

(g) *Payment for additional hours.* (1) If an individual, without fault on his or her part, performs work-study services for which payment may not be authorized, including services performed after termination of the contract, VA will pay the individual at the applicable hourly minimum wage for such services as the Director of the VA field station of jurisdiction determines were satisfactorily performed.

(2) The Director of the VA field station of jurisdiction shall determine whether the individual was without fault. In making this decision he or she shall consider all evidence of record and any additional evidence which the individual wishes to submit.

(Authority: 38 U.S.C. 3485(e); Pub. L. 102-16)

[FR Doc. 97-8140 Filed 3-31-97; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[W173-01-7302(b); FRL-5691-7]

Approval of Section 112(l) Program of Delegation; Wisconsin

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving, through a "direct final" procedure, Wisconsin's request for delegation of the Federal air toxics program contained within 40 CFR Parts 61 and 63 pursuant to Section 112(l) of the Clean Air Act (CAA) as amended. The State's requested mechanism of delegation involves either the delegation of all existing and future Section 112 standards as federally promulgated, for promulgation as State standards (or rules), or to incorporate Federal standards into State air pollution control permits, reserving the right to promulgate the standards as a State rule at a later time. The actual delegation of authority will occur through a memorandum of agreement (MOA) between the Wisconsin Department of Natural Resources (WDNR) and EPA. This request for approval of the mechanism of delegation encompasses all sources not covered by the 40 CFR Part 70 operating permit program.

DATES: This action will become effective June 2, 1997, unless adverse or critical comments not previously addressed by the State or EPA are received by May 1, 1997. If the effective date is delayed,

timely notice will be published in the **Federal Register**.

ADDRESSES: Copies of the State's submittal and other supporting information used in developing the approval are available for inspection during normal business hours at the following location: EPA Region 5, 77 West Jackson Boulevard, AR-18J, Chicago, Illinois, 60604. Please contact Constantine Blathras at (312) 886-0671 to arrange a time if inspection of the submittal is desired.

Effective immediately, all notifications, reports and other correspondence required under Section 112 standards should be sent to the State of Wisconsin rather than to the EPA, Region 5, in Chicago. Affected sources should send this information to:

Bureau of Air Management, Wisconsin Department of Natural Resources, 101 South Webster Street, P.O. Box 7921, Madison, Wisconsin 53707.

FOR FURTHER INFORMATION CONTACT: Constantine Blathras, AR-18J, 77 West Jackson Boulevard, Chicago, Illinois, 60604, (312) 886-0671.

SUPPLEMENTARY INFORMATION:

I. Background and Purpose

Section 112(l) of the CAA enables the EPA to approve State air toxics programs or rules to operate in place of the Federal air toxics program. The Federal air toxics program implements the requirements found in Section 112 of the CAA pertaining to the regulation of hazardous air pollutants. Approval of an air toxics program is granted by the EPA if the Agency finds that the State program: (1) Is "no less stringent" than the corresponding Federal program or rule, (2) the State has adequate authority and resources to implement the program, (3) the schedule for implementation and compliance is sufficiently expeditious, and (4) the program is otherwise in compliance with Federal guidance. Once approval is granted, the air toxics program can be implemented and enforced by State or local agencies, as well as EPA. Implementation by local agencies is dependent upon appropriate subdelegation.

On December 22, 1995, Wisconsin submitted to EPA a request for delegation of authority to implement and enforce the air toxics program under Section 112 of the CAA. On March 28, 1996, EPA found the State's submittal complete. In this document EPA is taking final action to approve the program of delegation for Wisconsin.

II. Review of State Submittal

A. Program Summary

Requirements for approval, specified in Section 112(l)(5), require that a State's program contain adequate authorities, adequate resources for implementation, and an expeditious compliance schedule. These requirements are also requirements for an adequate operating permits program under Part 70 (40 CFR 70.4). EPA promulgated a final interim approval under Part 70 of the State of Wisconsin's Operating Permit Program on March 6, 1995 (60 FR 12128-12137). The notice included the approval of a mechanism for delegation of all Section 112 standards for sources subject to the Part 70 program. Sources subject to the Part 70 program are those sources that are operating pursuant to a Part 70 permit issued by the State or EPA. Sources not subject to the Part 70 program are those sources that are not required to obtain a Part 70 permit from either the State or EPA. This action supplements the Part 70 rulemaking in that Wisconsin will have the authority to implement and enforce the Section 112 air toxics program regardless of a source's Part 70 applicability. The Wisconsin program of delegation for sources not subject to Part 70 will not include delegation of Section 112(r) authority nor Section 112(i)(5) Early Reductions Program authority.

As stated above, this document constitutes EPA's approval of Wisconsin's program of delegation of all existing and future air toxics standards, except for Section 112(i)(5) and Section 112(r) standards as they pertain to non-Part 70 sources. The Wisconsin program of delegation will operate as follows: For a future Section 112 standard for which WDNR intends to accept straight delegation, EPA will delegate the authority to implement a Section 112 standard to the State by letter unless WDNR notifies EPA differently within 45 days of EPA final promulgation of the standard. WDNR will as expeditiously as practicable and, if possible, within 18 months of the promulgation by EPA of a Section 112 standard which is applicable to non-Part 70 sources, adopt such standard into the State air quality regulations. Upon completion of such regulatory action, WDNR will submit to EPA proof of adoption. EPA shall respond with a letter delegating enforcement authority to the WDNR with respect to the adopted standard.

For a source category for which Wisconsin wishes to adopt its own rules, WDNR shall submit for approval to EPA State rules varying from the Federal

standard, as expeditiously as practicable, and if possible within 18 months of promulgation by EPA of a Section 112 standard applicable to non-Part 70 sources. EPA will review such rules for approvability pursuant to Section 112(l) and will rulemake on them.

Wisconsin will assume responsibility for the timely implementation and enforcement required by the standard, as well as any further activities agreed to by WDNR and EPA. However, EPA at all times retains its authority to enforce all provisions of Section 112 standards and requirements. Further, until WDNR obtains the authority necessary to enforce Section 112 standards, EPA shall initiate enforcement action when enforcement is in the best interest of the State, the general public, or EPA, or when delayed enforcement would impose an undue level of risk on the general public and/or the environment.

Some activities necessary for effective implementation of the standard include receipt of initial notifications, recordkeeping, reporting and generally assuring that sources subject to the standard are aware of its existence. When deemed appropriate, WDNR will utilize the resources of its Small Business Assistance Program to assist in general program implementation. The details of this delegation mechanism are set forth in a memorandum of agreement between EPA and WDNR, copies of which are located in the docket associated with this rulemaking.

B. Criteria for Approval

On November 26, 1993, EPA promulgated regulations to provide guidance relating to the approval of State programs under Section 112(l) of the CAA, (40 FR 62262). That rulemaking outlined the requirements of approval with respect to various delegation options. The requirements for approval of a program to implement and enforce Federal Section 112 rules as promulgated without changes are found at 40 CFR 63.91. The specific elements required for approval in Section 63.91 were promulgated to address the procedures required for approval pursuant to Section 112(l)(5) of the CAA. Any request for approval must meet all Section 112(l) approval criteria, as well as all approval criteria of Section 63.91. A more detailed analysis of the State's submittal pursuant to Section 63.91 is contained in the Technical Support Document included in the official file of this rulemaking.

Under Section 112(l) of the CAA, approval of a State program is granted by the EPA if the Agency finds that it: (1) is "no less stringent" than the

corresponding Federal program, (2) that the State has adequate authority and resources to implement the program, (3) the schedule for implementation and compliance is sufficiently expeditious, and (4) the program is otherwise in compliance with Federal guidance.

C. Analysis

EPA is approving Wisconsin's 'mechanism of delegation' because the State's submittal meets all requirements necessary for approval under Section 112(l). The first requirement is that the program be no less stringent than the Federal program. The Wisconsin program is no less stringent than the corresponding Federal program or rule because the State has requested either (1) delegation of standards unchanged from the Federal standards and adopting such standards into the State air quality regulations, or (2) that WDNR shall submit for approval to EPA, State rules varying from the Federal standard. EPA will review such rules for approvability pursuant to Section 112(l) and will rulemake on them.

Second, the State has shown that it has adequate authority and resources to implement the program. Wisconsin's State Statutes authorize the WDNR to issue construction and operating permits to Part 70 and non-Part 70 sources of regulated pollutants to assure compliance with all applicable requirements of the CAA. The authority to issue permits includes the authority to incorporate permit conditions that implement Federal Section 112 standards. Furthermore, Wisconsin has the authority to implement each Section 112 regulation, emission standard or requirement (regardless of Part 70 applicability), perform inspections, request compliance information, incorporate requirements into permits, and bring civil and criminal enforcement actions to recover penalties and fines. Finally, Wisconsin has the authority to enforce each Section 112 regulation, emission standard or requirement applicable to non-Part 70 sources upon incorporation into the State code of regulations. WDNR will enforce Section 112 standards applicable to Part 70 sources by including such Section 112 standards in State operating permits when they are issued or updated. Adequate resources will be obtained through Section 105 grant monies awarded to States by EPA and through any monies from the State's Title V program that can be used to fund acceptable Title V activities with respect to these non-Part 70 sources.

Third, upon promulgation of a standard, Wisconsin will immediately begin activities necessary for timely

implementation of the standard. These activities will involve identifying sources subject to the applicable requirement and notifying these sources of the applicable requirement. Such schedule is sufficiently expeditious for approval.

Fourth, nothing in the Wisconsin program for delegation is contrary to Federal guidance.

D. Determinations

In approving this delegation, EPA expects that the State will obtain concurrence from EPA on any matter involving the interpretation of Section 112 of the Clean Air Act or 40 CFR Part 63 to the extent that implementation, administration, or enforcement of these sections have not been covered by EPA determinations or guidance.

III. Final Action

The EPA is promulgating final approval of the December 22, 1995, request by the State of Wisconsin for delegation of Section 112 standards because the request meets all requirements of 40 CFR 63.91 and Section 112(l) of the CAA. Upon the effective date of this document, all existing section 112 standards which have been adopted unchanged in to the State rules are automatically delegated to the State of Wisconsin. Future delegation of the Section 112 standards to the State will occur according to the procedures outlined in the MOA upon EPA's promulgation of the standard.

Effective immediately, all notifications, reports and other correspondence required under Section 112 standards should be sent to the State of Wisconsin rather than to the EPA, Region 5, in Chicago. Affected sources should send this information to: Bureau of Air Management, Wisconsin Department of Natural Resources, 101 South Webster Street, P.O. Box 7921, Madison, Wisconsin 53707.

EPA is publishing this action without prior proposal because EPA views this action as a noncontroversial revision and anticipates no adverse comments. However, the rulemaking will not be deemed final if timely unaddressed adverse or critical comments are filed. The "direct final" approval shall be effective on June 2, 1997, unless EPA receives such adverse or critical comments by May 1, 1997. EPA is now soliciting public comments on this action. Any parties interested in commenting on this action should do so at this time. In the proposed rules section of this **Federal Register**, EPA is publishing a separate document which constitutes a "proposed approval" of the requested delegation. If EPA receives

timely comments adverse to or critical of the approval discussed above, which have not been addressed by the State or EPA, EPA will publish a **Federal Register** document which withdraws this final action. All public comments received will then be addressed in a subsequent rulemaking document based on the proposed approval. 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.

Copies of the State's submittal and other information relied upon for the final approval are contained in a rulemaking file maintained at the EPA Regional Office. The file is an organized and complete record of all the information submitted to, or otherwise considered by, EPA in the development of this final approval. The file is available for public inspection at the location listed under the **ADDRESSES** section of this document.

Nothing in this action should be construed as permitting, allowing or establishing a precedent for any future request for revision to the State's delegated air toxics program. EPA shall consider each request for revision to the State's delegated air toxics program 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 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 H. Shapiro, Acting Assistant Administrator for Air and Radiation. The Office of Management and Budget exempted this regulatory action from Executive Order 12866 review.

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.

Delegation of the Section 112 standards unchanged from the Federal standard does not create any new requirements, but simply allows the State to administer requirements that have been or will be separately promulgated. Therefore, because this delegation approval does not impose

any new requirements, I certify that it does not have a significant impact on any small entities affected.

Under Sections 202, 203 and 205 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, 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.

EPA has determined that the approval action promulgated today does not constitute a Federal mandate that may result in estimated costs of \$100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. The State voluntarily requested this delegation under Section 112(l) for the purpose of implementing and enforcing the air toxics program with respect to sources not covered by Part 70. The delegation imposes no new Federal requirements. Since the State was not required by law to seek delegation, this Federal action does not impose a mandate on the State.

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 June 2, 1997. 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).)

Under 5 U.S.C. 801(a)(1)(A) as added 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 this rule in today's **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 63

Environmental Protection, Administrative practice and procedure, Air pollution control, Hazardous substances, Intergovernmental relations.

Authority: 42 U.S.C. 7401, *et seq.*

Dated: February 7, 1997.

Michelle D. Jordan,

Acting Regional Administrator.

[FR Doc. 97-8183 Filed 3-31-97; 8:45 am]

BILLING CODE 6560-50-P

40 CFR Part 63

[IN74-1(a); FRL-5687-8]

Approval of Section 112(l) Program of Delegation; Indiana

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving, through a "direct final" procedure, a request for delegation of the Federal air toxics program contained within 40 CFR Parts 61 and 63 pursuant to section 112(l) of the Clean Air Act (CAA) of 1990. The State's mechanism of delegation involves State rule adoption of all existing and future section 112 standards unchanged from the Federal standards. The actual delegation of authority of individual standards will be in the form of a letter from EPA to the Indiana Department of Environmental Management (IDEM). This request for approval of a mechanism of delegation encompasses all sources not covered by the Part 70 program.

DATES: This action will become effective June 2, 1997, unless adverse or critical comments not previously addressed by the State or EPA are received by May 1, 1997. If the effective date is delayed, timely notice will be published in the **Federal Register**.

ADDRESSES: Copies of the State's submittal and other supporting information used in developing the approval are available for inspection during normal business hours at the following location: EPA Region 5, 77 West Jackson Boulevard, AR-18J, Chicago, Illinois, 60604.

Please contact Sam Portanova at (312) 886-3189 to arrange a time if inspection of the submittal is desired.

FOR FURTHER INFORMATION CONTACT: Sam Portanova, AR-18J, 77 West Jackson Boulevard, Chicago, Illinois, 60604, (312) 886-3189.

SUPPLEMENTARY INFORMATION:

I. Background and Purpose

Section 112(l) of the CAA enables the EPA to approve State air toxics programs or rules to operate in place of the Federal air toxics program. The Federal air toxics program implements the requirements found in section 112 of the CAA pertaining to the regulation of hazardous air pollutants. Approval of an