

**Subpart RR—Tennessee**

2. Section 52.2220 is amended by adding paragraph (c)(137) to read as follows:

**§ 52.2220 Identification of plan.**

\* \* \* \* \*

(c) \* \* \*

(137) Revisions to the State of Tennessee Air Pollution Control Regulations submitted by the Tennessee Department of Environment and Conservation on September 1, 1993, and June 10, 1996. These consist of revisions to Chapter 1200-3-9-.01 CONSTRUCTION PERMITS.

(i) Incorporation by reference.

(A) Chapter 1200-3-9-.01 CONSTRUCTION PERMITS of the Tennessee Department of Environment and Conservation which became state effective August 18, 1996.

(ii) Other material. None.

\* \* \* \* \*

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BILLING CODE 6560-50-P

**40 CFR Part 52**

[MO-006-1006(a); FRL-5542-6]

**Approval and Promulgation of Implementation Plans; State of Missouri**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Direct final rule.

**SUMMARY:** This document takes final action to correct a previous action published on February 29, 1996, that approved and incorporated multiple amendments to Missouri rule 10 CSR 10-6.110 into the State Implementation Plan (SIP) (see 61 FR 7714). Specifically, this action corrects the EPA's inadvertent approval of section 5 (Emission Fees) of Missouri rule 10 CSR 10-6.110 entitled, "Submission of Emission Data, Emission Fees, and Process Information" as a SIP revision.

**DATES:** This action is effective September 27, 1996 unless by August 28, 1996 adverse or critical comments are received.

**ADDRESSES:** Copies of the documents relevant to this action are available for public inspection during normal business hours at the: Environmental Protection Agency, Air Planning and Development Branch, 726 Minnesota Avenue, Kansas City, Kansas 66101.

**FOR FURTHER INFORMATION CONTACT:** Joshua A. Tapp at (913) 551-7606.

**SUPPLEMENTARY INFORMATION:** On March 31, 1994, the state of Missouri submitted

multiple amendments to rule 10 CSR 10-6.110. These amendments pertained to the submission of emission data and emission fees. The amendments pertaining to the submission of emission data are approvable as a revision to the SIP under section 110 of the Clean Air Act (CAA). However, the emission fee provisions of section 5 were designed to meet the requirements of section 502(b)(3) of the CAA, relating to requirements for state operating permits programs, rather than the requirements of section 110. Consequently, section 5 of Missouri rule 10 CSR 10-6.110 should not have been approved as a SIP revision. However, rule 10 CSR 10-6.110, including section 5, was approved as an integral part of the Missouri operating permit program on April 11, 1996 (see 61 FR 16063).

Under section 110(k)(6) of the CAA, the EPA may revise a previous SIP approval action when it determines that the action was in error. The EPA has determined that its approval of section 5 of 10 CSR 10-6.110 was in error, for the reasons stated in this document.

**EPA Action**

Pursuant to section 110(k)(6) of the CAA, this is a direct final action correcting the February 29, 1996, SIP approval, and clarifying that section 5 of Missouri rule 10 CSR 10-6.110 is not approved as a part of the Missouri SIP.

The EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in a separate document in the Federal Register publication, the EPA is proposing to approve the SIP revision should adverse or critical comments be filed.

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.

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

entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, part D of the CAA do not create any new requirements, but simply approve requirements that the state is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, the 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 the EPA to base its actions concerning SIPs on such grounds (*Union Electric Co. v. U.S. E.P.A.*, 427 U.S. 246, 256-66 (S.Ct. 1976); 42 U.S.C. 7410(a)(2)).

This action has been classified as a Table 3 action for signature by the Regional Administrator under the procedures published in the Federal Register on January 19, 1989 (54 FR 2214-2225), as revised by a July 10, 1995, memorandum from Mary Nichols, Assistant Administrator for Air and Radiation. The Office of Management and Budget has exempted this regulatory action from E.O. 12866 review.

Under sections 202, 203, and 205 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, the EPA must undertake various actions in association with proposed or final rules that include a Federal mandate that may result in estimated costs of \$100 million or more to the private sector, or to state, local, or tribal governments in the aggregate. The Missouri revisions have no impact on tribal governments.

Through submission of this plan revision, the state has elected to adopt the program provided for under section 110 of the CAA. These rules may bind state and local governments to perform certain actions and also require the private sector to perform certain duties. To the extent that the rules being finalized for approval by this action will impose new requirements, sources are already subject to these regulations under state law. Accordingly, no additional costs to state or local governments, or to the private sector, result from this final action. The EPA has also determined that this final action does not include a mandate that may result in estimated costs of \$100 million or more to state or local governments in the aggregate or to the private sector.

Under section 801(a)(1)(A) of the Administrative Procedure Act (APA) as

amended by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the General Accounting Office prior to publication of the rule in today's Federal Register. This rule is not a "major rule" as defined by section 804(2) of the APA as amended.

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 September 27, 1996. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review, nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

#### List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference.

Dated: July 5, 1996.

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 AA—Missouri

2. Section 52.1320 is amended by modifying paragraph (c)(86) to read as follows:

##### § 52.1320 Identification of plan.

\* \* \* \* \*

(c) \* \* \*

(86) A revision to the Missouri SIP to revise the Missouri Part D new source review rules, update and add numerous definitions, revise the maximum allowable increase for particulate matter under the requirements for prevention of significant deterioration, address emission statements under Title I of the CAA, and generally enhance the SIP.

(i) Incorporation by reference.

(A) Revision to rules 10 CSR 10–6.020, Definitions and Common Reference Tables, effective August 30, 1995; 10 CSR 10–6.060, Construction Permits Required, effective August 30,

1995; 10 CSR 10–6.110, Submission of Emission Data, Emission Fees, and Process Information, except section 5, effective May 9, 1994; and 10 CSR 10–6.210, Confidential Information, effective May 9, 1994.

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[FR Doc. 96–19200 Filed 7–26–96; 8:45 am]

BILLING CODE 6560–50–P

#### 40 CFR Part 70

[TN–96–01; TN–MEMP–96–01; FRL–5542–4]

#### Clean Air Act Final Interim Approval of Operating Permits Programs; State of Tennessee and Memphis-Shelby County, Tennessee

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final interim approval.

**SUMMARY:** EPA is promulgating interim approval of the operating permit programs submitted by the State of Tennessee on behalf of the Tennessee Department of Environment and Conservation and the Memphis-Shelby County Health Department for the purpose of complying with Federal requirements which mandate that authorized permitting authorities develop, and submit to EPA, programs for issuing operating permits to all major stationary sources and to certain other sources.

**EFFECTIVE DATE:** August 28, 1996.

**ADDRESSES:** Copies of the State of Tennessee and the Memphis-Shelby County submittals and the other supporting information used in developing the final interim approval are available for inspection during normal business hours at the following location: U.S. Environmental Protection Agency, Region 4, 345 Courtland Street, NE., Atlanta, GA 30365. Interested persons wanting to examine these documents, contained in EPA dockets numbered TN–96–01 and TN–MEMP–96–01, should make an appointment at least 24 hours before the visiting day.

**FOR FURTHER INFORMATION CONTACT:** Kelly Fortin, Title V Program Development Team, Air Programs Branch, Air Pesticides & Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 345 Courtland Street, NE., Atlanta, GA 30365, (404) 347–3555, Ext. 4223.

#### SUPPLEMENTARY INFORMATION:

##### I. Background and Purpose

Title V of the 1990 Clean Air Act Amendments (sections 501–507 of the Clean Air Act ("the Act")) and the

implementing regulations at 40 Code of Federal Regulations (CFR) part 70 require that permitting authorities develop and submit operating permits programs to EPA by November 15, 1993, and that EPA act to approve or disapprove each program within one year after receiving the submittal. If the program submission is materially changed during the one-year review period, 40 CFR 70.4(e)(2) allows EPA to extend the review period for no more than one year following receipt of the additional materials.

EPA received the State of Tennessee's ("the State") title V operating permit program submittal on November 10, 1994. The State requested, under the signature of the Tennessee Governor's designee, approval of its operating permit program with full authority to administer the program in ninety-one of the State's ninety-five counties. Four of the State's counties (Shelby, Davidson, Hamilton, and Knox) are regulated by local air pollution control agencies operating under certificates of exemption issued pursuant to Tennessee Code Annotated (T.C.A.) Section 68–201–115. The State's jurisdiction also does not extend to sources of air pollution over which an Indian Tribe has jurisdiction. The State of Tennessee supplemented its initial title V program submittal on December 5, 1994, August 8, 1995, January 17, 1996, January 30, 1996, February 13, 1996, April 9, 1996, June 4, 1996, June 12, 1996, July 3, 1996, and July 15, 1996. Because the August 8, 1995 supplement materially changed the State's title V program submittal, EPA extended the one-year review period.

On June 26, 1995, EPA received the Memphis-Shelby County ("the County") title V operating permit program submittal. The State requested, under the signature of the Tennessee Governor's designee, approval of the County's program on behalf of the Memphis-Shelby County Health Department. The Memphis-Shelby County Health Department has authority to administer the operating permit program in all areas of Shelby County, Tennessee, including the incorporated municipalities of Arlington, Bartlett, Collierville, Germantown, Lakeland, Memphis, and Millington. The County's jurisdiction does not extend to sources of air pollution over which an Indian Tribe has jurisdiction. The County supplemented its initial program on August 22, 1995, August 23, 1995, August 24, 1995, January 29, 1996, February 7, 1996, February 14, 1996, March 5, 1996, and April 10, 1996.

EPA reviews title V operating permit programs pursuant to section 502 of the