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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[IL171-1a; FRL-6536-1]

Approval and Promulgation of Implementation Plans; Illinois

AGENCY: United States Environmental Protection Agency (USEPA).

ACTION: Direct final rule.

SUMMARY: The USEPA is approving the incorporation of revised air pollution permitting and emissions standards rules into the Illinois State Implementation Plan (SIP). The State submitted this request for revision to its State Implementation Plan to USEPA on February 5, 1998. This approval makes the State's rule federally enforceable.

DATES: This rule is effective on April 17, 2000, unless USEPA receives adverse written comments by March 20, 2000. If USEPA receives adverse comment, we will publish a timely withdrawal of the rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: You should send written comments to: J. Elmer Bortzer, Chief, Regulation Development Section, Air Programs Branch (AR-18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Copies of the plan and USEPA's analysis are available for inspection at the U.S. Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. (Please telephone John Kelly at (312) 886-4882 before visiting the Region 5 Office.)

Copies of the plan are also available for inspection at the Illinois Environmental Protection Agency, Division of Air Pollution Control, 1021 North Grand Avenue East, Springfield, Illinois 62707-60015.

FOR FURTHER INFORMATION CONTACT: John Kelly, Environmental Scientist, Permits and Grants Section (IL/IN/OH), Air Programs Branch (AR-18J), USEPA, Region 5, Chicago, Illinois 60604, (312) 886-4882.

SUPPLEMENTARY INFORMATION: Throughout this document, "we," "us," or "our" are used to mean USEPA.

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I. Questions and Answers

A. What Action Is USEPA Taking?

We are approving two revisions to the Illinois State Implementation Plan which the State of Illinois requested. Specifically, we are approving the incorporation of revisions to Title 35 of the Illinois Administrative Code (35 IAC) 201.146, *Exemptions from State Permit Requirements* into the Illinois State Implementation Plan. These revisions clarify, modify and add to the list of emission units and activities which are exempt from State permitting requirements.

The revised section now takes into consideration the listing of insignificant activities in 35 IAC 201.210, *Categories of Insignificant Activities or Emission Levels*. The revision adds some emission units and activities to the list of those that are exempt from certain State permitting requirements, and clarifies that other State permitting requirements may apply. For example, if a new emission unit is subject to Federal New Source Performance Standards, then it will need a State construction permit.

B. Why Is USEPA Taking This Action?

We are acting on a February 5, 1998, request from the Illinois EPA to revise the Illinois State Implementation Plan.

C. How Do These Rule Changes Affect Current Federal Requirements?

State construction or operating permits are no longer required for 58 categories of emission units and activities listed in 35 IAC 201.146, *Exemptions from State Permit Requirements*. Prior to this rule revision there were 24 categories qualifying for

exemption. These rule changes do not affect permitting under major New Source Review or Federal operating permits under Title V of the Clean Air Act.

D. Why Has the State Made These Regulatory Changes?

The State has made these changes primarily to remove the requirement to obtain a State construction and operating permit for emission units with very low emissions and where the permit would serve no real environmental or informational need.

Many of these emission units have been deemed insignificant under Illinois' Clean Air Act Permit Program (CAAPP) as specified in 35 IAC 201.210 and, therefore, warrant consideration for exemption from State permitting requirements. However, the emission unit categories listed as insignificant in 35 IAC 201.210 are not automatically exempted in 201.146, because Illinois does not believe that all of the activities listed as insignificant under the CAAPP merit exemption from State permit requirements. Illinois' rationale is that Illinois EPA retains some discretion under the CAAPP to determine if a specific emission unit qualifies as insignificant. This discretion is appropriate under the CAAPP, as it applies to sources that are required to submit an application for a State construction and operating permit. The CAAPP permit application process allows Illinois EPA the opportunity to evaluate proposed insignificant emission units at a source. However, if an emission unit or activity qualifies for exemption from State permitting requirements under 35 IAC 201.146, no State construction and operating permit application is required and Illinois EPA therefore has no opportunity to evaluate the emission unit.

Certain amendments to section 201.146 clarify the types of activities or emission units that are covered by an exemption category. In several instances, the amendments modify an existing exemption category so that emission units subject to certain requirements to control emissions will require permits. Illinois believes that permitting for these activities is appropriate to assure compliance with these control requirements. Other revisions reflect current terminology. For example, changing the term "emission source" to "emission unit" removes potential confusion that can arise, since "source" can also be used to describe an entire site or facility.

E. What Types of Emission Units Are Affected by These Changes?

This SIP revision affects all emission units and activities subject to State permitting requirements pursuant to section 39 of the Illinois Environmental Protection Act (Illinois Act) and 35 IAC 201.142, 201.143, 201.144. For State operating permits, emission units only qualify for exemption if the units are located at a source that is not subject to the CAAPP pursuant to section 39.5 of the Illinois Act. For construction permits the exemption also includes emission units at a source subject to the CAAPP.

F. How Will USEPA's Approval of Revised Permit Exemptions Affect Air Quality?

Control requirements are independent of whether or not a source must have an operating permit. Other Federal and State regulations are not impeded by these revisions. USEPA does not anticipate that this action will adversely affect air quality.

G. How Can I Receive Additional Information About These Actions?

Contact the Illinois EPA or the USEPA at the addresses listed in the **ADDRESSES** and **FOR FURTHER INFORMATION CONTACT** sections located near the beginning of this rule.

H. Does This SIP Revision Contain Any Other Changes?

Yes, the State of Illinois has requested federal approval of the addition of Section 211.2285 Feed Mill to 35 IAC, Part 211 Definitions and General Provisions, Subpart B: Definitions.

I. What Is a Direct Final Rule?

We are publishing this action without prior proposal because we view this as a noncontroversial revision and anticipate no adverse comments. However, in a separate document in this **Federal Register** publication, we are publishing a proposal to approve the State Plan. This direct final action will be effective without further notice unless we receive relevant adverse written comments on the proposed approval by March 20, 2000. Should we receive such comments, we will publish a final rule informing the public that this direct final action will not take effect. We subsequently will publish a final rule addressing all comments received on the proposal. Therefore, any parties interested in commenting on this action should do so at this time. We do not anticipate providing an additional comment period for this rule. If we do not receive comments at this time, this

direct final action will be effective on April 17, 2000.

II. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866, entitled "Regulatory Planning and Review."

B. Executive Order 13045

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be "economically significant" as defined under Executive Order 12866, and (2) Concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to Executive Order 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

C. Executive Order 13084

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly affects or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian Tribes. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

D. Executive Order 13132

Federalism (64 FR 43255, August 10, 1999) revokes and replaces Executive Orders 12612 (Federalism) and 12875 (Enhancing the Intergovernmental Partnership). Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, because it merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment

rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

This rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co. v. U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

F. Unfunded Mandates

Under sections 202 of the Unfunded Mandates Reform Act of 1995 (“Unfunded Mandates Act”), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to the private sector, of \$100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include 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. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

G. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit 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 United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a “major rule” as defined by 5 U.S.C. 804(2). This rule will be effective April 17, 2000 unless EPA receives adverse written comments by March 20, 2000.

H. National Technology Transfer and Advancement Act

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires Federal agencies to evaluate existing technical standards when developing a new regulation. To comply with NTTAA, EPA must consider and use “voluntary consensus standards” (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical.

The EPA believes that VCS are inapplicable to this action. Today’s action does not require the public to perform activities conducive to the use of VCS.

I. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by April 17, 2000. 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, Administrative practice and procedure, Air pollution control, Hydrocarbons, Incorporation by reference,

Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: February 4, 2000.

Francis X. Lyons,

Regional Administrator, Region 5.

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

PART 52—[AMENDED]

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

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

Subpart O—Illinois

2. Section 52.720 is amended by adding paragraph (c)(152) to read as follows:

§ 52.720 Identification of plan.

* * * * *

(c) * * *

(152) On February 5, 1998, the Illinois Environmental Protection Agency submitted a requested revision to the Illinois State Implementation Plan. This revision provided additional exemptions from State of Illinois permit requirements codified by the State at Part 201 of Title 35 of the Illinois Administrative Code (35 IAC Part 201). The revision also added a definition of “Feed Mill” to Part 211 of 35 IAC (35 IAC Part 211).

(i) Incorporation by reference.

Illinois Administrative Code, Title 35: Environmental Protection, Subtitle B: Air Pollution, Chapter I: Pollution Control Board, Subchapter C: Emission Standards and Limitations for Stationary Sources.

(A) Part 211 Definitions and General Provisions, Subpart B: Definitions, Section 211.2285 Feed Mill. Added at 21 Ill. Reg. 7856, effective June 17, 1997.

(B) Part 201 Permits and General Conditions, Subpart C: Prohibitions, Section 201.146 Exemptions from State Permit Requirements. Amended at 21 Ill. Reg. 7878, effective June 17, 1997.

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