(B) Revised rules, ''Iowa Administrative Code,'' effective February 22, 1995. This revision approves new definitions to rule 567–20.2. This revision adopts EPA's definitions of ''EPA conditional method'' and ''EPA reference method.''

(ii) Additional material.

None.

[FR Doc. 95–22333 Filed 10–27–95; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 52

[OH83–1–6991a; FRL–5299–6]

Approval and Promulgation of Implementation Plans; Ohio

AGENCY: Environmental Protection Agency (USEPA).

ACTION: Direct final rule.

SUMMARY: USEPA is approving revisions to Ohio's program for issuing federally enforceable State operating permits. These revisions clarify that USEPA may deem individual permits to be deficient and not federally enforceable, even if the deficiencies are discovered only after the permit is issued. Then, if the company wishes to retain the benefits of the operating permit (typically, reduced requirements for sources with ''minor source'' allowable emissions levels), USEPA could require correction of the permit deficiencies to ensure that the permit limitations are truly federally enforceable.

DATES: This action is effective December 29, 1995 unless adverse or critical comments are received by November 29, 1995. If the effective date is delayed, timely notice will be published in the Federal Register.

ADDRESSES: Written comments should be addressed to: J. Elmer Bortzer, Chief, Regulation Development Section, Regulation Development Branch (AR–18J), United States Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Copies of the SIP revision and USEPA's analysis are available for public inspection during normal business hours at the following addresses: United States Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard (AE–17J), Chicago, Illinois 60604; and Office of Air and Radiation (OAR), Docket and Information Center (Air Docket 6102) Room M1500, United States Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: John Summerhays, Regulation Development Section, Regulation Development Branch (AE–17J), United States Environmental Protection Agency, Region 5, Chicago, Illinois 60604, (312) 886–6067.

SUPPLEMENTARY INFORMATION:

I. Review of State Submittal

On April 20, 1994, Ohio submitted rules to provide the option for the State to issue federally enforceable State operating permits (FESOPs). Unfortunately, the version of the rules that Ohio adopted and submitted inadvertently excluded some revisions requested by the United States Environmental Protection Agency (USEPA). On June 16, 1994, Ohio committed to make these intended revisions. On the basis of this commitment, USEPA conditionally approved Ohio's submittal on October 25, 1994, at 59 FR 53586.

On March 7, 1995, in accordance with its commitment, Ohio submitted revisions to its operating permit rules. USEPA found this submittal complete on March 27, 1995.

The principal revision in this submittal was to language in Rule 3745–35–07(B)(2). The language of the rule that Ohio submitted on April 20, 1994, stated:

> During the public comment period, the administrator may object that the terms and conditions of the permit to operate are not federally enforceable and the director shall not issue the permit to operate until such objection has been resolved.

USEPA expressed concern that this language could be construed to mean that USEPA had no authority to deem permits not federally enforceable once the permits had been issued. The March 7, 1995, submittal, in accordance with the State's commitment as submitted June 16, 1994, includes revised language that states:

> During the public comment period, IF the administrator OBJECTS that the terms and conditions of the permit to operate are not federally enforceable the director shall not issue the permit to operate until such objection has been resolved.

This revised language removes the implication that USEPA's authority to deem State operating permits not federally enforceable is limited to the State's public comment period. The fact that Ohio made this change, the revised language itself, and the discussion of the language by Ohio all indicate that USEPA is granted the authority to deem State operating permits to be not federally enforceable after permit issuance as well as before issuance. This change provides for satisfaction of the second criterion for FESOP program approval specified in USEPA's guidance published in the Federal Register of June 28, 1989 (at 54 FR 27274), that USEPA be authorized to deem relevant permits not federally enforceable. As a result, Ohio's rules now fully satisfy all criteria for FESOP program approval. (Ohio also revised the language concerning advance notification by sources of implementation of emissions trades, replacing the phrase ''advance notification * * * as specified in 40 CFR 70.4(6)(12)'' with the phrase ''seven day advance notification''; this clarification does not significantly affect program approvability.)

During the comment period on the October 25, 1994, direct final rulemaking, USEPA received two comment letters. The comments in these letters were not adverse or critical and did not require withdrawal of the direct final rulemaking. Nevertheless, it is appropriate to address these comments in the context of this rulemaking on Ohio's March 7, 1995, submittal.

The first comment was sent by the Natural Resources Defense Council (NRDC). NRDC did not object to USEPA approval of Ohio's rule. However, NRDC requested that the codification of USEPA's approval specify that FESOPs shall be enforceable not just by USEPA but also ''by any person under section 304 of the Clean Air Act.'' Section 304 indeed provides authority to any person to bring suits to enforce limits such as those contained in FESOPs. Thus, it is appropriate to amend the codification in 40 CFR 52.1888 as requested by NRDC.

The second comment was sent by Ohio EPA, by letter dated November 18, 1994. As discussed above, Ohio changed rule language that could be interpreted as limiting USEPA's authority to deem a State operating permit as not federally enforceable after permit issuance. Ohio takes the position that USEPA inherently has the authority to deem these permits not federally enforceable, and that ''Ohio does not believe it is in a position to make a specific authorization regarding the scope of USEPA's authority in this area.'' Therefore, Ohio argues that its rule revisions were not intended to provide ''veto'' authority to USEPA after permit issuance but instead were intended simply to remove an obstacle to USEPA exercising its preexisting authority.

This issue is somewhat moot, insofar as Ohio is not questioning USEPA's ''veto'' authority after permit issuance but is merely questioning the origins of that authority. In any case, USEPA believes that State operating permits are not inherently federally enforceable, and that these permits can only be federally enforceable if the State grants

USEPA that authority. Indeed, one of the criteria for USEPA approval of FESOP programs in the guidance cited above is that the State provide that USEPA has such authority. From this perspective, Ohio has satisfied these criteria by providing USEPA the authority to ''veto'' permits before and after issuance.

It is also clear that Ohio prefers for USEPA to use its pre-issuance ''veto'' authority rather than its post-issuance ''veto'' authority. USEPA will attempt to honor their preference to the extent practicable. While it may become necessary in limited cases to address problems that were only discovered after permit issuance, USEPA will endeavor to identify permits that are not federally enforceable prior to their issuance.

II. Rulemaking Action

Ohio's submittal satisfies its commitment to revise its rules to clarify that USEPA may deem State operating permits not federally enforceable. Therefore, USEPA is converting the prior conditional approval to a full approval. In the sense that a conditional approval is a ''temporary'' approval, today's action makes permanent Ohio's authorization to issue federally enforceable State operating permits.

The USEPA is publishing this action without prior proposal because USEPA views this action as a noncontroversial revision and anticipates no adverse comments. However, USEPA is publishing a separate document in today's Federal Register, which constitutes a ''proposed approval'' of the requested SIP revision and clarifies that the rulemaking will not be deemed final if we receive timely adverse or critical comments. The ''direct final'' approval shall be effective on December 29, 1995, unless USEPA receives adverse or critical comments by November 29, 1995, in which case USEPA will publish a Federal Register document which withdraws this final action. All public comments received will then be addressed in a subsequent rulemaking document.

Nothing in this action should be construed as permitting, allowing or establishing a precedent for any future request for revision to any SIP. USEPA 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 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 a July 10, 1995 memorandum from Mary Nichols, 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.*, USEPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. (5 U.S.C. 603 and 604.) Alternatively, USEPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, Part D of the Act do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP 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 Act, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of State action. The Act forbids USEPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *USEPA*, 427 U.S. 246, 256–66 (S.Ct. 1976); 42 U.S.C. 7410(a)(2).

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

Through submission of the State implementation plan or plan revisions approved in this action, the State has elected to adopt the program provided for under sections 110 and 112 of the Clean Air Act. The rules and commitments being approved in this action allow sources to request additional limitations (typically for the purpose of avoiding major source permitting requirements), but otherwise do not impose any requirements on State, local and tribal governments or private sector concerns. Thus, USEPA's action will impose no new requirements; and sources requesting limitations may in any case already request these limitations under State law. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action. The USEPA has also determined that this action does not include a mandate that may result in estimated costs or $100 million or more to State, local, or tribal governments in the aggregate or to the private sector.

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 29, 1995. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See Section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

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

Dated: September 5, 1995.

Michelle D. Jordan,

Acting Regional Administrator.

Title 40 of the Code of Federal Regulations, chapter I, part 52, is amended as follows:

PART 52—[AMENDED]

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

Authority: 42 U.S.C. 7401 - 7671q.

Subpart KK—Ohio

2. Section 52.1870 is amended by adding paragraph (c)(98) to read as follows:

§ 52.1870 Identification of plan.

* * * * *

(c) * * *

(98) On April 20, 1994, and March 7, 1995, Ohio submitted Rule 3745–35–07, entitled ''Federally Enforceable Limitations on Potential to Emit,'' and requested authority to issue such limitations as conditions in State operating permits.

(i) Incorporation by reference. Rule 3745–35–07, adopted November 3, 1994, effective November 18, 1994.

* * * * *

3. Section 52.1888 is revised to read as follows:

§ 52.1888 Operating permits.

Emission limitations and related provisions which are established in Ohio operating permits as federally enforceable conditions in accordance with Rule 3745–35–07 shall be enforceable by USEPA and by any person under section 304 of the Clean Air Act. USEPA reserves the right to deem permit conditions not federally enforceable. Such a determination will be made according to appropriate procedures, and will be based upon the permit, permit approval procedures or permit requirements which do not conform with the operating permit program requirements or the requirements of USEPA's underlying regulations.

§ 52.1919 [Amended]

4. Section 52.1919 is amended by removing paragraph (a)(2).

[FR Doc. 95–26589 Filed 10–27–95; 8:45 am]
BILLING CODE 6560–50–P

40 CFR Part 279

[FRL 5313–5]

Hazardous Waste Management System; Recycled Used Oil Management Standards

AGENCY: Environmental Protection Agency.

ACTION: Administrative stay.

SUMMARY: The Environmental Protection Agency (EPA or the Agency) today is announcing an administrative stay of the regulatory provisions set forth in 40 CFR 279.10(b)(2) applicable to mixtures of used oil destined for recycling and either characteristic hazardous waste or waste listed as hazardous because it exhibits a hazardous waste characteristic. The stay reinstates for these mixtures the regulatory requirements ordinarily applicable to mixtures containing hazardous waste, along with other applicable regulatory requirements, including but not limited to the 40 CFR Part 268 land-disposal restrictions (''LDRs''), until the Agency completes a new rulemaking addressing 40 CFR 279.10(b)(2).

EFFECTIVE DATE: December 29, 1995.

FOR FURTHER INFORMATION CONTACT: Tracy Bone at (202) 260–3509, Office of Solid Waste (5304), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

SUPPLEMENTARY INFORMATION: The contents of today's document are listed in the following outline:

I. Background

Section 3014(a) of the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. 6935(a), requires EPA to establish management standards for used oil destined for recycling. Those standards must protect public health and the environment and, to the extent possible within that context, not discourage used oil recycling.

Section 3014(a) was added to RCRA by the Used Oil Recycling Act of 1980, Pub. L. No. 96–463, § 7(a), 94 Stat. 2055, 2057 (1980). As originally enacted, section 3014(a) required EPA to establish performance standards and other requirements as may be necessary to protect the public health and the environment from hazards associated with recycled oil, but also specified that the Agency shall ''ensure that such regulations do not discourage the recovery or recycling of used oil.'' The Hazardous and Solid Waste Amendments of 1984 (HSWA), Pub. L. 98–616, § 242, 98 Stat. 3221, 3260 (1984), slightly altered the language of RCRA section 3014(a) to require that, in developing regulations addressing recycled used oil, the Agency shall ensure that such regulations do not discourage the recovery or recycling of used oil, ''consistent with the protection of human health and the environment.''

On September 10, 1992, EPA promulgated regulations pursuant to RCRA section 3014(a) governing the management of used oil destined for recycling. 57 FR 41566 (1992). These regulations are codified at 40 CFR Part 279. As part of these regulations, EPA promulgated a used oil mixture rule, 40 CFR 279.10(b), that specifies when mixtures of used oil destined for recycling and hazardous waste are regulated as used oil and when they are regulated as hazardous waste. Among other things, the used oil mixture rule specifies that mixtures of used oil destined for recycling and waste that is hazardous solely because it exhibits one or more of the hazardous waste characteristics identified in subpart C of 40 CFR Part 261, and mixtures of used oil and hazardous waste that is listed in subpart D of 40 CFR Part 261 solely because it exhibits one or more of the characteristics of hazardous waste identified in subpart C, are regulated as a hazardous waste under subtitle C of RCRA only if the resultant mixture exhibits a hazardous waste characteristic. 40 CFR 279.10(b)(2)(i). If the mixture does not exhibit a hazardous waste characteristic, it is regulated under the used oil management standards, and the hazardous waste regulations (including those relating to LDRs) are inapplicable.[1] 40 CFR 279.10(b)(2)(ii)–(iii).

Two weeks *after* EPA promulgated the used oil management standards, the D.C. Circuit issued its decision in *Chemical Waste Management, Inc.* v. *EPA*, 976 F.2d 2 (D.C. Cir. 1992), *cert. denied*, 113 S.Ct. 1961 (1993), a challenge to portions of the Agency's LDR regulations that did not prohibit dilution of certain characteristic hazardous wastes as a form of treatment.[2] The issue before the court was whether these regulations satisfied the requirements of RCRA section 3004(m), which mandates that treatment substantially diminish the toxicity of hazardous waste or the likelihood of migration of hazardous constituents from hazardous waste so that short-term and long-term threats to human health and the environment are minimized. The court held that, in authorizing dilution as a form of treatment for certain characteristic hazardous wastes, the Agency had not satisfied the requirements of RCRA section 3004(m) because dilution only removed the short-term threat posed by the characteristic, and did not address the long-term threat posed by hazardous constituents that could be present in such wastes.[3]

Petitions for review challenging EPA's used oil mixture rule subsequently were filed in the D.C. Circuit. *Safety-Kleen Corp.* v. *EPA*, No. 92–1629 (D.C. Cir.).

[1] In a separate part of the used oil regulations, EPA specified that mixtures of used oil and listed hazardous waste, except for wastes listed solely because they exhibit one or more of the characteristics of hazardous waste identified in subpart C of 40 CFR Part 261, must be handled as hazardous waste under subtitle C of RCRA and may not be managed as used oil. 40 CFR 279.10(b)(1); 57 Fed. Reg. at 41,581. That provision is not impacted by this stay.

[2] The LDR regulations, codified at 40 CFR Part 268, were promulgated pursuant to Section 3004 of RCRA, 42 U.S.C. 6924, which restricts the land disposal of certain hazardous wastes beyond specified dates unless the wastes are treated according to treatment standards established by the Agency.

[3] Pursuant to the *Chemical Waste Management* decision, the Agency has promulgated revisions to the 40 CFR Part 268 land disposal restrictions applicable to mixtures containing characteristic hazardous waste. *See* 58 Fed. Reg. 29860 (1993); 59 Fed. Reg. 47982 (1994).