Sources in Certain Areas

In addition to the rule changes needed to meet the commitments in the conditional approval, Illinois submitted other revised rules. Rules not related to the Granite City PM nonattainment area conditional approval will be addressed in future rulemaking actions.

Title I, section 107(d)(3)(D) of the amended Act and the general preamble to Title I (57 FR 13498 (April 16, 1992)), allow the Governor of a State to request the redesignation of an area from nonattainment to attainment. The criteria used to review redesignation requests are derived from the Act, general preamble, and the following policy and guidance memorandum from the Director of the Air Quality Management Division to the Regional Air Directors, September 4, 1992, *Procedures for Processing Requests to Redesignate Areas to Attainment.* An area can be redesignated to attainment if the following conditions are met:

1. The area has attained the applicable NAAQS;
2. The area has a fully approved SIP under section 110(k) of the Act;
3. The air quality improvement must be permanent and enforceable;
4. The area has met all relevant requirements under section 110 and Part D of the Act;
5. The area must have a fully approved maintenance plan pursuant to section 175(A) of the Act.

II. Analysis of State Submittal

The first deficiency was an invalid emissions inventory and attainment demonstration. The emissions inventory issue concerning the quench tower emissions calculations involved the use of ''clean water'' (Clean water is defined as water with ≤1500 mg/l total dissolved solids (TDS). Dirty water is defined as ≥5000 mg/l TDS.) emission factor. The EPA had argued that, because Illinois' rules allow weekly averaging and the PM standard is based on 24-hour measurements, Illinois' quench rule could allow significantly dirtier water than the 1200 mg/l TDS limit suggests, and should, therefore, be modeled using the dirty water emission factor. Illinois submitted records of quench water TDS concentrations which show that daily concentrations rarely approach 1500 mg/l, let alone 5000 mg/l. (Appendix 2 to Attachment 17 of Illinois' May 9, 1996 submittal) Based on the information provided by Illinois, the EPA agrees that the use of the clean water emission factor was appropriate.

To correct the problems with the attainment demonstration and emissions inventory, Illinois adopted and submitted to the EPA a 20%, 3 minute average opacity limit on the GCS BOF roof monitors (35 IAC 212.446(c)) and a more stringent mass limit of 60 pounds per hour or 0.225 pounds per ton of steel produced for the BOF stack. Illinois also submitted a revised emissions inventory, which includes emissions from the BOF roof monitors, and a revised attainment demonstration including an air quality modeling analysis.

In the submitted modeled attainment demonstration, which uses 5 years of meteorological data, a violation of the 24 hour NAAQS is indicated when six exceedances of the 24 hour standard are predicted. Each receptor's predicted 6th highest 24 hour value is, therefore, compared to the standard. The 24 hour PM standard is 150 micrograms per cubic meter ($\mu g/m^3$). The highest, sixth highest predicted 24 hour PM concentration at any receptor in the Granite City nonattainment area was 135.7 $\mu g/m^3$. Thus, the modeling analysis predicts that the 24-hour NAAQS will be met.

A modeled violation of the annual PM standard is indicated when any receptor's 5 year arithmetic mean annual PM concentration exceeds the annual PM standard of 50 $\mu g/m^3$. The highest arithmetic mean annual PM concentration predicted by the modeling for the Granite City area was 49.05 $\mu g/m^3$. Therefore, the modeling analysis predicts that the annual PM NAAQS will be met.

The second deficiency was Illinois' failure to adequately address maintenance of the PM NAAQS for at least 3 years beyond the applicable attainment date. Because of the length of time it may take to determine whether an area has attained the standards, EPA recommends that PM nonattainment area SIP submittals demonstrate maintenance of the PM NAAQS for at least 3 years beyond the applicable attainment date. (See a August 20, 1991, memorandum from Fred H. Renner, Jr. to Regional Air Branch Chiefs titled ''Questions and Answers for Particulate Matter, Sulfur Dioxide, and Lead'') Illinois' May 15, 1992, submittal took growth into account in the modeling analysis, but did not adequately address maintenance of the NAAQS for PM.

The attainment date was December 31, 1994. Therefore, Illinois needs to show maintenance up to December 31, 1997. In the May 9, 1996, submittal, Illinois used ambient monitoring data to show that background concentrations of PM were no higher in 1995 than they were in 1991, and there are no significant trends in background pm concentrations from 1989 to 1995. (See Figure 1 of Attachment 18 to the May 9, 1996, submittal.) Illinois concluded from this analysis that the effects of growth on ambient PM concentrations in the Granite City PM nonattainment area will continue to be negligible through the end of the maintenance period. The EPA agrees, because of the short time remaining in the maintenance period, that the projection of trends in PM background concentrations is sufficient for this maintenance demonstration.

The third deficiency was the lack of an opacity limit on coke oven combustion stacks. Because coke oven operations are generally covered by special opacity limits, Illinois' SIP exempts coke oven sources from the statewide 30 percent opacity limit. This State exemption was approved by EPA on September 3, 1981. It was later realized that this exemption left coke oven combustion stacks without an opacity limit. Coke oven combustion stacks in Illinois are subject to grain loading limits which require stack tests for compliance determinations. Because stack tests can take months to perform and only last a few hours, an opacity limit, for which compliance can be determined by visual observations, is needed to ensure continuous compliance. This deficiency was cited in the November 18, 1994, conditional approval of Illinois' pm SIP submittal for the Granite City, Lake Calumet and McCook nonattainment areas.

In response to the conditional approval of Illinois' PM plan, the State adopted a 30 percent opacity limit for coke oven combustion stacks. However, this rule also includes an exemption for ''when a leak between any coke oven and the oven's vertical or crossover flue(s) is being repaired . . .'' for up to 3 hours per repair. Illinois' position is that this is a very limited exemption. The State reports that the exemption will apply only 1 percent to 4 percent of the time, and that encouraging such

maintenance would reduce potential problems with future emissions. The State explains that this exemption is needed only for LTV Steel in Chicago because of a procedure LTV uses to detect and repair oven leaks using ceramic welding. Illinois states that other coke ovens in the State (including Granite City Steel) almost never require ceramic welding; however, the rule applies to all Illinois coke oven batteries so that such repairs will be allowed when coke oven aging requires future repairs at other facilities.

The EPA believes this rule is unacceptable for several reasons. First, the exemption could apply for a large percentage of time, since repairs which would qualify for the exemption are quite common. Illinois' estimate of 1 percent to 4 percent exemption time is based on only ceramic welding. There are other types of repairs which could qualify for the exemption, such as silica dusting, spray patching, panel patching, end flue rehabilitation, and through wall rehabilitation. Aside from the significance of unlimited emissions for 1 percent to 4 percent of the time (for ceramic welding), the exemption time would be even higher when other types of repairs are considered.

Second, compliance with this opacity limit will not ensure compliance with the corresponding mass emission limits. Since there is no repair exemption in the mass limits for these sources, it is likely that the mass limits would be exceeded during the 3-hour exemption periods.

Third, the repair opacity exemption could be used to argue against stack tests taken while ovens are being repaired. It could be argued that, by accepting the opacity repair exemption, the EPA would be recognizing that sources cannot comply with emissions limits while oven repairs are being made.

Fourth, the exemption allows for battery condition to degrade to the point where ceramic welding is needed. An unlimited repair exemption would encourage the patching of old batteries when more substantive repairs would be appropriate. In fact, Illinois has stated that the exemption is currently only needed for LTV Steel in Chicago, yet the rule applies statewide so that other batteries can take advantage of the exemption when their condition deteriorates.

Fifth, other states across the country impose 20% opacity limits on coke oven combustion stacks, with exemptions, if any, of only a few minutes per hour. Even in areas not designated nonattainment for PM, these stacks are often covered by 20% opacity limits. Indiana imposes a 20 percent six minute average opacity limit on coke oven combustion stacks in PM nonattainment areas, with no exemption. Other such stacks in Indiana are covered by either a 30 percent or 40 percent six minute average, with no exemption. Ohio requires combustion stacks to meet a 20 percent 6-minute average opacity limit with a 1 averaging period per hour exemption up to 60 percent opacity. Michigan also has a 20 percent 6-minute average opacity limit, with a 1 averaging period per hour exemption up to 27 percent opacity. West Virginia imposes a 20% opacity limit with a 5-minute per hour exemption up to 40%, while Utah uses a 20% 6-minute average limit with no exemption. In Allegheny County, Pennsylvania, opacity from coke oven combustion stacks is not allowed to equal or exceed 20% opacity for more than 3 minutes per hour, and is never allowed to exceed 60% opacity.

Since this opacity limit is not acceptable, Illinois has not adequately addressed this issue.

The fourth conditional approval item involved the pM emission limitations on the electric arc furnace roof vents at American Steel Foundries. The EPA considered the mass limits on these sources to be unenforceable because the stacks are too short to be tested for compliance. The rules submitted by IEPA include a 20% opacity limit (6-min average) on the EAF roof vents at American Steel Foundries. This limit is enforceable. Therefore, the enforceability problem has been addressed.

The final issue from the November 18, 1994, conditional approval notice involves wording problems in several of Illinois' rules. In the 1992 submittal, 35 IAC Section 212.107, Measurement Methods for Visible Emissions, stated that Method 22 should be used for ''detection of visible emissions''. This could be misinterpreted as requiring use of Method 22 for sources subject to opacity limits as well as sources subject to limits on detectability of visible emissions. The revised rule (See the June 14, 1996, submittal.) contains revised language which adequately clarifies the intended uses of Method 22.

Another wording problem was the fact that measurement methods for opacity, visible emissions, and ''PM'' in 35 IAC 212.107, 212.108, 212.109, and 212.110 were not always consistent with each other. The revised rules in the June 14, 1996, submittal contain much less overlap than the previous rules. The rules are now consistent.

Finally, several of the rules in the 1992 submittal contained language which exempted sources with no visible emissions from mass emissions limits. Illinois has added language which states that the exemption ''is not a defense to a finding of a violation of the mass emission limits''. This issue has been adequately addressed.

Under cover letters dated March 19, 1996, and October 15, 1996, the State submitted a redesignation request for the Granite City PM nonattainment area. A public hearing was held on May 6, 1996.

All five of the redesignation criteria given under section 107(d)(3)(E) of the Clean Air Act must be satisfied in order for the EPA to redesignate an area from nonattainment to attainment. Under the second criterion, the EPA is prohibited from redesignating an area to attainment when a SIP for that area has not been fully approved. Those States containing initial moderate PM nonattainment areas were required to submit a SIP by November 15, 1991 which implemented reasonably available control measures (RACM) by December 10, 1993 and demonstrated attainment of the PM NAAQS by December 31, 1994. The SIP for the area must be fully approved under section 110(k) of the Act, and must satisfy all requirements that apply to the area.

Illinois submitted the required SIP revision for the Granite City PM nonattainment area to EPA on May 15, 1992. Upon review of Illinois' submittal, EPA identified several concerns. Illinois submitted a letter on March 2, 1994, committing to satisfy all of these concerns within one year of final conditional approval. On May 25, 1994, the EPA proposed to conditionally approve the SIP. Final conditional approval was published on November 18, 1994, and became effective on December 19, 1994. The final conditional approval gave the State one year to correct the five stated deficiencies. Illinois made submittals to meet the commitments related to the conditional approval on November 14, 1995, May 9, 1996, June 14, 1996, and February 3, 1997. In this notice, the EPA is proposing to disapprove this submittal because it does not correct all the concerns cited in the conditional approval. Illinois has not provided an enforceable limit for coke oven combustion stacks (see discussion above). Therefore, Illinois does not have a fully approved SIP for the Granite City PM nonattainment area. Without a fully approved SIP, the redesignation request can not be approved.

Section 179(a) of the amended Act states that if the Administrator finds that a State has failed to make a required submission, finds that a SIP or SIP

revision submitted by the State does not satisfy the minimum criteria established under section 110(k) of the amended Act, or disapproves a SIP submission in whole or in part, unless the deficiency has been corrected within 18 months after the finding, one of the sanctions referred to in section 179(b) of the amended Act shall apply until the Administrator determines that the State has come into compliance. (Pursuant to 40 CFR 52.31, the first sanction shall be a sanction requiring 2 to 1 offsets, in the absence of a case-specific selection otherwise.) If the deficiency has not been corrected within 6 months of the selection of the first sanction, the second sanction under section 179(b) shall also apply. In addition, section 110(c) of the Act requires promulgation of a Federal Implementation Plan (FIP) within 2 years after the finding or disapproval, as discussed above, unless the State corrects the deficiency and the SIP is approved before the FIP is promulgated.

On December 17, 1991, a letter was sent to the Governor of Illinois notifying him that the EPA was making a finding that the State of Illinois had failed to submit PM SIPs for the Lake Calumet, McCook, and Granite City nonattainment areas. This letter triggered both the sanctions and FIP processes as explained above. Illinois submitted a PM SIP revision for the three nonattainment areas on May 15, 1992, and in an April 30, 1993, letter to the State the EPA informed the State that the SIP was determined to be complete. Therefore, the deficiency which started the sanctions and FIP processes was corrected, and the sanctions process ended. The FIP process, however, was not stopped by the correction of the deficiency and EPA was to promulgate a FIP within 2 years of the failure-to-submit letter (or December 17, 1993), unless a PM SIP for the three nonattainment areas was finally approved before then.

On November 18, 1994, the EPA conditionally approved the SIP. The final conditional approval allowed the State until November 20, 1995, to correct the five stated deficiencies. Conditional approval does not start a new sanctions process, unless the state fails to make a submittal to address the deficiencies, makes an incomplete submittal, or the submittal is ultimately disapproved. Illinois made a submittal to meet the commitments related to the conditional approval on November 14, 1995. Supplemental information was submitted on May 9, 1996, June 14, 1996, and February 3, 1997. This submittal became complete by operation of law on May 14, 1996.

III. EPA's Proposed Rulemaking Action

Illinois has corrected all of the deficiencies listed in the November 18, 1994, conditional approval as they relate to the Granite City PM nonattainment area except for one deficiency. The State failed to provide an acceptable opacity limit on coke oven combustion stacks. Because Illinois has not met all of the commitments of the conditional approval, the EPA is proposing limited approval/limited disapproval of the plan. By this action, EPA is proposing to approve those regulations that have a strengthening effect on the SIP, while at the same time proposing to disapprove the overall SIP for failure to satisfy the requirement under the Clean Air Act for a fully enforceable plan that assures attainment. See sections 172(c)(1), 172(c)(6), and 189(a)(1)(B) of the Act. The EPA may grant such a limited approval under section 110(k)(3) of the Act in light of the general authority delegated to EPA under section 301(a) of the Act, which allows EPA to take actions necessary to carry out the purposes of the Act.

Upon limited approval/limited disapproval of the Granite City PM SIP, a new 18-month sanctions clock will begin. See section 179 (a) and (b) of the Act. To correct the deficiency and avoid implementation of sanctions, Illinois must submit a complete plan to the EPA, and that plan must be fully approved within 18 months from the final limited approval/limited disapproval.

The EPA is also proposing disapproval of Illinois' March 19, 1996, and October 15, 1996, request to redesignate the Granite City area to attainment for PM because the SIP for the area has not been fully approved by the EPA.

EPA is requesting written comments on all aspects of this proposed rule. As indicated at the outset of this document, EPA will consider any written comments received by August 21, 1997.

IV. Administrative Requirements

A. Executive Order 12866

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. section 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. sections 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 Act do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, 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 Act, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of the State action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *EPA*., 427 U.S. 246, 256–66 (1976); 42 U.S.C. 7410(a)(2).

C. Unfunded Mandates

Under Section 202 of the Unfunded Mandates Reform Act of 1995, signed into law on March 22, 1995, EPA must undertake various actions in association with 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. This Federal action approves pre-existing requirements under state or local law, and imposes no new requirements. Accordingly, no additional costs to state, local, or tribal governments, or the private sector, result from this action.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Particulate matter.

Dated: July 1, 1997.

David A. Ullrich,

Acting Regional Administrator.

[FR Doc. 97–19212 Filed 7–21–97; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MN44–01–7269b; FRL–5861–7]

Approval and Promulgation of Implementation Plans; Minnesota

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.