

PART 935—OHIO

1. The authority citation for part 935 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. In Section 935.15, a new paragraph (iii) is added to read as follows:

§ 935.15 Approval of regulatory program amendments.

(iii) The following amendment to the Ohio regulatory program, as submitted to OSM on June 30, 1992, and clarified on October 21, 1992, is approved, effective January 12, 1993: Amendment Number 59 which consists of revisions to the Ohio Administrative Code (OAC) at 1501:13-13-06(A) concerning the permitting of coal preparation plants or support facilities operated in connection with a coal mine but not located within the permit area for a specific mine.

[FR Doc. 93-595 Filed 1-11-93; 8:45 am]

BILLING CODE 4310-05-M

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 1

RIN 2900-AE61

Regional Office Committees on Waivers and Compromises

AGENCY: Department of Veterans Affairs.
ACTION: Final regulations.

SUMMARY: In order to comply with legislative changes to 38 U.S.C. 5302 (formerly 3102), the Department of Veterans Affairs (VA) has amended current VA regulations which establish the standards by which Committees on Waivers and Compromises consider requests for waiver of collection of all benefit and home loan program debts. **EFFECTIVE DATE:** January 12, 1993.

FOR FURTHER INFORMATION CONTACT: Peter Mulhern, Debt Management Policy Division (047G7), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 233-3405.

SUPPLEMENTARY INFORMATION: On pages 15046 through 15047 of the Federal Register of April 24, 1992, VA published proposed regulations to amend the standards by which Committees on Waivers and Compromises consider requests for waiver of collection of all benefit and home loan program debts. No comments were received from the general public. However, the U.S. Court of Veterans Appeals, in the case of *Farless v. Derwinski* (U.S. Vet. App. No. 90-1372),

noted a discrepancy between the language of 38 U.S.C. 5302(c) and the language found in section 1.965(b).

As we stated in the preamble to the publication of the proposed regulations, 38 CFR 1.963, 1.964, and 1.965 establish the standards by which our Regional Office Committees on Waivers and Compromises consider waiver requests on all benefit and home loan program debts. This authority comes directly from section 5302 of title 38 of the U.S. Code. Congress enacted (Public Law 101-237, "The Veterans Benefits Amendment Act of 1989" (December 18, 1989), which revised Section 5302(c). Prior to this legislative change, Section 5302(c) stated that the authority to waive recovery of any payment or the collection of any indebtedness may not be exercised if there existed an indication of fraud, misrepresentation, material fault, or lack of good faith on the part of the person or persons having an interest in obtaining a waiver. Public Law 101-237 removed material fault and lack of good faith as absolute bars to waiver and replaced them with bad faith. As a result of this legislative change, we revised the three regulations to comply with these new standards.

In the *Farless* case, the U.S. Court of Veterans Appeals noted that 38 U.S.C. 5302(c) states that an indebtedness may not be waived where there exists an "indication of" fraud, misrepresentation, or bad faith. The Court then found an inconsistency in the corresponding regulation, 38 CFR 1.965(b), because it does not contain the phrase, "indication of". In publishing our proposed revision of 38 CFR 1.963, 1.964, and 1.965, we applied the phrase "indication of" to our revision of sections 1.963 and 1.964. However, since our revision of section 1.965 was limited to a revision of its subsection (b)(2), we failed to incorporate the exact statutory language into the initial portion of subsection (b). In order to avoid any questions concerning this inconsistency, we have amended the language of section 1.965(b) to include the phrase "indication of".

The Secretary hereby certifies that these final rules will not, if promulgated, have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601-612. Pursuant to 5 U.S.C. 605(b), these rules are therefore exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604. The reason for this certification is that these rules primarily affect only individuals indebted to the U.S. Government as a result of participation

in benefit programs administered by the Department of Veterans Affairs.

These final rules have also been reviewed under E.O. 12291 and have been determined to be nonmajor because they will not have a \$100 million annual effect on the economy and will not have any adverse economic impact on or increase costs to consumers, individual industries, Federal, State, and local government agencies or geographic regions.

There is no Catalog of Federal Domestic Assistance number.

List of Subjects in 38 CFR Part 1

Claims, Administrative practice and procedures, Veterans.

Approved: December 1, 1992.

Anthony J. Principi,

Acting Secretary of Veterans Affairs.

For the reasons set out in the preamble, 38 CFR part 1 is amended as set forth below.

PART 1—GENERAL PROVISIONS

1. The authority citation for §§ 1.955 through 1.970 is revised to read as follows:

Authority: 38 U.S.C. 3720 and 5302; 5 U.S.C. 5584.

2. In § 1.963, paragraph (a) and the authority citation at the end of the section are revised to read as follows:

§ 1.963 Waiver—other than loan guaranty.

(a) *General.* Recovery of overpayments of any benefits made under laws administered by the VA shall be waived if there is no indication of fraud, misrepresentation, or bad faith on the part of the person or persons having an interest in obtaining the waiver and recovery of the indebtedness from the payee who received such benefits would be against equity and good conscience.

(Authority: 38 U.S.C. 5302 (a) & (c).)

3. In § 1.964, paragraph (a) and the authority citation at the end of the section are revised to read as follows:

§ 1.964 Waiver—loan guaranty.

(a) *General.* Any indebtedness of a veteran or the indebtedness of the spouse shall be waived only when the following factors are determined to exist:

(1) Following default there was a loss of the property which constituted security for the loan guaranteed, insured or made under chapter 37 of title 38 United States Code;

(2) There is no indication of fraud, misrepresentation, or bad faith on the

part of the person or persons having an interest in obtaining the waiver; and
(3) Collection of such indebtedness would be against equity and good conscience.

(Authority: 38 U.S.C. 5302 (b) and (c)).

4. In § 1.965, the introductory text of paragraph b and paragraph (b)(2) are revised, and an authority citation is added at the end of the section to read as follows:

§ 1.965 Application of standard.

(b) In applying this single standard for all areas of indebtedness, the following elements will be considered, any indication of which, if found, will preclude the granting of waiver:

(2) *Bad Faith*. This term generally describes unfair or deceptive dealing by one who seeks to gain thereby at another's expense. Thus, a debtor's conduct in connection with a debt arising from participation in a VA benefits/services program exhibits bad faith if such conduct, although not undertaken with actual fraudulent intent, if undertaken with intent to seek an unfair advantage, with knowledge of the likely consequences, and results in a loss to the government.

(Authority: 38 U.S.C. 5302(c)).

[FR Doc. 93-561 Filed 1-11-93; 8:45 am]

BILLING CODE 8320-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[IL 40-1-5436; FRL-4541-1]

Approval and Promulgation of Implementation plans; Illinois

AGENCY: United States Environmental Protection Agency (USEPA).

ACTION: Final rule.

SUMMARY: USEPA is taking action to approve a revision to parts 218 and 219 of title 35 of the Illinois Administrative Code (35 IAC) as revisions to the State Implementation Plan (SIP) for ozone. USEPA's action is based upon a revision request which was submitted by the State to satisfy the requirements of section 182(b)(3) of the Clean Air Act as amended in 1990 (CAA), which requires all ozone nonattainment areas classified as moderate or worse to require specified gasoline dispensing facilities to install and operate Stage II vapor recovery equipment. In Illinois, subject

areas include the Chicago ozone nonattainment area (Cook, DuPage, Kane, Lake, McHenry, Will Counties and Aux Sable and Goose Lake Townships in Grundy County and Oswego Township in Kendall County) and the Illinois portion of the East St. Louis ozone nonattainment area (Madison, Monroe, and St. Clair Counties). USEPA's action is being taken with no prior proposal.

DATES: This action will be effective March 15, 1993 unless notice is received within 30 days of publication that adverse or critical comments will be submitted. If the effective date is delayed, timely notice will be published in the Federal Register.

ADDRESSES: Copies of the requested SIP revision, technical support documents and public comments received are available at the following address:

U.S. Environmental Protection Agency, Region 5, Air and Radiation Division, Regulation Development Branch, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Comments on this rulemaking should be addressed to:

J. Elmer Bortzer, Chief, Regulation Development Section, Regulation Development Branch (5AR-18J), United States Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Francisco J. Acevedo, Environmental Engineer, Regulation Development Section, Regulation Development Branch (5AR-18J), United States Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604. (312)886-6061.

Anyone wishing to come to Region 5 offices should contact Francisco J. Acevedo first.

SUPPLEMENTARY INFORMATION:

I. Background/Summary of State Submittal

On September 30, 1992, the Illinois Environmental Protection Agency (IEPA) submitted to USEPA Stage II Vapor Recovery Rules: Amendments to 35 ILL. ADM. CODE PARTS 215, 218 AND 219 (R91-30). The rules were adopted by the Illinois Pollution Control Board (IPCB) on August 13, 1992. The rules became effective on August 24, 1992. The State submitted these rules to satisfy the section 182(b)(3) requirements of the CAA which is applicable to the Chicago and East St. Louis ozone nonattainment areas. The information presented below summarizes the requested SIP revision

and USEPA's action on it. A more detailed analysis of the State's submittal is contained in a technical support document dated September 3, 1992, which is available from the Region 5 office listed above.

Illinois' regulations specify that Stage II vapor recovery systems are required at gasoline dispensing facilities that dispense more than 10,000 gallons per month. Private fueling facilities such as government and company fleet fueling facilities as well as retailers are subject to the Stage II requirements. The regulations specify the use of California Air Resource Board certified Stage II systems, which have been demonstrated to achieve at least 95 percent control of Volatile Organic Compound (VOC) emissions. The rules also mandate the proper installation and operation of such systems, to be achieved by requiring the installed systems to be tested for proper installation and requiring the State to perform all necessary enforcement.

The rules mandate Stage II vapor recovery systems to be implemented pursuant to the following phase-in schedule:

- (1) Facilities that commenced construction after November 1, 1990, must comply by May 1, 1993;
- (2) Facilities that commenced construction before November 1, 1990, and dispense an average monthly volume of more than 100,000 gallons of motor fuel per month, must comply by November 1, 1993; and
- (3) All other facilities must comply by November 1, 1994.

II. Review Criteria

USEPA reviewed the submittal against the requirements of section 182(b)(3) of the CAA, as interpreted in the General Preamble for the Implementation of title I of the Clean Air Act Amendments of 1990 (57 FR 13498, 13513 (April 16, 1992)), and two USEPA documents entitled Technical Guidance—Stage II Vapor Recovery Systems for Control of Vehicle Refueling Emissions at Gasoline Dispensing Facilities (Technical Guidance) and the Enforcement Guidance for Stage II Vehicle Refueling Control Programs (Enforcement Guidance). Specifically seven general criteria need to be met for a Stage II vapor recovery regulation to be acceptable. The regulation must fulfill the following requirements:

- (1) Installation of Stage II Controls and Determination of Regulated Facilities. Facilities that dispense more than 10,000 gallons per month must install and operate Stage II controls. For gasoline dispensing facilities that are owned and operated by an independent

small business marketer, the State may establish a cut-point as high as 50,000 gallons per month. In the General Preamble, USEPA indicated that the suggested method for calculating the gallons per month dispensed by affected facilities is determined by calculating the average volume of product dispensed per month for the 2-year period prior to the adoption of the rule by the State. (See General Preamble, 57 FR at 13514.) The Enforcement Guidance suggests that if sufficient data is not available for a full 2-year period, then the actual months of operation during that 2-year period should be used to calculate the facility's average gallons per month. (See Enforcement Guidance, Sec. 3.2.)

(2) Establishment of a Time Schedule for Installation of Stage II Control Equipment. Section 182(b)(3)(B) of the CAA establishes three standard deadlines for the installation and application of Stage II controls, after adoption by the State of the Stage II requirements. The phase-in schedule given in the CAA is the following:

(a) 6 months after adoption for all facilities commencing construction after November 15, 1990;

(b) 1 year for all facilities which dispense 100,000 gallons or more of gasoline per month; and

(c) 2 years for all other facilities required to be regulated.

(3) System Certification. An approved system should be tested and certified so as to meet a minimum requirement of 95 percent emission reduction efficiency. USEPA believes that this efficiency rate has been demonstrated to be feasible. As stated in the General Preamble, the States may achieve this by utilizing one of the following three alternatives: (a) A method tested and approved by California Air Resources Board (CARB) past, current or future recognized test methods, or (b) an equivalent testing program adopted by the State, conducted by the Program Oversight Agency (POA) or by a third party recognized by the POA, and submitted and approved by USEPA for incorporation in the SIP, or (c) a system approved by CARB. (See Enforcement Guidance, Sec. 4.2.)

(4) Facility Verification of the Proper Installation and Function of Stage II Vapor Control Systems. The General Preamble indicates in order for the State Stage II requirement to be enforceable, the State must require the regulated facility to verify proper installation and function of the Stage II equipment. The Enforcement Guidance specifies performing a Liquid Blockage Test which determines if there is an unacceptable low point in the piping,

and a Leak Test which measures the vapor tightness of the Stage II system. The Enforcement Guidance also states that a facility should recertify the functions of the Stage II equipment at least every 5 years, or upon major facility modification (75 percent or more equipment change), whichever comes first. (See April 16, 1992 (57 FR 13514) Federal Register, and; Enforcement Guidance, Sec. 8.2.)

(5) Recordkeeping and Reporting. In the Enforcement Guidance, USEPA identifies various records that the State should require facilities to keep and to make available upon request. USEPA believes that these documents must be available in order to make the Stage II requirement enforceable. These documents include: (a) A license/permit to install and operate the Stage II system; (b) verification of passing functional tests after installation of equipment; this includes the Liquid Blockage Test, Leak Test, all shutoff/flow prohibiting device testing; (c) general station file containing initial station information such as motor vehicle fuel throughput information; (d) equipment maintenance and compliance file log containing verification that proper maintenance has been conducted in accordance with manufacturer's specifications and requirements; (e) training certification files. (See Enforcement Guidance, Sec. 8.0.)

(6) Periodic Inspection of Regulated Facility. The State POA should conduct a minimum of 1 compliance inspection per facility per year with mandatory follow-up at stations with violations. USEPA believes such inspections are necessary to ensure that facilities are complying with the Stage II requirements. This is necessary not only for enforcement action but to notify sources that are violating the Stage II requirements so they can make the necessary adjustments to come into compliance. The compliance inspection should consist of a visual inspection of the required paperwork, and Stage II equipment. In addition to the visual inspection, a functional inspection to determine if the facility's Stage II equipment is functioning properly must also be performed. (See Enforcement Guidance, Sec. 5.2(d).)

(7) Requirement to ensure regulated facility compliance with program requirements through enforcement mechanisms, and a penalty schedule that establishes appropriate penalties for facilities violating the Stage II requirements. (See Enforcement Guidance, Sec. 5.2(e).)

III. Results of USEPA Review

USEPA reviewed the Illinois submittal to determine if criteria for approval have been met. The results of USEPA's review are as follows:

(1) Installation of Stage II Controls and Determination of Regulated Facilities

Illinois' submittal mandates the requirement of Stage II vapor recovery systems on any gasoline dispensing facility that dispenses a monthly average volume of 10,000 gallons or more. The submittal also includes a requirement that affected facilities be identified by calculating the average volume of product dispensed per month for the 2 year period prior to adoption of the rule by the State. USEPA finds this acceptable because it directly addresses the Federal requirement.

(2) Establishment of a Time Schedule for Installation of Stage II Control Equipment

The time schedule stated in the Illinois rule mandates installation of the Stage II control equipment by (1) May 1, 1993, for facilities that started construction after November 1, 1990; (2) November 1, 1993, for facilities which started construction before November 1, 1990, and dispense more than 100,000 gallons of motor fuel per month; and, (3) November 1, 1994, for facilities which have started construction before November 1, 1990 and dispense less than 100,000 gallons of motor fuel per month. Under section 812(b)(3) (B) and (C), the state must establish a two year time table for source implementation of Stage II. The Act provides that this time table must run from the date of adoption of the Stage II rules and then defines adoption to mean the date the State adopts the requirements for installation and operation of the Stage II equipment. Although Illinois adopted its Stage II regulations on August 13, 1991, USEPA believes that it can interpret the adoption date to be November 1, 1992 under the limited circumstances presented in this submittal.

USEPA is proposing to approve the submitted time table running from November 1, 1992 for three reasons. First, USEPA recognizes that the date selected by Illinois precedes the date by which the State was required to submit the Stage II regulations to USEPA. Thus Illinois could have waited to adopt the Stage II regulations on November 1, 1992, and still have met the November 15, 1992 submittal date. Second, the time table initiation date established by the State—November 1, 1992—began shortly after adoption of the regulation. Third, the State would have a limited

ability to remedy this deficiency. To the extent the State could amend the implementation date, many sources within the State would not have the lead time intended by the statute to install and operate the system. If the State chose to withdraw and readopt their Stage II requirement, potentially the time table could run from a date later than November 15, 1992; this would further delay implementation of Stage II. Finally, the Illinois rule otherwise fulfills the Stage II requirements and USEPA believes it will provide substantial air quality benefits to the regulated areas. Therefore, USEPA believes it is in the public interest to approve and make enforceable this requirement at the earliest time feasible. In the limited circumstances described above, USEPA believes that it is not inconsistent to interpret the adoption date to be November 1, 1992.

(3) System Certification

The adopted rules mandate that all Stage II vapor control systems used be certified by CARB to meet 95 percent emission reduction efficiency. Use of CARB-certified systems is acceptable to USEPA. USEPA has specified in its guidance documents that it believes that CARB approved Stage II systems meet the CAA requirement with no additional efficiency testing required. Therefore, USEPA believes the specified system certification in the Illinois submittal is acceptable.

(4) Installation of Stage II Vapor Control Systems

The Illinois rule mandates that proper tests be performed to verify proper installation and function of the Stage II systems, and requires systems to be retested after major facility modification. USEPA believes the testing procedures specified help make the rule enforceable and, therefore, are consistent with the CAA requirements.

(5) Recordkeeping and Reporting

Illinois is exempting any facility subject to Stage II requirement from the air pollution control permit requirement applicable to regulated sources under the SIP. The exemption is allowed provided that the affected facilities provide a registration of their Stage II equipment. The Illinois rule requires that registration material be kept on site. It also requires that, at a minimum, the registration information includes: the facility name and address, signature of owner or operator, the CARB Executive Order Number for the Stage II system used, number of nozzles used, the monthly average volume of gasoline

dispensed, and the location (including contact person's name, address, and telephone number) of other records and reports required by the rule. Other records and reports required by the rule to be kept on file by the owner or operator and which need to be made available to the POA upon request include: Proof that a certified Stage II system has been installed and tested to verify its performance according to its specifications; records that show that proper maintenance has been conducted according to manufacturer specifications; records that show time periods and duration of all malfunctions of the Stage II system; motor vehicle fuel throughput information for each calendar month of the previous year; and proof of employee training certification. After discussions between IEPA and USEPA regarding the recordkeeping requirements, the above format was agreed to by USEPA as meeting Stage II Enforcement Guidance requirements.

(6) Periodic Inspection Requirements

The IEPA has committed to adhere to Enforcement Guidance that specifies annual inspections for the facilities or the development of an inspection schedule approved by USEPA through IEPA's inspection program plan.

(7) Regulated Facility Compliance with Program Requirements

The Illinois Environmental Protection Act (Act), section 42(a), states that any person that violates any provision of this Act or any regulation adopted by the IPCB, or any permit or term or condition thereof, or that violates any determination or order of the IPCB pursuant to this Act, shall be liable to a civil penalty not to exceed \$50,000 for the violation and an additional \$10,000 for each day for which the violation continues. In that this submittal is a regulation adopted by the IPCB, a violation of which subjects the violator to penalties under section 42(a), the submittal is consistent with the policy established by USEPA in its Enforcement Guidance.

IV. Rulemaking Action

USEPA approves 35 Ill. Adm. Code §§ 218.586(a)-(h) and 219.586(a)-(h) as a revision to the Illinois ozone SIP because the submittal meets all the criteria required for approvability as cited above. The Stage II vapor recovery SIP revision for the Chicago and East St. Louis ozone nonattainment areas will be complete following today's action.

USEPA is publishing this action without prior proposal because the USEPA views this as a noncontroversial

revision and anticipates no adverse comments. This action will be effective March 15, 1993 unless, within 30 days of its publication, notice is received that adverse or critical comments will be submitted. If such notice is received, this action will be withdrawn before the effective date by publishing two subsequent notices. One notice will withdraw the final action and another will begin a new rulemaking by announcing a proposal of the action and establishing a comment period. If no such comments are received, the public is advised that this action will be effective March 15, 1993.

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. USEPA has submitted a request for a permanent waiver for Table 2 and Table 3 SIP revisions. OMB has agreed to continue the temporary waiver until such time as it rules on USEPA's request.

This action has been classified as a Table 2 action by the Regional Administrator under the procedures published in the Federal Register on January 19, 1989, (54 FR 214-2225). On January 6, 1989, the Office of Management and Budget (OMB) waived Table 2 and 3 SIP revisions (54 FR 2222) from the requirements of section 3 of Executive Order 12291 for a period of 2 years.

Under the Regulatory Flexibility Act, 5 U.S.C. 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. 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 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 USEPA 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).

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 March 15, 1993. 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 requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Note—Incorporation by reference of the State Implementation Plan for the State of Illinois was approved by the Director of the Federal Register on July 1, 1982.

Dated: November 18, 1992.

Valdas V. Adamkus,
Regional Administrator.

For the reasons set out in the preamble, part 52 of chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for part 52 continues to read as follows:

Authority: 7401-7671q.

Subpart O—Illinois

2. Section 52.720 is amended by adding paragraph (c)(93) to read as follows:

§ 52.720 Identification of plan.

* * * * *

(c) * * *

(93) On September 30, 1992, the State submitted rules regulating volatile organic compound emissions from gasoline dispensing facilities' motor vehicle fuel operations.

(i) Incorporation by reference.

(A) Illinois Administrative Code, title 35 Environmental Protection, subtitle B: Air Pollution, chapter I: Pollution Control Board part 218: Organic

Material Emission Standards and Limitations for the Chicago Area; subpart Y: Gasoline Distribution; § 218.583 Gasoline Dispensing Facilities—Storage Tank Filling Operations, amended at 16 Illinois Register 13864 effective August 24, 1992, and; § 218.586 Gasoline Dispensing Facilities—Motor Vehicle Fueling Operations, added at 16 Illinois Register 13864, effective August 24, 1992.

(B) Illinois Administrative Code, title 35 Environmental Protection, subtitle B: Air Pollution, Chapter I: Pollution Control Board, part 219: Organic Material Emission Standards and Limitations for the East St. Louis Area; Subpart Y: Gasoline Distribution; § 219.583 Gasoline Dispensing Facilities—Storage Tank Filling Operations, amended at 16 Illinois Register 13883, effective August 24, 1992. Section 219.586 Gasoline Dispensing Facilities—Motor Vehicle Fueling Operations, added at 16 Illinois Register 13883, effective August 24, 1992.

(ii) Additional materials.

(A) Stage II Vapor Recovery SIP Program Description dated September 29, 1992.

3. Section 52.726 is amended by adding paragraph (f) to read as follows:

§ 52.726 Control Strategy: Ozone.

* * * * *

(f) On September 30, 1992, the State submitted rules regulating volatile organic compound emissions from gasoline dispensing facilities' motor vehicle fuel operations (Stage II vapor recovery rules) in the Chicago and East St. Louis Ozone nonattainment areas. The Illinois Environmental Protection Agency Bureau of Air must as part of the program conduct inspections of facilities subject to this rule to ensure compliance with the applicable rules. These inspections will be conducted on an annual basis or an alternative schedule as approved in the USEPA Fiscal Year Inspection Program Plan.

[FR Doc. 93-479 Filed 1-11-93; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 52

[IL 37-1-5397; FRL-4529-8]

Approval and Promulgation of Implementation Plans; Illinois

AGENCY: United States Environmental Protection Agency (USEPA).

ACTION: Final rule.

SUMMARY: The USEPA is approving a request by the State of Illinois to revise

its State Implementation Plan to provide for the regulation of fine particulate matter, known as PM-10. The revision establishes a PM-10 air quality standard, revises particulate matter episode rules, and revises two rules pertaining to particulate matter emissions from iron and steelmaking facilities. The purpose of the SIP revision is to satisfy Federal requirements under the Clean Air Act (Act), as amended, for an approvable PM-10 SIP in Illinois.

DATES: This action will be effective March 15, 1993, unless notice is received within 30 days 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: Copies of the SIP revision request and USEPA's analysis are available for inspection at the following address: (It is recommended that you telephone Gustavo Felix at (312) 353-6009, before visiting the Region V Office.) U.S. Environmental Protection Agency, Region V, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604.

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

A copy of today's revision to the Illinois SIP is available for inspection at: U.S. Environmental Protection Agency, Public Information Reference Unit, 401 M Street, SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Gustavo Felix, Regulation Development Branch, Regulation Development Section (5AR-18J), U.S. Environmental Protection Agency, Region V, Chicago, Illinois 60604, (312) 353-6009.

SUPPLEMENTARY INFORMATION:

I. Summary of State Submittal

The SIP revision approved today, among other things, replaces Illinois' TSP air quality standards with PM-10 air quality standards. On July 1, 1987, USEPA revised the National Ambient Air Quality Standard for particulate matter, replacing total suspended particulate (TSP) as the indicator with a new indicator that included only those particles with an aerodynamic diameter less than or equal to a nominal 10 microns (PM-10). The 24-hour PM-10 standard is set at 150 micrograms per cubic meter ($\mu\text{g}/\text{m}^3$) and the annual PM-10 standard at 50 $\mu\text{g}/\text{m}^3$. See 52 FR 24634.

Today's action will also revise the State's emergency episode rules to incorporate various alert levels for PM-10. Episodes are periods of extremely high concentrations of specific air contaminants. These regulations set forth what steps are taken during such periods to prevent the occurrence of significant public harm.

Finally, the SIP revision imposes opacity limits on fugitive PM-10 emissions from Blast Furnace Cast Houses, and a water quality standard on quench water used for coke oven quenching.

The revision which is the subject of today's approval action is necessary in order to satisfy, as a preliminary matter, the Federal requirements under the (Act), as amended in 1990, for approvable PM-10 SIPs for Illinois.¹ The Act requires each state to adopt a SIP that provides for attainment and maintenance of the Federal air quality standards. 42 U.S.C. 7410. Upon enactment of the Act Amendments of 1990, areas meeting the qualifications of section 107(d)(4)(B) of the Act were designated nonattainment for PM-10 by operation of law. Additionally, in accordance with section 188(a), all PM-10 areas designated nonattainment at enactment were classified as moderate by operation of law. A Federal Register notice announcing all of the initial areas designated nonattainment for PM-10 and classified as moderate at enactment was published in 56 FR 11101 (March 15, 1991).² Four Illinois areas were initially designated nonattainment and classified as moderate for PM-10 in the March 15, 1991 notice. These areas are located in portions of Cook County, LaSalle County, and Madison County. Section 189(a)(2) of the amended Act required each state to submit to USEPA, no later than November 15, 1991, a SIP adopting certain specified rules for all areas initially designated nonattainment upon enactment. Since Illinois is among those states with areas initially designated nonattainment for PM-10, it was required to submit a plan by November 15, 1991 for these areas which meets the applicable requirements of the amended Act. By adopting the regulations for PM-10 described above, this revision amends previously identified deficiencies in the

State's particulate matter regulations and, consequently, is an integral step in the process of ensuring the submittal of fully-adopted and technically and administratively complete PM-10 SIPs for the State of Illinois.

In an effort to meet the requirements of the Act, as amended, the Illinois Environmental Protection Agency (IEPA) submitted to USEPA, on April 30, 1992, a requested revision of its SIP which amends the following rules:

(1) 35 Ill. Adm. Code 243, Air Quality Standards and Measurement Methods; Section 243.108 Incorporations by Reference; section 243.120 PM-10; section 243.121 Repealed; section 243 appendix A, B, and C.

(2) 35 Ill. Adm. Code 244, Episodes: Section 244.101 Definitions; section 244.106 Monitoring; section 244.107 Determination of Areas Affected; section 244.121 Local Agency Responsibilities; section 244.161 Advisory Alert and Emergency Levels; section 244.162 Criteria for Declaring an Advisory; section 244.163 Criteria for Declaring a Yellow Alert; section 244.166 Criteria for Terminating Advisory, Alert and Emergency; section 244.167 Episode Stage Notification; section 244.168 Contents of Episode Stage Notification; section 244.169 Actions During Episode Stages Adopted; section 244 appendix A, B, C and D.

(3) 35 Ill. Adm. Code 212, Visible and Particulate Matter Emissions: Section 212.113 Incorporations by Reference; section 212.424 Fugitive Particulate Matter Control for the Portland Cement Manufacturing Plant and Associated Quarry Operations located in LaSalle County, South of the Illinois River; section 212.443(h) Coke Plants, Quenching; section 212.445 Blast Furnace Cast Houses.

Illinois is federally mandated by the Act to submit an implementation plan, which provides for the adoption and enforcement of rules which are structured to achieve and maintain the new federal standards. See section 110(a). By virtue of Illinois' adoption of the amended provision in (1), above, State has adopted the federal PM-10 standard constituting it as an integral part of the Illinois PM-10 SIP.

The Act further provides that a SIP must contain provisions for immediate emission reductions in the event of emergency air pollution episodes. See section 110(G). The amended provisions in (2), above, serve to address the new Federal standards and to satisfy this requirement of the Act.

The amended provisions identified in (3), above, address previously identified deficiencies in Illinois' regulations pertaining to control of fugitive

particulate matter emissions from certain iron & steel operations, and acceptable concentration of total dissolved solids in water used for coke oven quenching. The amendments are necessary to complete the inclusion of approvable PM-10 regulations into Illinois' SIP. In addition, minor editorial changes were made to clarify section references contained in section 212.424.

The Illinois Pollution Control Board (IPCB), Illinois' Board granted authority by State law to adopt environmental regulations, went to First Notice with a proposed revision on December 19, 1991. The USEPA provided formal comments on this regulatory proposal on March 2, 1992. On March 11, 1992, the IPCB went to Second Notice on the proposal. The proposed revision, considered here today, was formally adopted when the IPCB went to Final Order on April 9, 1992.

What follows is a summary of the State's submittal and USEPA's analysis of it. The State's submittal and USEPA's detailed evaluation is available for inspection at the Region 5 Office listed above.

II. USEPA's Analysis of State Submittal

A. The revision is intended to regulate particulate matter with an aerodynamic diameter less than or equal to a nominal 10 microns, which is known as PM-10. The revision replaces the total suspended particulate (TSP) air quality standards with PM-10 air quality standards. The revision sets a 24-hour PM-10 standard of 150 $\mu\text{g}/\text{m}^3$, with no more than one exceedance allowed per year. It sets out an annual PM-10 standard at a level of 50 $\mu\text{g}/\text{m}^3$, in the form of an annual arithmetic mean.

B. The revision also affects the requirements with respect to episodes. Episodes are periods of extremely high concentrations of specific air contaminants. These regulations set forth the steps which must be taken during such periods to prevent the occurrence of significant harm. The regulations adopt Advisory, Yellow Alert, Red Alert, and Emergency Alert levels for PM-10.

In addition to the change from TSP levels to PM-10 levels, those parts of the revision affecting episodes make the following changes:

1. Section 244.107, removes an ambiguity in the current regulations governing episodes with regard to whether or not emission reductions can be required in Illinois, based on out-of-state episode levels caused by Illinois' sources. The amended regulations now state that emission reductions can be required in Illinois, based on out-of-

¹ The 1990 Amendments to the Act made significant changes to the air quality planning requirements for areas that do not meet (or that significantly contribute to ambient air quality in a nearby area that does not meet) the PM-10 national ambient air quality standards (see Pub. L. 101-549, 104 Stat. 2399). References herein are to the Clean Air Act, as amended, 42 U.S.C. sections 7401 *et seq.*

² A subsequent notice correcting certain information in the March 15, 1991, notice was published in 56 FR 37654 (August 8, 1991).

state episode levels caused by Illinois' sources.

2. Since the IEPA will now be "advising" when elevated pollutant levels actually occur rather than "watching" to see if they occur, all references to "watch" are deleted and pollutant-specific notification provisions of section 244.168 is to include advisories as well as alerts and emergencies.

3. Under the revision, episode notification is made to the IEPA, rather than to IEPA's Emergency Action Center.

4. A change is made in the ozone advisory level from a 2-hour ozone concentration in the former rules to a 1-hour ozone concentration of 0.12 parts per million in the revision.

Several other changes in the episode portion of the revision that are nonsubstantive to the rules are explained in the Second Notice and Final Order, and are not addressed here.

C. This revision also includes two rules which control particulate emissions for certain iron and steel sources. The two rules are 212.443 Coke Plants and 212.445 Blast Furnace Cast Houses.

The first rule, a coke oven quenching rule, which earlier had been conditionally approved by USEPA (46 FR 44182) is being revised to make it fully approvable. This rule will require that quench water used for coke oven quench towers not exceed a concentration of 1200 mg/l for total dissolved solids, averaged weekly. Also, baffles, used in the quench towers, are now required to cover 95% of the cross sectional area of the exhaust vent or stack.

The second rule, a blast furnace cast house rule, which was earlier disapproved by USEPA (46 FR 44185) is also being revised to make it fully approvable. This revised rule will impose a 20% opacity on fugitive particulate matter coming from Blast Furnace Cast Houses, and a 10% opacity on emissions coming from control equipment used for the tap hole, trough, iron or slag runners, or iron or slag spouts. Method 9 of 40 CFR part 60, appendix A will be used to enforce the opacity limits.

III. USEPA's Rulemaking Action

For the reasons above, USEPA approves the incorporation of the revisions and additions to the following state rules into the Illinois SIP: Sections 212.113, 212.424, 212.443, 212.445, appendices A, B, and C and Illustrations A, B, and C to part 212; sections 243.108, 243.120, 243.121, appendices A, B, and C to part 243; 244.101,

244.106, 244.107, 244.121, 244.161, 244.162, 244.163, 244.166, 244.167, 244.168, 244.169, and appendices A, B, C, and D to part 244.

Because USEPA considers today's action noncontroversial and routine, we are approving it today without prior proposal. The action will become effective on March 15, 1993. However, if we receive notice by February 11, 1993 that someone wishes to submit critical comments, then USEPA will publish: (1) A notice that withdraws the action, and (2) a notice that begins a new rulemaking by proposing the action and establishing a comment period.

This action has been classified as a Table 2 action by the Regional Administrator under the procedures published in the Federal Register on January 19, 1989, (54 FR 2214-2225). On January 6, 1989, the Office of Management and Budget (OMB) waived Table 2 and 3 SIP revisions (54 FR 2222) from the requirements of section 3 of Executive Order 12291 for a period of 2 years. USEPA has submitted a request for a permanent waiver for Table 2 and 3 SIP revisions. The OMB has agreed to continue the temporary waiver until such time as it rules on USEPA's request.

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

Under the Regulatory Flexibility Act, 5 U.S.C. 600 et. seq., USEPA 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, 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 Act do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the federal SIP-approve 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 State action. The Act

forbids USEPA to base its actions concerning SIPs on such grounds. *Union Electric Co. v. U.S.E.P.A.*, 427 U.S. 246, 255-66 (S. Ct. 1976); 42 U.S.C. 7410(a)(2).

This rulemaking does not propose to approve any of the part D SIPs required for the Illinois nonattainment areas. It proposes to approve a set of rules that supplements the part D nonattainment SIPs required for the Lake Calumet and Granite City nonattainment areas. The USEPA has reviewed this request for revision of Illinois' federally approved State Implementation Plan for conformance with the provisions of the Act Amendments, enacted on November 15, 1990. The USEPA has determined that this action conforms with those requirements.

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 March 15, 1993. 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

Air pollution control, Incorporation by reference, Ozone, Particulate matter.

Note: Incorporation by reference of the State Implementation Plan for the State of Illinois was approved by the Director of the Federal Register on July 1, 1982.

Dated: June 30, 1992.

Valdas V. Adamkus,
Regional Administrator.

For the reasons stated in the preamble 40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401-7671(g).

Subpart O—Illinois

2. Section 52.720 is amended by adding paragraph (c)(92) to read as follows:

§ 52.720 Identification of plan.

* * * * *

(c) * * *

(92) On June 4, 1992, the State submitted particulate matter regulations adopted as part of Pollution Control Board Proceeding R91-35. These

regulations concern particulate matter ambient limits and episode regulations.

(i) Incorporation by reference. Illinois Administrative Code, Title 35: Environmental Protection, Subtitle B: Air Pollution, Chapter I: Pollution Control Board

(A) Part 212 Visible and Particulate Matter Emissions: Section 212.113 Incorporations by Reference; section 212.424 Fugitive Particulate Matter Control for the Portland Cement Manufacturing Plant and Associated Quarry Operations located in LaSalle County, South of the Illinois River; section 212.443 Coke Plants; section 212.445 Blast Furnace Cast Houses; adopted at 16 Illinois Register 8204, effective May 15, 1992.

(B) Part 243 Air Quality Standards: Section 243.108 Incorporations by Reference; section 243.120 PM₁₀; section 243.121 Repealed; adopted at 16 Illinois Register 8185, effective May 15, 1992.

(C) Part 244 Episodes: Section 244.101 Definitions; section 244.106 Monitoring; section 244.107 Determination of Areas Affected; section 244.121 Local Agency Responsibilities; section 244.161 Advisory Alert and Emergency Levels; section 244.162 Criteria for Declaring and Advisory; section 244.163 Criteria for Declaring a Yellow Alert; section 244.166 Criteria for Terminating Advisory, Alert and Emergency; section 244.167 Episode Stage Notification; section 244.168 Contents of Episode Stage Notification; section 244.169 Actions During Episode Stages Adopted; section 244 appendix D; adopted at 16 Illinois Register 8191, effective May 15, 1992.

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BILLING CODE 6560-50-M

40 CFR Part 52

[KS-2-1-5640; FRL-4552-3]

Approval and Promulgation of Implementation Plans; State of Kansas

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Kansas Department of Health and Environment (KDHE) has submitted a revision to its State Implementation Plan (SIP), which revises the state prevention of significant deterioration (PSD) regulation to incorporate by reference the EPA revisions to 40 CFR 52.21 at 53 FR 40656 pertaining to PSD nitrogen oxide (NO_x) increments. The state also revised its miscellaneous metal parts

surface coating rule and updated its continuous emission monitoring rule. EPA is taking final action to approve these revisions to the Kansas SIP. The effect of this action is to update and strengthen the Kansas SIP.

EFFECTIVE DATE: This action will be effective March 15, 1993 unless notice is received by February 11, 1993 that adverse or critical comments will be submitted. If the effective date is delayed, timely notice will be published in the *Federal Register*.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal business hours at the: Environmental Protection Agency, Air Branch, 726 Minnesota Avenue, Kansas City, Kansas 66101; Kansas Department of Health and Environment, Bureau of Air Quality and Radiation, Forbes Field, Building 740, Topeka, Kansas 66620; and the Public Information Reference Unit, Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Wayne A. Kaiser at (913) 551-7603.

SUPPLEMENTARY INFORMATION: On October 17, 1988, EPA revised the PSD regulations at 40 CFR 52.21 (53 FR 40656) for NO_x. These regulations establish the maximum increase in ambient nitrogen dioxide concentrations allowed in an area above the baseline concentration; these maximum allowable increase are called increments. The effect of these regulations is to require all applicants for major new stationary sources and major modification emitting nitrogen oxides to account for and, if necessary, restrict emissions so as not to cause or contribute to exceedances of the increment.

On September 29, 1992, the KDHE submitted revisions to its PSD rule, K.A.R. 28-19-17, which incorporates by reference the revisions to 40 CFR 52.21, effective October 17, 1988. The state rule became effective June 8, 1992.

The state also provided a demonstration that it meets the conditions for approval of adoption of the NO_x increment program as detailed in the EPA guidance memorandum on the subject dated August 17, 1990.

The EPA memorandum above described specific conditions for EPA approval of a state's adoption of the NO_x increment rule. Those conditions pertained to regulatory language, increment consumption analysis, increment consumption for the transition period, and legal authority. EPA has evaluated the state's submittal in accordance with the August 17, 1990,

guidance and finds that the state submittal is acceptable.

The state also revised rule K.A.R. 28-19-17 by replacing the existing 40 CFR 52.21 language with adoption by reference to the appropriate sections of 40 CFR 52.21 and, where appropriate, updated references to the federal rules. In so doing, the state adopted by reference two provisions which had previously been retained by EPA in 40 CFR 52.884. EPA previously retained the authority for the provisions of 52.21(v), innovative control technology (49 FR 48185), in 40 CFR 52.884(a)(2), but the state will now have that authority in its adoption by reference of 52.21(v) in rule 28-19-17q. Thus, 40 CFR 52.884(a)(2) is being deleted.

Also, EPA previously retained the authority to issue PSD permits to marine terminal facilities in 40 CFR 52.884(a)(3) (49 FR 48185) because of a pending court decision and because the state's definition of "building, structure, facility or installation" did not exclude vessels. Since the state's definition is now consistent with 52.21(b)(6), 40 CFR 52.884(a)(3) is being deleted, thus giving the state authority to act on PSD permits for marine terminals with vessel emissions.

The state also revised rule K.A.R. 28-19-19, continuous emission monitoring (CEM), to update the reference to 40 CFR part 60, appendix A, Method 19, as in effect July 1, 1989.

Finally, the state revised rule K.A.R. 28-19-73, surface coating of miscellaneous metal parts and products, and metal furniture. This rule generally requires a volatile organic compound (VOC) content of 3.5 pounds per gallon for surface coatings for applications subject to the rule. In this revision, the state adopted the reasonably available control technology (RACT) limit by allowing a VOC content of 4.3 pounds per gallon for coatings applied to the interior of metal pails and drums. This determination was made on the basis of the unavailability of lower VOC coatings that can withstand the harsh, toxic, and corrosive nature of many of the chemicals that are shipped in these containers. Only three sources are subject to this rule.

The 4.3 pound limit is consistent with the maintenance plan approved by EPA for the Kansas City metropolitan area. Because the 3.5 pound limit has not been achieved by sources subject to the limit, the emission inventory includes a 4.3 pound actual emission rate for the three sources subject to the rule. Since the plan's control strategy is based on 4.3 pounds, and the new allowable limit merely reflects that rate, EPA has concluded that no adjustments to the