

(1) Rule 67.24, adopted on March 7, 1995.

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40 CFR Part 52

[IN58-1-7216a; FRL-5342-9]

Approval and Promulgation of Implementation Plans; Revision to the Indiana State Implementation Plan for Ozone

AGENCY: Environmental Protection Agency (USEPA).

ACTION: Direct final rule.

SUMMARY: The USEPA approves the State Implementation Plan (SIP) revision request submitted by the State of Indiana on August 25, 1995, establishing a summertime gasoline Reid Vapor Pressure (RVP) limit of 7.8 pounds per square inch (psi) for gasoline distributed in Clark and Floyd Counties, as part of the State's plan to attain 15 percent (%) Reasonable Further Progress (RFP) reductions of Volatile Organic Compounds (VOC) emissions in these two Counties by 1996. Emissions of VOC react with other pollutants, such as oxides of nitrogen, on hot summer days to form ground-level ozone, commonly known as smog. Ozone pollution is of particular concern because of its harmful effects upon lung tissue and breathing passages. RFP plans are intended to bring areas which have been exceeding the public health-based Federal ozone air quality standard closer toward the goal of attaining and maintaining this standard. Indiana expects that the summertime RVP gasoline limit will reduce VOC emissions by 2.29 tons per day in the Clark and Floyd Counties ozone nonattainment area. A final approval action is being taken because the submittal meets all pertinent Federal requirements.

DATES: The "direct final" is effective on April 9, 1996, unless USEPA receives adverse or critical comments by March 11, 1996. If the effective date is delayed, timely notice will be published in the Federal Register.

ADDRESSES: Copies of the revision request is available for inspection at the following address: U.S. Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. (It is recommended that you telephone Mark J. Palermo at (312) 886-6082 before visiting the Region 5 Office.)

Written comments should be sent to: J. Elmer Bortzer, Chief, Regulation Development Section, Regulation Development Branch (AR-18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Mark J. Palermo at (312) 886-6082.

SUPPLEMENTARY INFORMATION:

I. Background

RVP is a measure of a fuel's volatility and thereby affects the rate at which gasoline evaporates and emits VOC; the lower the RVP, the lower the rate of evaporation. The RVP of gasoline can be lowered by reducing the amount of its volatile components, such as butane. Lowering RVP in the summer months can offset the effect of summer temperature upon the volatility of gasoline, which in turn lowers emissions of VOC. Because VOC is a necessary component in the production of ground level ozone in hot summer months, reduction of RVP will assist the State of Indiana to attain the National Ambient Air Quality Standard (NAAQS) for ozone, which all States must promulgate SIPs to achieve under section 110(a) of the Act.

The USEPA first proposed to regulate gasoline RVP in 1987 (52 FR 31274). USEPA's gasoline RVP proposal resulted in a two-phased final regulation which was incorporated into the 1990 Amendments to the Clean Air Act (Act) in section 211(h). Phase I of the regulation took effect in 1990 (54 FR 11868) for the years 1990 and 1991. Phase II of the regulation became effective in 1992 (55 FR 23658). The rule divides the continental United States into two control regions, Class B and Class C. Generally speaking, the Class B states are the warmer southern and western states, and Class C states are the cooler northern states. The Phase II regulation limits the volatility of gasoline sold during the high ozone season to 9.0 psi RVP for Class C areas and 7.8 psi RVP for Class B ozone nonattainment areas. Indiana is a Class C State, and therefore, required under the Federal rule to meet the 9.0 psi RVP standard.

State governments are generally preempted under section 211(c)(4)(A) of the Act from requiring any or all areas in a state to meet a more stringent volatility standard.¹ However, a state can require a more stringent standard in

¹ USEPA's federal standards were promulgated under both section 211(c) and section 211(h). States are generally preempted under section 211(c)(4)(A) from requiring fuel standards promulgated under section 211(c).

its SIP if the state can show under section 211(c)(4)(C) that the more stringent standard is necessary to achieve the National Ambient Air Quality Standard (NAAQS) for ozone in a particular nonattainment area. The state can make this showing by providing evidence that no other measures exist that would bring about timely attainment, or that such measures exist and are technically possible to implement, but are unreasonable or impractical. If a state makes this showing, it can lower the RVP of gasoline to whatever level has been shown to be necessary in the nonattainment area(s).

II. State Submittal

Section 182 of the Act requires all moderate, serious, severe, and extreme ozone nonattainment areas to submit an RFP plan to achieve a 15% reduction of 1990 emissions of VOC by 1996. In Indiana, Clark and Floyd Counties are classified as moderate nonattainment for ozone, and as such, subject to the 15% RFP requirement. See 40 CFR 81.315.

The Indiana Department of Environmental Management (IDEM) developed and submitted a plan to USEPA on July 12, 1995, outlining the VOC emission control measures which will be implemented in order to satisfy the 15% RFP requirement for Clark and Floyd Counties. USEPA is currently reviewing the plan. One of the measures identified in the Clark and Floyd Counties plan is a summertime gasoline RVP limit of 7.8 psi. On August 3, 1994, the Indiana Air Pollution Control Board (IAPCB) held a preliminary adoption hearing on a proposed rule to limit summertime gasoline RVP to 7.8 psi, and on January 11, 1995, the IAPCB adopted the rule. The rule became effective on August 5, 1995, and was published in the Indiana State Register on August 1, 1995. IDEM formally submitted the RVP rule to USEPA on August 25, 1995, as a revision to the Indiana ozone SIP. USEPA made a finding of completeness of this SIP revision in a letter dated October 2, 1995.

In the 15% RFP plan for Clark and Floyd Counties, Indiana reviewed all reasonable control measures and calculated the total reductions that it could achieve through these measures. The plan's modeling demonstrates that limiting the RVP of gasoline to 7.8 reduces emissions in Clark and Floyd Counties by approximately 2.29 tons per day.

"Opt-in" into the Federal reformulated gasoline program, pursuant to section 211(k)(6) of the Act, could also achieve this amount of

emission reduction, but could not be implemented in time to qualify as a control measure which could help Clark and Floyd Counties meet 15% RFP reductions by 1996. Other reasonable control measures which could possibly achieve this degree of emission reduction, such as Stage II vapor recovery, enhanced vehicle Inspection/Maintenance, or new Reasonably Available Control Technology requirements for stationary sources, are already part of the RFP plan for Clark and Floyd Counties.

Indiana has therefore selected the RVP control because it is the only other reasonable and practicable emission control option available to the Clark and Floyd County area 15% RFP plan, and gasoline RVP control is necessary to ensure timely attainment with the NAAQS for ozone. On this basis, USEPA has found that Indiana has sufficiently justified establishing a 7.8 psi summertime gasoline RVP limit under section 211(c)(4)(C) of the Act.

III. Analysis of Rule

The Indiana RVP rule specifies that the gasoline distributed in Clark and Floyd Counties by all refineries, importers, carriers, or terminals between May 1 and September 15, and all retail stations and other end users who sell or dispense gasoline between June 1 and September 15, must meet a RVP standard of 7.8 psi or less per gallon. The rule provides a 1.0 psi volatility waiver for ethanol blended fuels and establishes reformulated gasoline (RFG) as a compliant fuel in order to allow gasoline distributors who sell only RFG to maintain a presence in Clark and Floyd Counties. In addition, the Indiana RVP rule requires all parties involved with the marketing of gasoline to maintain records indicating that the volatility of each gasoline shipment meets the 7.8 psi limit. The control period, ethanol blend waiver, and recordkeeping requirements, are all consistent with the Act and USEPA's final RVP rule (55 FR 23658).

Reformulated gasoline is suitable as a compliant fuel because it achieves slightly higher emission reductions than gasoline with 7.8 psi RVP.

IDEM will oversee compliance with this rule. Gasoline sampling and testing to assure compliance with the regulation began in the summer of 1995. Sampling will be performed in accordance with the procedures described by USEPA in its gasoline volatility regulations in 40 CFR part 80, Appendix D. Gasoline volatility and ethanol content tests will be performed following procedures described by USEPA in 40 CFR part 80, Appendices

E and F, respectively. The Indiana Code (IC) 13-7-13-1, states that any person who violates any provision of IC 13-1-1, IC 13-1-3, or IC 13-1-11, or any regulation or standard adopted by one (1) of the boards (i.e., IAPCB), or who violates any determination, permit, or order made or issued by the commissioner (of IDEM) pursuant to IC 13-1-1, or IC 13-1-3, is liable for a civil penalty not to exceed twenty-five thousand dollars per day of any violation. Because this submittal is a regulation adopted by the IAPCB, a violation of which subjects the violator to penalties under IC 13-7-13-1, and because a violation of the ozone SIP would also subject a violator to enforcement under section 113 of the Act by USEPA, USEPA finds that the submittal contains sufficient enforcement penalties for approval. In addition, IDEM has submitted a civil penalty policy document which accounts for various factors in the assessment of an appropriate civil penalty for noncompliance with IAPCB rules, among them, the severity of the violation, intent of the violator, and frequency of violations. USEPA finds these criteria sufficient to deter non-compliance.

IV. Final Rulemaking Action

The USEPA approves the SIP revision submitted by the State of Indiana. The State of Indiana has submitted a SIP revision which includes enforceable state regulations consistent with Federal requirements. Indiana has already conducted inspections at about one-third of the regulated facilities during the first season of compliance. Substantial penalties which will provide an adequate incentive for the regulated industry to comply and are no less than the expected cost of compliance are included in current Pollution Control Board Regulation. USEPA is, therefore, approving this submittal.

Procedural Background

The USEPA is publishing this action without prior proposal because USEPA views this action as a noncontroversial revision and anticipates no adverse comments. However, USEPA is publishing a separate document in this Federal Register publication, which constitutes a "proposed approval" of the requested SIP revision and clarifies that the rulemaking will not be deemed final if timely adverse or critical comments are filed. The "direct final" approval shall be effective on April 9, 1996, unless USEPA receives adverse or critical comments by March 11, 1996. If USEPA receives comments adverse to or

critical of the approval discussed above, USEPA will withdraw this approval before its effective date by publishing a subsequent Federal Register document which withdraws this final action. All public comments received will then be addressed in a subsequent rulemaking document. Please be aware that USEPA will institute another comment period on this action only if warranted by significant revisions to the rulemaking based on any comments received in response to today's action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, USEPA hereby advises the public that this action will be effective on April 9, 1996.

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 D. Nichols, Assistant Administrator for Air and Radiation. The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866 review.

Nothing in this action should be construed as permitting, allowing or establishing a precedent for any future request for revision to any SIP. USEPA shall consider each request for revision to the SIP in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act") (signed into law on March 22, 1995) requires that the USEPA prepare a budgetary impact statement before promulgating a rule that includes a Federal mandate that may result in expenditure by State, local, and tribal governments, in aggregate, or by the private sector, of \$100 million or more in any one year. Section 203 requires the USEPA to establish a plan for obtaining input from and informing, educating, and advising any small governments that may be significantly or uniquely affected by the rule.

Under section 205 of the Unfunded Mandates Act, the USEPA must identify and consider a reasonable number of regulatory alternatives before promulgating a rule for which a budgetary impact statement must be prepared. The USEPA must select from those alternatives the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule, unless the USEPA explains why this alternative is not selected or

the selection of this alternative is inconsistent with law.

This final rule only approves the incorporation of existing state rules into the SIP and imposes no additional requirements. This rule is estimated to result in the expenditure by State, local, and tribal governments or the private sector of less than \$100 million in any one year. USEPA, therefore, has not prepared a budgetary impact statement or specifically addressed the selection of the least costly, most cost-effective, or least burdensome alternative. Furthermore, because small governments will not be significantly or uniquely affected by this rule, the USEPA is not required to develop a plan with regard to small governments.

Under the Regulatory Flexibility Act, 5 U.S.C. section 600 et seq., USEPA 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, USEPA 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 Clean Air Act do not create any new requirements, but simply approve requirements a State has already imposed. 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 Act, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of the State action. The Clean Air Act forbids USEPA to base its actions concerning SIPs on such grounds. *Union Electric Co. v. USEPA*, 427 U.S. 246, 256-66 (S.Ct. 1976); 42 U.S.C. section 7410(a)(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by April 9, 1996. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See Section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbon, Incorporation by reference, Ozone.

Dated: November 21, 1995.

Valdas V. Adamkus,

Regional Administrator.

For the reasons stated in the preamble, 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 P—Indiana

2. Section 52.770 is amended by adding paragraph (c)(101) to read as follows:

§ 52.770 Identification of plan.

* * * * *

(c) * * *

(101) On August 25, 1995, Indiana submitted a regulation which reduced the maximum allowable volatility for gasoline sold in Clark and Floyd Counties to 7.8 psi during the summer control period. The summer control period is June 1, to September 15, for retail outlets and wholesale customers, and May 1, to September 15, for all others.

(i) *Incorporation by reference.* 326 Indiana Administrative Code 13-3 Control of Gasoline Reid Vapor Pressure. Sections 1 through 7. Finally adopted by the Indiana Air Pollution Control Board January 11, 1995. Signed by the Secretary of State July 6, 1995. Effective August 5, 1995. Published at Indiana Register, Volume 18, Number 11, August 1, 1995.

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40 CFR Part 52

[IN62-1-7234a; FRL-5342-7]

Approval and Promulgation of Implementation Plans; Indiana

AGENCY: Environmental Protection Agency.

ACTION: Direct final rule.

SUMMARY: The United States Environmental Protection Agency (USEPA) is approving an August 25, 1995, State request for a site-specific revision to the Indiana sulfur dioxide (SO₂) State Implementation Plan (SIP). This revision amends the SO₂ emission

limitations applicable to the Joseph E. Seagram and Sons, Inc. (Seagram), facility in Lawrenceburg, Indiana, so that two boilers may not operate simultaneously on coal or fuel oil. The Seagram facility has essentially operated under these restrictions for several years, thereby emitting less SO₂ than the previous rules had allowed. The incorporation of this restriction into the Indiana SO₂ SIP was deemed to be necessary after dispersion modeling in support of an SO₂ SIP revision for Cincinnati, Ohio predicted violations of the National Ambient Air Quality Standards (NAAQS) for SO₂ in Dearborn County, Indiana, if Seagram were to operate at the previously allowed SO₂ emission rates. The restrictions contained in Indiana's August 25, 1995, submittal will eliminate the predicted violations in Dearborn County, and their approval by USEPA will enable final Federal approval of the Cincinnati, Ohio SO₂ SIP revision.

DATES: This action is effective on April 9, 1996 unless an adverse comment is received by March 11, 1996. If the effective date is delayed, timely notice will be published in the Federal Register.

ADDRESSES: Written comments should be addressed to: J. Elmer Bortzer, Chief, Regulation Development Section, Regulation Development Branch (AR-18J), United States Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Copies of the State's submittal and USEPA's analysis (Technical Support Document) are available for inspection at the following location: United States Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. (It is recommended that you telephone Mary Onischak at (312) 353-5954 before visiting the Region 5 Office.)

FOR FURTHER INFORMATION CONTACT: Mary Onischak at (312) 353-5954.

SUPPLEMENTARY INFORMATION:

I. Introduction

Indiana has revised the SO₂ emission limits for the Joseph E. Seagram and Sons, Inc., distillery in Lawrenceburg, Indiana, as codified by the State at 326 Indiana Administrative Code (326 IAC) 7-4-13 (3) (Dearborn County Sulfur Dioxide Emission Limitations), and submitted this rule on August 25, 1995, to USEPA as a site-specific SO₂ SIP revision. The SIP revision limits the use of sulfur-bearing fuels at the Seagram distillery in Lawrenceburg, Indiana, and is intended to address potential