§ 117.875 Coquille River.

The draws of the US 101 highway bridge, mile 3.5 at Bandon, Oregon, shall open on signal if at least two hours notice is given to the drawtender at the Coos Bay South Slough bridge.

Dated: September 30, 1994.

John A. Pierson,

Captain, Coast Guard, Commander, 13th Coast Guard District, Acting.

[FR Doc. 94–25724 Filed 10–17–94; 8:45 am]

BILLING CODE 4910–14–M

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33 CFR Part 165

[CGD01–92–004]

RIN 2115–A97

Safety Zone; Rhode Island Sound, Narragansett Bay, Providence River

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard amends the regulation concerning the safety zone around Liquefied Petroleum Gas (LPG) vessels moored at the LPG facility in the Port of Providence. This amendment reduces the distance a vessel must moor from a LPG vessel at the LPG facility in the Port of Providence from 400 feet to 200 feet. This action is necessary to eliminate unnecessary economic hardship on the commercial shipping industry. Reduction of the required empty pier space from 400 feet to 200 feet fore and aft of LPG vessels will continue to provide the necessary level of safety and will also provide the space necessary to respond effectively to a LPG emergency.

EFFECTIVE DATE: This regulation is effective November 17, 1994.

FOR FURTHER INFORMATION CONTACT: MST1 Jeffrey Perdue of Marine Safety Office Providence at (401) 435–2300.

SUPPLEMENTARY INFORMATION:

Drafting Information

The drafters of this regulation are MST1 Jeffrey Perdue, Coast Guard Captain of the Port Providence, Project Manager and Lieutenant Commander J. Stieb, First Coast Guard District Legal Office, Project Counsel.

Regulatory History

On March 8, 1994, the Coast Guard published a Notice of Proposed Rulemaking (NPRM) entitled SAFETY ZONE: Rhode Island Sound, Narragansett Bay, Providence River in the **Federal Register**, 59 FR 10775. The Coast Guard received no comments on the proposal. A public hearing was not requested and one was not held. The Coast Guard is publishing the rule as proposed.

Background and Purpose

The regulations contained in 33 CFR 165.121 outline safety zones required for LPG vessels visiting the Port of Providence under a variety of conditions. The regulations establish safety zones around LPG vessels at anchor, transiting Narragansett Bay, while moored at the LPG facility, Port of Providence, and around the shoreside manifold during LPG transfer operations. This amendment only concerns the safety zone required around LPG vessels moored at the LPG facility, Port of Providence.

33 CFR 165.121(a)(3) establishes a 50 foot safety zone around a moored LPG vessel and also requires that no vessel may moor within 400 feet of a LPG vessel moored at the facility. Industry personnel have continually expressed dissatisfaction with the 400 foot requirement, contending that it places an unnecessary economic burden on the industry involved in and affected by LPG evolutions. Coast Guard research into this issue has shown that prohibiting vessels from mooring within 400 feet from LPG vessels moored at the LPG facility is excessive and unnecessary. Reduction of the requirement from 400 feet to 200 feet provides ignition source protection and the necessary space for shoreside or waterside firefighting or tug-assisted emergency break-away from the pier.

Regulatory Evaluation

This proposal is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary.

This amendment is an act of deregulation designed to eliminate an unnecessary burden. Reducing the safety zone around a moored LPG vessel from 400 feet to 200 feet fore and aft will benefit the LPG facility economically in that the required total additional pier space for which they must pay to meet the regulations is reduced from 800 feet to 400 feet. This will also benefit the Port of Providence economically in that more pier space will be available for other vessels to moor while a LPG vessel is in port.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this rule will have a significant economic impact on a substantial number of small entities. "Small entities" include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as "small business concerns" under section 3 of the Small Business Act (15 U.S.C. 632).

For the reasons discussed in the Regulatory Evaluation, the Coast Guard expects the economic impact of this rule to be minimal and the Coast Guard certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), that this final rule will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This rule contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism

The Coast Guard has analyzed this action in accordance with the principals and criteria contained in Executive Order 12612 and has determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard considered the environmental impact of this regulation and concluded that under section 2.B.2.e of Commandant Instruction M16475.1B, they are categorically excluded from further environmental documentation. A Categorical Exclusion Determination is available in the docket for inspection or copying where indicated.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

Final Regulation

For the reasons set out in the preamble, the Coast Guard amends 33 CFR Part 165 as follows:

PART 165—[AMENDED]

1. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 604–1, 6.04–6, and 160.5; 49 CFR 1.46.

2. Section 165.121 is amended by revising paragraph (a)(3) to read as follows:

§165.121 Safety Zone: Rhode Island Sound, Narragansett Bay, Providence River.

(a) * * *

(3) For Liquefied Petroleum Gas (LPG) vessels while moored at the LPG facility, Port of Providence; a safety zone within 50 feet around the vessel. No vessel shall moor within 200 feet from the LPG vessel. All vessels transiting the area are to proceed with caution to minimize the effects of wake around the LPG vessel.

* * * * *

Dated: October 3, 1994.

P.A. Turlo,

Captain, U.S. Coast Guard, Captain of the Port, Providence.

[FR Doc. 94–25725 Filed 10–17–94; 8:45 am]

BILLING CODE 4910–14–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[KS–4–1–6508a; FRL–5079–2]

Approval and Promulgation of Implementation Plans; State of Kansas

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The state of Kansas has submitted revisions to the State Implementation Plan (SIP) which amend certain state rules concerning sulfur dioxide (SO_2) and volatile organic compounds (VOC). It has also submitted two source-specific permits for electric utilities which restrict (SO_2) emissions. EPA is approving these revisions to the SIP. This action is necessary to keep the Kansas SIP current with state regulations and to make the state permits federally enforceable.

DATES: This final rule is effective December 19, 1994 unless notice is received by November 17, 1994 that adverse or critical comments will be submitted. If the effective date is delayed, timely notice will be published in the **Federal Register**.

ADDRESSES: Written comments should be addressed to the Kansas City address below. 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; and EPA Air and Radiation Docket and Information Center, 401 M Street, SW., Washington, DC 20460.

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

SUPPLEMENTARY INFORMATION: The EPA is publishing this action as a direct-final because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. If adverse comments are received, a withdrawal notice will be published and all public comments will be addressed in a subsequent final rule based on the proposed rule published in this **Federal Register**.

On May 16, 1994, the Secretary of the Kansas Department of Health and Environment (KDHE) (designee for the Governor) submitted an SIP revision to the EPA Region VII Administrator. The Secretary requested that EPA revise the SIP to include the revisions discussed below.

K.A.R. 28–19–31, Indirect Heating Equipment Emissions; Emission Limitations

This rule has been amended in a number of ways. First, paragraphs A through E were relettered to read a through e. Paragraph c has been changed to state the emission limitations in terms of SO_2, rather than sulfur, in order to be consistent with federal standards. The rule amendment does not change the amount of allowable emissions, but merely restates it in the same terminology as the National Ambient Air Quality Standards (NAAQS) it is designed to protect.

The rule has also been amended to state the emissions limitation in terms of pounds of SO_2 per million British thermal units (SO_2/mmBtu) of heat input without respect to heat input per hour. This is merely a technical correction; the regulation applies to heating equipment having a heat input of 250 Btu/hour, so the additional reference to emissions based on heat input per hour was unnecessary. The rule also now provides for an alternative emission limit to the 3.0 pounds of SO_2/mmBtu, provided that the alternate limit is set forth in a permit issued pursuant to K.A.R. 28–19–14, is adequate to protect the SO_2 NAAQS, and has been approved by EPA as part of the state SIP. This revision was effective November 8, 1993.

K.A.R. 28–19–32, Exemptions

This rule, which created exemptions from the emissions limitations on indirect heating equipment imposed by K.A.R. 28–19–31, was approved as part of the original SIP in 1971. Paragraph D provided an exemption to the SO_2 emission limit in rule K.A.R. 28–19–31 if a source operated less than 2000 hours per year. This was a deficiency in the SIP which EPA has strived to correct.

Kansas revised K.A.R. 28–19–32 in 1981, 1982, and in 1993. The revisions in 1981 and 1982 were not submitted as SIP revisions at that time. Thus, EPA is today acting on the cumulative revisions of this rule. In the 1981 revision, the state deleted paragraphs A and B of the SIP approved rule. These provisions were eliminated because equipment which had been exempted was, by that time, operating within the limitations of other regulations. At the same time, the state added an exemption which provided that electric generating plants of 90 megawatts could, under certain circumstances, be exempt from the SO_2 emission limits contained in K.A.R. 28–19–31(C). In the 1982 state rule revision, this provision was expanded to specifically include three electric generating plants with specified capacities.

The 1993 revisions deleted completely the provisions which allowed exemptions to the SO_2 emission limits in K.A.R. 28–19–31. Of the three sources previously eligible for the exemption, two are operating within the 3.0 lbs SO_2 mm/Btu emission limit allowed in rule K.A.R. 28–19–32. The third source is now subject to emission limits contained in a permit issued pursuant to rule K.A.R. 28–19–14. This limit is more restrictive than the 3.0 lbs per mm/Btu allowed in K.A.R. 28–19–31. This permit has been submitted as a SIP revision, and EPA is taking action on it as discussed below (see Quindaro Power Station).

In summary, the state's submittal of its revisions to rule K.A.R. 28–19–32 deletes exemptions allowed in the original SIP rule, deletes exemptions allowed in previous versions of the state rule, will make the state and SIP rule consistent, and will greatly enhance the enforceability of both rules. This revision was effective November 8, 1993.

K.A.R. 28–19–63, Automobile and Light-Duty Truck Surface Coating

This reasonably available control technology rule is applicable to automobile or light-duty truck top coat and primer surface coating application systems at the one facility subject to the regulation. This amendment clarifies existing requirements by adopting a standard industry procedure for demonstrating continual compliance with organic vapor emission requirements. The state has incorporated by reference the EPA protocol, "Protocol for Determining the Daily Volatile Organic Compound Emission Rate of Automobile and Light-Duty Truck Topcoat Operations," EPA-450/3-88-018 (December 1988). This protocol provides an alternative compliance demonstration method and adds some flexibility to the previous requirements. The regulatory change does not affect the current monitoring and inspection program for volatile organic compound sources. This revision improves the enforceability of the state rule. This rule was effective November 8, 1993.

Permits

The Kansas City, Kansas, Board of Public Utilities (BPU) owns and operates three electric utility generation stations in the Kansas City, Kansas, area. This action approves new emission limits, as contained in state operating permits, for the Kaw and Quindaro stations.

Kaw Power Station

Upon a showing by EPA Region VII that the BPU Kaw Power Station, even though operating within the permit limits established by state rule K.A.R. 28-19-31(C), was causing modeled violations of the SO_2 NAAQS, the BPU entered into a Consent Agreement (C.A.) with the state, which set a schedule for BPU to develop an emissions control strategy sufficient to protect and maintain the SO_2 NAAQS.

In accordance with the terms of the C.A., BPU conducted a modeling analysis in accordance with the protocol agreed to by the state and EPA. The modeling was performed in accordance with the EPA Guideline on Air Quality Models (Revised), EPA-450/2-78-027R, as supplemented. The modeling results established emission limits which were incorporated into an operating permit issued by the state pursuant to K.A.R. 28-19-14. Emission limits were set based on a maximum ambient impact of less than 330 $\mu g/m^3$. This provides an adequate safety margin for the 24-hour SO_2 standard of 365 $\mu g/m^3$, which was the controlling standard.

Permit #2090049 contains interim and final compliance limits. The interim limits are based on coal sampling analysis. Final compliance limits are based on continuous emission monitoring (CEM). The CEM systems are to be installed and certified in conformance with the requirements of 40 CFR part 75 no later than October 1994. The permit contains enforceable monitoring, and recordkeeping and reporting requirements.

The emission limit previously applicable to this source was 3.0 lbs SO_2/mmBtu. The new limit contained in the permit is 1.1 lbs SO_2/mmBtu when only one of the three units is operating, or 0.91 lbs SO_2/mmBtu when two or more units are operating. The state permit was effective October 20, 1993. This permit is being incorporated into the SIP for purposes of federal enforceability.

Quindaro Power Station

As noted in the discussion above revisions to rules K.A.R. 28-19-31 and 28-19-32, the Quindaro station was able to operate under an exemption which was difficult to enforce and which did not ensure protection of the NAAQS.

The BPU agreed in the C.A. mentioned above to conduct a modeling analysis for the Quindaro station at the same time it was performing the modeling analysis for the Kaw station.

The modeling results established emission limits which were incorporated into an operating permit issued by the state pursuant to K.A.R. 28-19-14. Emission limits were set based on a maximum ambient impact of less than 320 $\mu g/m^3$. This is adequate to ensure attainment and maintenance of the 24-hour SO_2 NAAQS of 365 $\mu g/m^3$, which was the controlling standard. The emission limits are equivalent to 4.75 lbs of SO_2/mmBtu when only unit Q-1 is operating, and 4.75 for Q-1 and 3.57 for Q-2 when both units are operating. (Unit Q-2 is a CAA Title IV Phase I unit.)

Permit #2090048, issued pursuant to K.A.R. 28-19-14, contains interim and final compliance limits. The interim limits are based on coal sampling analysis and the final limits are based on CEM monitoring. The CEM systems are scheduled for final part 75 certification testing by October 1994. The permit contains enforceable monitoring, and reporting and recordkeeping requirements. This permit is being approved into the SIP for purposes of federal enforceability. The permit was effective October 20, 1993.

The state has met the public notification requirements of 40 CFR 51.102. EPA proposes to approve the above revisions to the Kansas SIP.

EPA Action

EPA is taking final action to approve revisions to the Kansas SIP. This includes revisions to the SO_2 emission limitations and exemptions rules, and a surface coating rule. EPA is also approving two source-specific permits which set SO_2 emission limits on two electric power stations.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request or 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.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities (5 U.S.C. 603 and 604). Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under 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, EPA certifies that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the federal-state relationship under the CAA, preparation of a regulatory flexibility analysis would constitute federal inquiry into the economic reasonableness of state action. The CAA forbids EPA to base its action 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)).

The Office of Management and Budget has exempted these actions from review under Executive Order 12866.

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 19, 1994. 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, Incorporation by reference, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: September 16, 1994.

William Rice,

Acting Regional Administrator.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

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

Authority: 42 U.S.C. 7401–7671q.

Subpart R—Kansas

2. Section 52.870 is amended by adding paragraph (c)(29) to read as follows:

§ 52.870 Identification of plan.

* * * * *

(c) * * *

(29) On May 16, 1994 the Secretary of KDHE submitted revisions to rules K.A.R. 28–19–31, 28–19–32, 28–19–63, and operating permits #20090048 (BPU Quindaro station) and #20090049 (BPU Kaw station).

(i) Incorporation by reference.

(A) Revised regulations K.A.R. 28–19–31, K.A.R. 28–19–32, K.A.R. 28–19–63, effective November 8, 1993.

(B) Operating permits; Kansas City, Kansas, Board of Public Utilities Quindaro permit #20090048, and Kaw permit #20090049, effective October 20, 1993.

(ii) Additional material.

(A) Letter from BPU to KDHE dated December 11, 1992, regarding compliance verification methods and schedules.

* * * * *

3. Section 52.873 is amended by adding paragraph (c) to read as follows:

§ 52.873 Approval status.

* * * * *

(c) The Administrator approves Rule K.A.R. 28–19–31 as identified at § 52.870(c)(29), with the understanding that any alternative compliance plans issued under this rule must be approved by EPA as individual SIP revisions.

[FR Doc. 94–25675 Filed 10–17–94; 8:45 am]

BILLING CODE 6560–50–P–M

40 CFR Part 52

[RI6–1–5811; A–1–FRL–5081–6]

Approval and Promulgation of Air Quality Implementation Plans; Rhode Island; Clean Air Act Approval and Promulgation of Implementation Plans for Rhode Island State Implementation Plan Revision

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving a State Implementation Plan (SIP) revision submitted by the State of Rhode Island Department of Environmental Management (DEM). The intended effect of this action is to approve Rhode Island Air Pollution Control Regulations Number 19, "Control of Volatile Organic Compounds from Surface Coating Operations," Number 25, "Control of Volatile Organic Compound Emissions from Cutback and Emulsified Asphalt," and Number 26, "Control of Volatile Organic Compound Emissions from Manufacture of Synthetic Pharmaceutical Products." The DEM submitted these revisions to EPA on November 13, 1992 in response to the Clean Air Act, as amended in 1990, which requires States to adopt Reasonably Available Control Technology (RACT) rules for all areas designated nonattainment for ozone and classified as moderate or above. This revision establishes and requires the implementation of RACT for the following source categories: Metal Coil Coating, Metal Furniture Coating, Magnet Wire Coating, Large Appliance Coating, Miscellaneous Metal Parts Coating, Wood Products Coating, Flat Wood Paneling Coating, Manufacture and Application of Cutback and Emulsified Asphalt, and Manufacture of Synthetic Pharmaceutical Products. In addition, the applicability thresholds for RACT for the source categories Paper Coating, Fabric Coating, and Vinyl Coating have been lowered from the potential to emit 100 tons per year to actual emissions of 15 pounds per day.

EFFECTIVE DATE: This rule will become effective on November 17, 1994.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal business hours, by appointment at the Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region I, One Congress Street, 10th floor, Boston, MA; Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, 401 M Street, SW., (LE–131), Washington, DC 20460; and Division of Air and Hazardous Materials, Department of Environmental Management, 291 Promenade Street, Providence, RI 02908–5767.

FOR FURTHER INFORMATION CONTACT: Martha Larson, (617) 565–3270.

SUPPLEMENTARY INFORMATION: On March 21, 1994 (59 FR 13292), EPA published a notice of proposed rulemaking (NPR) for the State of Rhode Island. The NPR proposed approval of Rhode Island Air Pollution Control Regulations Number 19, "Control of Volatile Organic Compounds from Surface Coating Operations," Number 25, "Control of Volatile Organic Compound Emissions from Cutback and Emulsified Asphalt," and Number 26, "Control of Volatile Organic Compound Emissions from Manufacture of Synthetic Pharmaceutical Products." The formal SIP revision was submitted by Rhode Island on November 13, 1992.

Under the Clean Air Act, prior to the 1990 Amendments, ozone nonattainment areas were required to adopt RACT rules for sources of VOC emissions. EPA issued three sets of Control Technique Guidelines (CTG) documents, establishing a "presumptive norm" for RACT for various categories of VOC sources. The three sets of CTGs were (1) Group I—issued before January, 1978 (15 CTGs); (2) Group II—issued in 1978 (9 CTGs); and (3) Group III—issued in the early 1980's (5 CTGs). Those sources not covered by a CTG were called non-CTG sources. EPA determined that the area's SIP-approved attainment date established which RACT rules the area needed to adopt and implement. Under section 172(a)(1), ozone nonattainment areas were generally required to attain the ozone standard by December 31, 1982. Those areas that submitted an attainment demonstration projecting attainment by that date were required to adopt RACT for sources covered by the Group I and II CTGs. Those areas that sought an extension of the attainment date under section 172(a)(2) to as late as December 31, 1987 were required to adopt RACT for all CTG sources and for all major (i.e., 100 ton per year or more of VOC emissions) non-CTG sources.

Rhode Island established an attainment date of December 31, 1982 and, therefore, was required to adopt RACT for Group I and II CTGs. Rhode Island adopted rules for the applicable source categories covered by Group I and II CTGs. In addition, Rhode Island adopted a rule which covered all major sources (100 tons per year or more of VOC emissions).

Section 182(b)(2) of the Clean Air Act as amended in 1990 requires States to adopt RACT rules for all areas designated nonattainment for ozone and classified as moderate or above. There are three parts to the section 182(b)(2) RACT requirement: (1) RACT for sources covered by an existing CTG—i.e., a CTG issued prior to the enactment of the Clean Air Act Amendments of 1990; (2) RACT for sources covered by a post-enactment CTG; and (3) all major sources not covered by a CTG. This RACT requirement applies to nonattainment areas that previously were exempt from certain RACT requirements and requires them to "catch up" to those nonattainment areas that became subject to those requirements during an earlier period. In addition, it requires newly designated ozone nonattainment areas to adopt RACT rules consistent with those for previously designated nonattainment areas.

Rhode Island is required to adopt rules under section 182(b)(2) for the entire State because all areas within the State are classified as serious ozone nonattainment areas. Under section 182(b)(2), the State is required to adopt RACT requirements for all major sources, including sources covered by a post-enactment CTG, or not covered by a CTG. Rhode Island has adopted rules which cover major sources which will be covered by post-enactment CTGs or which are not covered by a CTG. The major source definition for serious area has been lowered under the amended Act to sources that emit greater than 50 tons per year of VOC. EPA will be proposing to approve these rules in a separate notice. With the exception of Wood Products coating, all of the categories which were submitted in the State's November 13, 1992 submittal and are being approved are existing CTG categories. The rules in the November 13, 1992 submittal which EPA is approving meet the requirements of section 182(b)(2)(B), which requires that RACT be adopted for all CTG categories issued before the date of the enactment of the Clean Air Act Amendments of 1990.

EPA has evaluated the State's submittal for consistency with the Clean Air Act, and EPA policy. EPA is approving Rhode Island's submittal as meeting the requirements of section 182(b)(2)(B). The rationale for EPA's proposed approval are explained in the NPR (59 FR 13292) and will not be restated here. Rhode Island's regulations and EPA's evaluation are detailed in a memorandum, dated July 14, 1993, entitled "Technical Support Document for Rhode Island's Revised Regulations Controlling Surface Coating Sources and New Regulations Controlling Volatile Organic Compound Emissions from Pharmaceutical and Cutback Asphalt Sources." Copies of that document are available, upon request, from the EPA Regional Office listed in the ADDRESSES section of this document.

Final Action

EPA is approving Rhode Island Air Pollution Control Regulations Number 19, "Control of Volatile Organic Compounds from Surface Coating Operations," Number 25, "Control of Volatile Organic Compound Emissions from Cutback and Emulsified Asphalt," and Number 26, "Control of Volatile Organic Compound Emissions from Manufacture of Synthetic Pharmaceutical Products" as a revision to the Rhode Island SIP, with the exception of sections 19.2.2, 25.2.2, 26.2.3, and the last sentence of 19.1.1, which were not submitted by Rhode Island to EPA as part of the SIP submittal.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

EPA received no adverse public comment on the proposed action. As a direct result, I have reclassified this action from Table 2 to Table 3 under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225), as revised by an October 4, 1993, memorandum from Michael H. Shapiro, Acting Assistant Administrator for Air and Radiation. A future document will inform the general public of these tables. On January 6, 1989, the Office of Management and Budget (OMB) waived Table 2 and Table 3 SIP revisions from the requirement of section 3 of Executive Order 12291 for a period of two years. The U.S. EPA has submitted a request for a permanent waiver for Table 2 and Table 3 SIP revisions. The OMB has agreed to continue the waiver until such time as it rules on U.S. EPA's request. This request continues in effect under Executive Order 12866 which superseded Executive Order 12291 on September 30, 1993.

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 EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. E.P.A.*, 427 U.S. 246, 256–66 (S.Ct. 1976); 42 U.S.C. 7410(a)(2).

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

Under 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 December 19, 1994. 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, 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 Rhode Island was approved by the Director of the Federal Register on July 1, 1982.

Dated: September 6, 1994.

John P. DeVillars,

Regional Administrator, Region I.

Part 52 of 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 OO—Rhode Island

2. Section 52.2070 is amended by adding paragraph (c)(40) to read as follows:

§ 52.2070 Identification of plan.

* * * * *

(c) * * *

(40) Revisions to the State Implementation Plan submitted by the Rhode Island Department of Environmental Management on November 13, 1992.

(i) Incorporation by reference.

(A) Letter from the Rhode Island Department of Environmental Management dated November 13, 1992 submitting a revision to the Rhode Island State Implementation Plan.

(B) Rhode Island Department of Environmental Protection, Division of Air and Hazardous Materials, Air Pollution Control Regulations No. 19, entitled "Control of Volatile Organic Compounds from Surface Coating Operations," submitted to the Secretary of State on October 30, 1992 and effective on November 20, 1992.

(C) Rhode Island Department of Environmental Protection, Division of Air and Hazardous Materials, Air Pollution Control Regulations No. 25, entitled "Control of Volatile Organic Compound Emissions from Cutback and Emulsified Asphalt," submitted to the Secretary of State on October 30, 1992 and effective on November 20, 1992.

(D) Rhode Island Department of Environmental Protection, Division of Air and Hazardous Materials, Air Pollution Control Regulations No. 26, entitled "Control of Organic Solvent Emissions from Manufacture of Synthesized Pharmaceutical Products," submitted to the Secretary of State on October 30, 1992 and effective on November 20, 1992.

(ii) Additional materials.

(A) Letter from the Rhode Island Department of Environmental Protection, dated February 10, 1993, clarifying the November 13, 1992 revision to the SIP.

(B) Nonregulatory portions of the submittal.

§ 52.2081 [Amended]

3. In § 52.2081, Table 52.2081 is amended by adding a new entry to existing state citation "No. 19"; and by adding new state citations for "No. 25" and "No. 26" to read as follows:

TABLE 52.2081—EPA-APPROVED RULES AND REGULATIONS

State citation	Title/subject	Date adopted by state	Date approved by EPA	FR citation	52.2070	Comments/unapproved sections
*	*	*	*	*	*	*
No. 19	Control of Volatile Organic Compounds from Surface Coating Operations.	10/30/92	10/18/94	[Insert FR citation from published date].	(c)(40)	All of No. 19 is approved with the exception of 19.2.2, and the last sentence of 19.1.1, which Rhode Island did not submit as part of the SIP revision. No. 19 was amended to change applicability and to add emission limitations for metal coil coating, metal furniture coating, magnet wire coating, large appliance coating, miscellaneous metal parts coating, wood products coating, and flat wood paneling coating.
No. 25	Control of Volatile Organic Compound Emissions from Cutback and Emulsified Asphalt.	10/30/92	10/18/94	[Insert FR citation from published date].	(c)(40)	All of No. 25 is approved, with the exception of 25.2.2, which was not submitted by Rhode Island as part of the SIP revision.
*	*	*	*	*	*	*
No. 26	Control of Organic Solvent Emissions from Manufacture of Synthesized Pharmaceutical Products.	10/30/92	10/18/94	[Insert FR citation from published date].	(c)(40)	All of No. 26 is approved, with the exception of 26.2.3, which was not submitted by Rhode Island as part of the SIP revision.
*	*	*	*	*	*	*

[FR Doc. 94–25789 Filed 10–17–94; 8:45 am]
BILLING CODE 6560–50–P

40 CFR Part 52

[NC–44–1–6641a; FRL–5081–7]

Approval and Promulgation of Sulfur Dioxide State Implementation Plan, North Carolina: Approval of Texasgulf, Incorporated, Air Permit No. 2331R10

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: On October 13, 1989, the State of North Carolina issued to Texasgulf, Incorporated (TG), located in Aurora, Beaufort County, North Carolina, air permit number 2331R10, which set the sulfur dioxide emission limit at 2.3 pounds per million British Thermal Units (BTU). The State then submitted this permit to EPA on November 2, 1989, for approval as a revision to the State implementation plan (SIP). Upon review of the permit,

EPA finds that the designated limit for Texasgulf is adequate to protect the ambient standard and approves this permit.

DATES: This final rule will be effective December 19, 1994 unless notice is received by November 17, 1994 that someone wishes to submit adverse or critical comments. If the effective date is delayed, timely notice will be published in the **Federal Register**.

ADDRESSES: Written comments on this action should be addressed to Mr. Randy Terry at the EPA Regional Office listed.

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

Air and Radiation Docket and Information Center (Air Docket 6102), US Environmental Protection Agency, 443, 401 M Street, SW., Washington DC 20460.

Environmental Protection Agency, Region IV Air Programs Branch, 345 Courtland Street NE., Atlanta, Georgia 30365.

North Carolina Department of Environment, Health, and Natural Resources, Division of Environmental Management, P.O. Box 29535, Raleigh, North Carolina 27626–0535.

FOR FURTHER INFORMATION CONTACT: Mr. Randy Terry, Regulatory Planning and Development Section, Air Programs Branch, Air, Pesticides & Toxics Management Division, Region IV Environmental Protection Agency, 345 Courtland Street NE, Atlanta, Georgia 30365. The telephone number is 404/347–3555, ext. 4212.

SUPPLEMENTARY INFORMATION: On December 7, 1982 (47 FR 54934), EPA announced approval of a revised sulfur dioxide (SO_2) emission limit for most fuel- burning sources in North Carolina. This revision raised the emission limit of SO_2 from 1.6 pounds per million BTU to 2.3 pounds per million BTU. Texasgulf, Incorporated, located in Aurora, Beaufort County, North Carolina, was included in this rulemaking, but was not allowed to increase it's emission level until such time that appropriate conditions could be applied to ensure that the ambient standard was not violated. These conditions included the issuance of an air permit. On October 13, 1989, North Carolina Environmental Management Commission issued air permit no. 2331R10 to Texasgulf, Incorporated. On November 2, 1989, the State of North Carolina, through the North Carolina Department of Environment, Health and Natural Resources submitted this permit to EPA for approval as a revision to the North Carolina SIP regarding the SO_2 emissions limitation for Texasgulf, Incorporated. In a letter dated November 25, 1991, EPA responded to the Texasgulf, Incorporated submittal with several comments concerning the enforceability of the permit. EPA questioned North Carolina's ability to enforce the condition of reporting any 4-hour exceedances of SO_2, opacity and particulate standards without requiring the installation of SO_2 and opacity monitors. EPA also stated that the permit should be revised to incorporate the emission limits for the F.W. and B.W. boilers because alternative operating procedures are allowable if one or more of the acid plants are inoperable. EPA directed North Carolina to address these sections before the permit could be approved. On April 29, 1994, North Carolina submitted a letter to EPA which effectively responded to all of EPA's concerns and demonstrated that the permit contains adequate recordkeeping and testing requirements.

Final Action

EPA is approving Texasgulf, Inc's Air Permit No. 2331R10 submitted on November 2, 1989, for incorporation into the North Carolina SIP. The EPA is publishing this action without prior proposal because the EPA views this as a noncontroversial amendment and anticipates no adverse comments. However, in a separate document in this **Federal Register** publication, the EPA is proposing to approve the SIP revision should adverse or critical comments be filed. This action will be effective December 19, 1994 unless, by November 17, 1994, adverse or critical comments are received.

If the EPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on this action serving as a proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective December 19, 1994.

The EPA has reviewed this request for revision of the federally-approved SIP for conformance with the provisions of the 1990 Amendments enacted on November 15, 1990. The EPA has determined that this action conforms with those requirements irrespective of the fact that the submittal preceded the date of enactment.

Under section 307(b)(1) of the Clean Air Act (CAA), 42 U.S.C. 7607(b)(1), petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 19, 1994. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2) of the CAA, 42 U.S.C. 7607(b)(2)).

This action has been classified as a Table 3 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225), as revised by an October 4, 1993, memorandum from Michael Shapiro, Acting Assistant Administrator for Air and Radiation. A future document will inform the general public of these tables. 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 two years. EPA has submitted a request for a permanent waiver for Table 2 and Table 3 SIP revisions. The OMB has agreed to continue the temporary waiver until such time as it rules on EPA's request. This request continues in effect under Executive Order 12866 which superseded Executive Order 12291 on September 30, 1993.

Nothing in this action shall be construed as permitting or allowing or establishing a precedent for any future request for a 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., EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under 110 and subchapter I, part D of the CAA do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP-approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-state relationship under the CAA, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. E.P.A.*, 427 U.S. 246, 256–66 (S.Ct. 1976); 42 U.S.C. 7410(a)(2).

List of Subjects in 40 CFR Part 52

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

Dated: September 22, 1994.

Patrick M. Tobin,

Acting Regional Administrator.

Part 52 of chapter I, title 40, Code of Federal Regulations, is amended as follows:

PART 52—[AMENDED]

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

Authority: 42 U.S.C. 7401–7671q.

Subpart II—North Carolina

2. Section 52.1770 is amended by adding paragraph (c)(76) to read as follows:

§ 52.1770 Identification of plan.

* * * * *

(c) * * *

(76) The North Carolina Department of Environment, Health and Natural Resources submitted revisions to the North Carolina State Implementation Plan on November 2, 1989. These revisions incorporate SO_2 limits and permit conditions for Texasgulf, Incorporated.

(i) Incorporation by reference.

(A) Permit for Texasgulf, Incorporated (air permit no. 2331R10) which was issued by the Environmental Management Commission on October 13, 1989.

(ii) Additional material–none.

[FR Doc. 94–25679 Filed 10–17–94; 8:45 am]

BILLING CODE 6560–50–F

40 CFR Parts 52 and 81

[MN25–1–6002a, MN–1–6093a; FRL–5083–2]

Approval and Promulgation of Implementation Plans and Designation of Areas for Air Quality Planning Purposes: Minnesota

AGENCY: Environmental Protection Agency.

ACTION: Direct final rule.

SUMMARY: On June 22, 1993, the Minnesota Pollution Control Agency (MPCA) submitted a State Implementation Plan (SIP) revision and request for redesignation from nonattainment to attainment to the United States Environmental Protection Agency (USEPA). This submittal was in response to a designation to nonattainment, effective January 6, 1992, for an area in Dakota County, Minnesota. The MPCA submittal consisted of an administrative order for the Gopher Smelting and Refining Company, a secondary lead smelter located in Eagan, Minnesota. The submittal also contained technical support information in the form of air dispersion modeling an ambient air monitoring data. The proposed SIP revision and request for redesignation was submitted to satisfy the requirements of the Clean Air Act (CAA). A letter, identifying specific issues pertaining to the proposed SIP revision, was sent to the MPCA on April 8, 1994. In response to those issues, the MPCA amended the original administrative order and has submitted it to USEPA. In this action, USEPA is granting direct final approval of the SIP revision and redesignation requests.

DATES: This final rule is effective December 19, 1994 unless notice is received by November 17, 1994, that someone wishes to submit adverse or critical comments. If the effective date is delayed, timely notice will be published in the **Federal Register**.

ADDRESSES: Written comments should be addressed to: William L. MacDowell, Chief, Regulation Development Section, Air Enforcement Branch (AE–17J), United States Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Copies of the State submittal and USEPA's analysis are available for public inspection during normal business hours at the following address: United States Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard (AE–17J), Chicago, Illinois 60604; and Air Docket (6102), United States Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Randy Robinson, Air Enforcement Branch, Regulation Development Section (AE–17J), United States Environmental Protection, Region 5, Chicago, Illinois 60604, (312) 353–6713.

SUPPLEMENTARY INFORMATION:

I. Summary of State Submittal

On November 6, 1991, USEPA, in accordance with the Clean Air Act (CAA), title I, section 107(d)(3), designated an area in Dakota County, Minnesota as nonattainment for the primary and secondary National Ambient Air Quality Standards (NAAQS) for lead of 1.5 micrograms per cubic meter ($\mu g/m^3$). The nonattainment area is bounded by Lone Oak Road (County Road 26) to the north, County Road 63 to the east, Westcott Road to the south, and Lexington Avenue (County Road 43) to the west. The basis for the nonattainment designation was monitored violations of the NAAQS. The major lead source in the area is the Gopher Smelting and Refining Company (Gopher Smelting), located in Eagan, Minnesota. As a result of this nonattainment designation, the State of Minnesota was required to submit to the USEPA a revised SIP for the area within 18 months from January 6, 1992, which was the effective date of the redesignation.

The State submitted to USEPA, a SIP revision and a request for redesignation to attainment, dated June 22, 1993. The submittal was determined to be complete, in accordance with the requirements found in 40 CFR part 51, appendix V, on September 1, 1993. The submittal consisted of an administrative order which includes specific information pertaining to emission limits and operating restrictions, compliance demonstrations, and recording/reporting requirements. In addition, the submittal contained technical support pertaining to the attainment demonstration and ambient air monitoring data. Initial review of the proposed SIP revision identified several issues which needed to be addressed by the State before the revision could be approved. The issues were detailed in an April 8, 1994, letter from George Czerniak, Chief, Air Enforcement Branch, USEPA, to David Thornton, Administrator, Program Development and Air Analysis Section, MPCA. The issues involved clarification of language pertaining to source descriptions and sweeping requirements and additional information regarding negative pressure testing methodology and stack testing conditions. The issues identified in the April 8, 1994, letter were adequately addressed by the State and an amended administrative order, dated September 13, 1994, was submitted to USEPA. The remainder of this rulemaking summarizes USEPA's review of the Minnesota lead SIP revision package, followed by a review of the request for redesignation, and then the final rulemaking action.

II. Analysis of SIP Revision Submittal

The State SIP revision submittal consisted of four major sections: (1) The completeness review material; (2) the SIP revision request providing background information and citing statutory requirements; (3) materials from the MPCA including the administrative order issued to Gopher Smelting and Refining Company and public hearing material; and (4) technical information supporting the attainment demonstration. This section will discuss the modeling analysis of the attainment demonstration, provisions of the administrative order, and whether the submittal meets the requirements of sections 172(c), 191, and 192, of the CAA. Section 172(c), pertaining to nonattainment plan provisions, and sections 191 and 192 pertaining to lead nonattainment plan deadlines and attainment dates.

Administrative Order Provisions

The administrative order submitted by MPCA on June 22, 1993, was amended, pursuant to comments by USEPA, on September 13, 1994. The comments were identified in a previous section. The following analysis refers to the amended administrative order.

Emission Limits and Operating Restrictions

Gopher Smelting emits lead through two stacks: Emission points 1 and 3. Emissions point 1 is limited to no more than 7000 micrograms of lead per dry standard cubic meter (μg/dscm) (0.00306 grains per dry standard cubic foot); emission point 3 is limited to no more than 5720 μg/dscm (0.00250 grains per dry standard cubic foot). In addition, emission points 1 and 3 are subject to a 5 percent opacity limit.

The Gopher Smelting facility is also subject to numerous operating restrictions. These restrictions are designed to control fugitives from building openings, reentrained traffic dust, and wind erosion. Additionally, Gopher Smelting must store slag material inside the facility building and must apply water as a suppressant when the material is transported. Gopher Smelting must store other raw material inside the facility building. Further operating restrictions affect the maintenance of air pollution control equipment.

Compliance Demonstration

Gopher Smelting must demonstrate compliance with the emission limits and operating restrictions by annual stack tests and opacity tests, negative pressure testing, inspections, and recordkeeping.

Gopher Smelting will demonstrate compliance with the operating restrictions to control fugitives through negative pressure testing and mandatory monthly inspections of vegetative cover and railway ballast and pavement to insure cover is continuous. Additionally, the administrative order requires regularly scheduled inspections and maintenance of control monitoring equipment and property access restrictions.

Reporting

Pursuant to the administrative order, the Company is required to report the results of any performance stack test as well as report each shutdown or breakdown of any control equipment or process equipment if that process equipment shutdown causes increased lead emissions.

Contingency Measures

Section 172(c)(9) of the Clean Air Act defines contingency measures as measures in a SIP which are to be implemented if an area fails to make reasonable further progress or to attain the NAAQS by the applicable attainment date. These measures should become effective without further action by the State or the Administrator and should consist of available control measures that are not included in the primary control strategy.

The administrative order contains contingency measures which shall be implemented by the Company within 30 days following notification by the MPCA or USEPA. Since the submittal provides for immediate attainment, it therefore satisfies reasonable further progress requirements. Implementation of the contingency measures would result from a finding that the area has failed to attain the NAAQS. The measures consist of increased frequency (twice daily) sweeping with a vacuum equipped road sweeper over areas that are normally daily swept and daily sweeping with a vacuum sweeper over areas that are normally swept on a weekly basis.

Modeling Analysis

In order to demonstrate that the limits and restrictions imposed by the administrative order are sufficient to demonstrate attainment of the National Ambient Air Quality Standards (NAAQS) for lead, air dispersion modeling must be conducted. The dispersion modeling accompanying this submittal was performed using the Industrial Source Complex—Long Term (ISCLT2) model, version 92062. The modeling methodology used was compared against the guidance contained in the "Guideline on Air Quality Models (Revised)"; July 1986, including Supplement A.

The Gopher Smelting and Refining Company facility is located just south of St. Paul in Eagan, Minnesota. The modeling analysis used five years (1985 through 1989) of surface meteorological data from the Minneapolis/St. Paul National Weather Service station, and upper air data from the St. Cloud, Minnesota, National Weather Service station. The data sets are representative of the meteorological conditions at Gopher Smelting.

The process sources at Gopher Smelting which discharge lead into the atmosphere are: Two reverberatory furnaces, a blast furnace, six refining kettles, a flue dust agglomeration furnace, a scrap dryer for the feed desulfurization system, and the central vacuum system. Fugitive emissions are also generated from raw material handling. Lead emissions from these sources are vented to four dust collectors (baghouses or cartridge filters). The lead emissions passing through these dust collectors are emitted through two stacks.

The dispersion modeling also took into account fugitive emissions generated from vehicular traffic at the facility as well as emissions generated by wind erosion of the area surrounding the facility. The lead emissions from unpaved areas at the facility were estimated using the "PM10 Open Fugitive Dust Source Computer Model" package distributed by USEPA. The lead content of emissions due to wind erosion was based on soil sample analyses conducted at the facility. Snowcover was assumed for the months of November through March, therefore fugitives from grassy areas was considered to be zero for these months.

The receptor grid used in the analysis consisted of a cartesian coordinate system with various spacing resolutions. After initial screening runs with receptor grids extending as far as 50 kilometers, a refined receptor grid, with 100 meter spacing, was established for a 1.0 kilometer square area surrounding the facility. Lead impacts at the fenceline of the property were modeled.

Background levels of lead were estimated in order to consider the contribution to the total ambient air concentration made by sources other than Gopher Smelting. The background value was determined using a wind direction analysis which identified when air monitors were upwind of the Gopher Smelting Facility. The resulting value of 0.11 micrograms per cubic meter (μg/m³) is representative of background lead concentrations in the area. The background concentration was added to the maximum modeled concentration for a total maximum lead concentration of 0.97 μg/m³. This is well below the NAAQS value of 1.5 μg/m³.

General Statutory Requirements

The purpose of this section is to discuss whether the SIP revision submittal meets the statutory requirements set forth in the Clean Air Act. The Gopher Smelting area of Dakota County, Minnesota is designated nonattainment for lead. Therefore, the SIP for this area must meet the applicable requirements of Subpart 1 and 5 of Part D of Title 1 of the Clean Air Act, specifically, Sections 172(c), 191, and 192.

Section 172(c)(1) states that Part D plans must require reasonably available control measures, including reasonably available control technology (RACT). The submittal includes modeling which demonstrates that the Gopher Smelting area of Dakota County will achieve attainment of the lead NAAQS with the control measures fully implemented. The control measures were required to be fully implemented on June 22, 1993 (the effective date of the order). Consequently, the application of additional available measures would not result in attainment any faster. Therefore, the control measures included in the SIP revision satisfy the RACT requirements.

Section 172(c)(2) states that plans shall require reasonable further progress. The Minnesota submittal provides for immediate attainment.

Section 172(c)(3) requires a suitable emission inventory. A suitable inventory of actual and allowable lead emissions from the Gopher Smelting facility was provided in Attachment C.1 of the submittal.

Section 172(c)(4) mandates that any stationary source growth margin included in the submittal be expressly identified and quantified. The submittal provides for a zero growth margin.

Section 172(c)(5) mandates a suitable permit program for new and modified major stationary sources. A new source permitting program for nonattainment areas has been approved by USEPA on April 4, 1994 (59 FR 21939). In addition, MPCA has been delegated authority to implement the Federal Prevention of Significant Deterioration rules in attainment areas.

Section 172(c)(6) requires enforceable limitations sufficient to provide for attainment. The administrative order contains emission and operating limits which, when implemented, provide for attainment.

Section 172(c)(7) mandates satisfaction of Section 110(a)(2). The USEPA has determined that the submittal meets the applicable provisions of Section 110(a)(2).

Section 172(c)(8) states that the Administrator, in some circumstances, may allow the use of equivalent modeling emission inventory, and planning procedures. In the Gopher Smelting submittal, no equivalent techniques were used for modeling, emission inventory, or planning procedures.

Section 172(c)(9) requires the plan to provide for implementation of specific measures to be undertaken if the area fails to make reasonable further progress or to attain the primary NAAQS by the attainment date applicable under this part (i.e., contingency measures). The administrative order for Gopher Smelting contains measures to be taken if the area fails to attain the NAAQS. The administrative order provides for immediate attainment which precludes the need for a schedule by which the company would demonstrate reasonable further progress toward attainment. Therefore, any future violations of the NAAQS in the area would require the Company to implement the contingency measures.

Section 191(a) requires a State with an area designated as nonattainment subsequent to the date of enactment of the CAA, to submit an applicable plan to the Administrator within 18 months. A part of Dakota County, Minnesota was designated nonattainment for lead, effective January 6, 1992. The SIP revision was submitted on June 23, 1993; in accordance with the 18 month schedule.

Section 192(a) requires that a plan submitted pursuant to section 191(a) provide for attainment of the relevant standard no later than 5 years from the date of the nonattainment designation. The limits and restrictions in the Minnesota lead plan revision are effective immediately and have been demonstrated to provide for immediate attainment.

III. Analysis of the Redesignation Request

The State redesignation request consisted primarily of a maintenance plan and air quality monitoring data. The request also referenced the provisions and technical information in the SIP revision submittal. The State submitted this information to comply with title I, section 107(d)(3)(E) of the CAA, which requires that USEPA determine whether certain criteria have been met before a redesignation of a nonattainment area to attainment can be promulgated. The CAA criteria and the State responses are discussed below.

Redesignation Request Requirements

Section 107(d)(3)(E)(i) requires a determination of whether the area has attained the NAAQS. The State used both air quality monitoring data and a dispersion modeling analysis to show that the area has attained the NAAQS for lead of 1.5 μg/m³ based on a quarterly average.

Monitoring data for four ambient air monitors was included in the June 22, 1993, redesignation submittal. Additional ambient air monitoring data was submitted by the State on December 3, 1993. The additional data set replaced some 1992 data for two monitors due to problems identified by the State with the testing method used (flameless atomic absorption). The revised 1992 data was analyzed using flame atomic absorption (atomic absorption using an air-acetylene flame is the 40 Code of Federal Regulations (CFR) Part 50 Appendix G reference method). The flame atomic absorption method had much better recovery results with spiked samples of lead. The monitors are all located near the Gopher facility. The data collected from the four monitors has been quality assured according to the procedures specified in 40 (CFR) Part 58, and is submitted to USEPA Aerometric Information Retrieval System (AIRS).

The Lead Guideline Document (EPA–452/R–93–009), April 1993, states that in demonstrating, through monitoring data, that an area is attaining the lead NAAQS, the area must show no exceedances on a quarterly basis. Based on a April 21, 1983, memorandum from Meyers, S., Office of Air Quality Planning and Standards, the demonstration should consist of "the most recent eight quarters of quality-assured representative air quality data." The State has submitted ambient monitoring data for the period from first quarter 1990 to the third quarter 1993. The first quarter of 1990 shows the NAAQS violation which precipitated the nonattainment designation. No violations of the NAAQS for lead have been recorded at any of the monitors since that time.

The State also submitted an air dispersion modeling analysis to demonstrate that the Gopher facility, with the emission limits and operating restrictions applied, attains the NAAQS for lead. The modeling demonstration was an integral part of the proposed SIP revision submittal and has been assessed as part of the regulatory review process pertaining to the SIP revision.

The dispersion modeling accompanying the submittal was performed using the Industrial Source Complex—Long Term (ISCLT2) model, version 92062. The modeling methodology used was compared against the guidance contained in the "Guideline on Air Quality Models (Revised)"; July 1986. The modeling analysis used surface meteorological data from the Minneapolis/St. Paul National Weather Service station, and upper air data from the St. Cloud, Minnesota, National Weather Service station. The data sets are considered to be representative of the meteorological conditions at Gopher Smelting. The sources that were modeled included both process and fugitive. Concentrations of lead were predicted around the Gopher facility through the use of a receptor grid with 100 meter spacing near identified areas of maximum concentrations. Background levels of lead, determined from the ambient air monitors, were added to the maximum modeled concentration. The resulting value of 0.97 $\mu g/m^3$ is well below the NAAQS value of 1.5 $\mu g/m^3$.

Based on the monitoring and modeling information included in the June 22, 1993 proposed SIP revision and redesignation request submittal, USEPA has determined that the State has demonstrated that the area around the Gopher facility, which encompasses the current nonattainment area, has attained the NAAQS for lead.

Section 107(d)(3)(E)(ii) states that USEPA may not promulgate a redesignation request to attainment unless USEPA has fully approved the area SIP under section 110(k). The June 22, 1993 package consisted of a proposed SIP revision and a redesignation request. The SIP revision was submitted to meet the Clean Air Act requirements of Title I, Part D. The SIP revision was discussed earlier in this notice and is being approved in this notice.

Section 107(d)(3)(E)(iii) states that USEPA may not promulgate a redesignation request to attainment unless USEPA determines that "the improvement in air quality is due to permanent and enforceable reductions in emissions resulting from implementation of the applicable implementation plan and applicable Federal air pollutant control regulations and other permanent and enforceable reductions." In the first quarter of 1990, three of the four ambient air monitors sited around the Gopher facility recorded a violation of the lead NAAQS. Lead violations were also recorded in the fourth quarter of 1988 and the second quarter of 1989. As a result, the area near the Gopher facility was designated nonattainment, effective on January 6, 1992. An investigation into the cause of the violations concluded that fugitive emissions from process sources and also from general work practices were the primary reason for the high monitored values. The Gopher Smelting and Refining Company implemented a program that included improved materials handling procedures and work practices. These initial procedures and practices, among other controls, are included in the Federally enforceable Administrative Order, which was discussed earlier. No violations of the lead NAAQS have been recorded at any of the ambient air monitors surrounding the Gopher facility since the first quarter of 1990. The State has reasonably attributed the improvement in air quality to the changes in work practices at the Gopher facility. Additionally, the Gopher facility has installed control equipment (i.e., baghouses and a negative pressure system vented through cartridge filters) to further limit process fugitive emissions. The operation, testing, and maintenance of this control equipment is required in the administrative order for the facility. The administrative order for the Gopher facility has no expiration date. Therefore, USEPA agrees with the State that the improvement in air quality over the last four years in the nonattainment area surrounding the Gopher facility is attributable to permanent and enforceable lead emission reductions.

Section 107(d)(3)(E)(iv) states that USEPA may not promulgate a redesignation request to attainment unless USEPA has fully approved a maintenance plan for the area as meeting the requirements of section 175A. The redesignation request submitted on June 22, 1993 by the Minnesota Pollution Control Agency (MPCA), was accompanied by a proposed SIP revision affecting the primary lead source in the nonattainment area. The measures required in the proposed SIP revision (i.e., administrative order for Gopher Smelting and Refining Company), provided for attainment of the lead NAAQS as demonstrated by the modeling analysis performed for the area. The limits and operating restrictions detailed in the administrative order do not expire. Furthermore, once the SIP revision is promulgated, it cannot be revised without approval of USEPA. Therefore, attainment of the lead NAAQS has been projected for the required 10 year period as is discussed in Section 175A.

Section 175A(d) requires contingency provisions be submitted to assure that the State will promptly correct any violation of the lead standard which occurs after the area has been redesignated to attainment. The current monitoring network is continuing to operate in order to verify the attainment status of the area. The proposed SIP revision, discussed earlier, contained specific measures which the Gopher facility will implement, without further action to be taken by the State or USEPA, upon notification that a violation of lead NAAQS has occurred. These measures consist of sweeping with a wet vacuum sweeper areas that are swept daily and daily sweeping with a vacuum sweeper areas that are normally swept on a weekly basis. The contingency measures are designed to immediately reduce emissions from areas likely to be causing the violation. The administrative order became effective on June 22, 1993, and enforced by the authority of MPCA. The changes included in the amended administrative order, dated September 13, 1994, did not affect the contingency measures. Therefore, the limits and restrictions in the administrative order will have been implemented prior to promulgation of redesignation to attainment.

Section 107(d)(3)(E)(v) states that USEPA may not promulgate a redesignation request to attainment unless the State has met all the requirements applicable to the nonattainment area under section 110 and part D. The Gopher Smelting area of Dakota County, Minnesota is designated nonattainment for lead. Therefore, the SIP revision for this area must meet the requirements of Subpart 1 and 5 of Part D of Title 1 of the Clean Air Act, specifically Section 172(c) and Sections 191 and 192. Based on the regulatory review, the SIP revision is being approved as having satisfied the requirements of the applicable CAA sections.

IV. Rulemaking Action

This action has evaluated the approvability of the Minnesota Lead SIP revision submittal and request for redesignation to attainment for the area around Gopher Smelting and Refining Company, located in the city of Eagan, Dakota County, Minnesota. It has been determined that the submittal meets the applicable requirements of the CAA.

Because U.S. EPA considers this action noncontroversial and routine, we are approving it without prior proposal. The action will become effective on December 19, 1994. However, if we receive notice by November 17, 1994 that someone wishes to submit adverse comments, then USEPA will publish a document that withdraws this action and will address the comments received in the final rule on the requested redesignation and SIP revision which have been proposed for approval in the proposed rules section of this Federal Register.

Nothing in this action should be construed as permitting, allowing or establishing a precedent for any future request for revision to any SIP. U.S. EPA 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.

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). A revision to the SIP processing review tables was approved by the Acting Assistant Administrator for Office of Air and Radiation on October 4, 1993 (Michael Shapiro's memorandum to Regional Administrators). A future document will inform the general public of these tables. Under the revised tables this action remains classified as a Table 2 action. On January 6, 1989, the Office of Management and Budget (OMB) waived Table 2 and Table 3 SIP revisions (54 FR 222) from the requirements of section 3 of Executive Order 12291 for a period of 2 years. The 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. This request continued in effect under Executive Order 12866 which superseded Executive Order 12291 on September 30, 1993.

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. *USEPA*, 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 December 19, 1994. 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

40 CFR Part 52

Air Pollution control, Incorporation by reference, Lead, Reporting and recordkeeping requirements.

40 CFR Part 81

Air pollution control.

Dated: September 20, 1994.

Valdas V. Adamkus,

Regional Administrator.

Title 40 of the Code of Federal Regulations, chapter I, 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: 42 U.S.C. 7401–7671q.

2. Section 52.1220 is amended by adding paragraph (c)(36) to read as follows:

§ 52.1220 Identification of plan.

* * * * *

(c) * * *

(36) On June 22, 1993, and September 13, 1994, the State of Minnesota submitted revisions to its State Implementation Plan for lead for a portion of Dakota County.

(i) Incorporation by reference.

(A) For Gopher Smelting and Refining Company, located in the city of Eagan, Dakota County, Minnesota:

(1) An administrative order, dated, submitted, and effective June 22, 1993.

(2) Amendment One to the administrative order, dated, submitted, and effective, September 13, 1994.

(ii) Additional material.

(A) A letter from Charles W. Williams to Valdas V. Adamkus, dated June 22, 1993, with enclosures providing technical support (e.g., computer modeling) for the revisions to the State Implementation Plan for lead.

(B) A letter from Charles W. Williams to Valdas V. Adamkus, dated September 13, 1994, with enclosures providing technical support for the revised administrative order for Gopher Smelting and Refining Company.

PART 81—[AMENDED]

1. The authority citation for part 81 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

2. In § 81.324 the table "Minnesota Lead" is revised to read as follows:

§ 81.324 Minnesota.

* * * * *

MINNESOTA—LEAD

Designated area	Designation		Classification	
	Date	Type	Date	Type
Dakota County (part) . . . Lone Oak Road (County Road 26) to the north, County Road 63 to the east, Westcott Road to the south, and Lexington Avenue (County Road 43) to the west.	Dec. 19, 1994			
Rest of State not designated.				

* * * * *

[FR Doc. 94–25681 Filed 10–17–94; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 65

Changes in Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Final rule.

SUMMARY: Modified base (100-year) flood elevations are finalized for the communities listed below. These modified elevations will be used to calculate flood insurance premium rates for new buildings and their contents.

EFFECTIVE DATES: The effective dates for these modified base (100-year) flood elevations are indicated on the following table and revise the Flood Insurance Rate (Map(s) in effect for each listed community prior to this date.

ADDRESSES: The modified base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.

FOR FURTHER INFORMATION CONTACT: Michael K. Buckley, P.E., Chief, Hazard Identification Branch, Mitigation Directorate, 500 C Street, SW, Washington, DC 20472, (202) 646–2756.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency makes the final determinations listed below of the final determinations of modified base (100-year) flood elevations for each community listed. These modified elevations have been published in newspapers of local circulation and ninety (90) days have elapsed since that publication. The Associate Director has resolved any appeals resulting from this notification.

The modified base (100-year) flood elevations are not listed for each community in this notice. However, this rule includes the address of the Chief Executive Officer of the community where the modified base (100-year) flood elevation determinations are available for inspection.

The modifications are made pursuant to Section 206 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.*, and with 44 CFR part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The modified base (100-year) flood elevations are the basis for the floodplain management measures that the community is required to either adopt or to show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program (NFIP).

These modified elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State, or regional entities.

These modified elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

The changes in base (100-year) flood elevations are in accordance with 44 CFR 65.4.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Associate Director, Mitigation Directorate, certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because modified base (100-year) flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are required to maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

Regulatory Classification

This proposed rule is not a significant regulatory action under the criteria of Section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of Section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 65 is amended to read as follows:

PART 65—[AMENDED]

1. The authority citation for Part 65 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq.; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 65.4 [Amended]

2. The tables published under the authority of § 65.4 are amended as follows: