

than 15 minutes before the hearing starts.

The rules of 26 CFR 601.601(a)(3) apply to the hearing.

Persons who wish to present oral comments at the hearing must submit comments and an outline of the topics to be discussed and the time to be devoted to each topic by September 3, 1997.

A period of 10 minutes will be allotted to each person for making comments.

An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Proposed Effective Date

This amendment applies to payments received by an entity on or after January 1, 1998.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 2. In § 1.894-1, paragraph (d) is added to read as follows:

§ 1.894-1 Income affected by treaty.

* * * * *

[The text of proposed paragraph (d) is the same as the text of § 1.894-1T(d) published elsewhere in this issue of the **Federal Register**.]

Michael P. Dolan,

Acting Commissioner of Internal Revenue.

[FR Doc. 97-17468 Filed 6-30-97; 12:19 pm]

BILLING CODE 4830-01-U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[TN 104-1-9706(a); TN 148-1-9705(a); FRL-5849-3]

Approval of Revisions to the Tennessee State Implementation Plan Regarding Visibility

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: On February 9, 1993, and December 19, 1994, the State of Tennessee, through the Tennessee Department of Environment and Conservation (TDEC), submitted to EPA revisions to the Tennessee State Implementation Plan (SIP) for the purpose of visibility protection. The intended effect of these revisions is to meet the requirements of the Clean Air Act (CAA) for the purpose of assuring visibility protection in mandatory Class I Federal areas. In the final rules section of this **Federal Register**, the EPA is approving the submitted chapter in its entirety as a direct-final rule without prior proposal because the EPA views this as a noncontroversial revision and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this proposed rule, no further activity is contemplated in relation to this proposed rule. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this document. Any parties interested in commenting on this document should do so at this time.

DATES: To be considered, comments must be received by August 1, 1997.

ADDRESSES: Written comments on this action should be addressed to William Denman at the Environmental Protection Agency, Region 4 Air Planning Branch, 61 Forsyth Street, SW, Atlanta, Georgia 30303. Copies of 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. Reference files TN104-01-9706 and TN148-01-9705. The Region 4 office may have additional background documents not available at the other locations.

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

Environmental Protection Agency, Region 4 Air Planning Branch, 61 Forsyth Street, SW, Atlanta, Georgia 30303. William Denman 404/562-9030

Tennessee Department of Environment and Conservation, Division of Air Pollution Control, 9th Floor L & C

Annex, 401 Church Street, Nashville, Tennessee 37243-1531

FOR FURTHER INFORMATION CONTACT: William Denman at 404/562-9030.

SUPPLEMENTARY INFORMATION: For additional information see the direct final rule which is published in the rules section of this **Federal Register**.

Dated: June 17, 1997.

A. Stanley Meiburg,

Acting Regional Administrator.

[FR Doc. 97-17184 Filed 7-1-97; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MO-025-1025; FRL-5852-2]

Approval and Promulgation of Implementation Plans; State of Missouri

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA proposes to approve two regulations which are components of Missouri's State Implementation Plan (SIP) to meet the 15% Rate-of-Progress Plan (15% Plan, or ROPP) requirements of section 182(b)(1)(A) of the Clean Air Act (CAA), as amended (the Act). Specifically, the EPA is proposing to approve Missouri rules 10 CSR 10-5.443, "Control of Gasoline Reid Vapor Pressure," and 10 CSR 10-5.490, "Municipal Solid Waste Landfills" (MSWL). The implementation of these rules will achieve reductions in the emissions of volatile organic compounds (VOC) of approximately 7.76 tons per day (TPD), or approximately 14 percent of the reductions required with the St. Louis ozone nonattainment area. Final action on these regulations will incorporate them into the Federally approved SIP.

DATES: Comments on this proposed action must be received in writing by August 1, 1997.

ADDRESSES: Comments may be mailed to Royan W. Teter, Environmental Protection Agency, Air Planning and Development Branch, 726 Minnesota Avenue, Kansas City, Kansas 66101.

FOR FURTHER INFORMATION CONTACT: Royan W. Teter at (913) 551-7609.

SUPPLEMENTARY INFORMATION: On March 18, 1996, the EPA proposed a limited approval and limited disapproval (61 FR 10968) of the SIP submitted by the state of Missouri to meet the 15% Plan requirements of section 182(b)(1)(A) of the CAA, as amended (the Act). The EPA also proposed conditional approval for two individual components of the 15% Plan. The EPA proposed a limited approval because the 15% Plan, submitted by Missouri, will result in significant emission reductions from the 1990 baseline and, thus, will improve air quality. The EPA proposed a limited disapproval of the 15% Plan because it failed to demonstrate sufficient reductions of VOCs to meet the 15% ROPP requirements.

Certain circumstances have arisen which the EPA believes make it appropriate to repropose approval for two regulations which make up a portion of Missouri's 15% Plan. What follows is an explanation of these circumstances and a summary of the technical basis for the EPA's proposal. A more detailed discussion is presented in the EPA's Technical Support Document (TSD).

I. 10 CSR 10-5.443, "Control of Gasoline Reid Vapor Pressure" (RVP)

RVP is a measure of a fuel's volatility. It reflects the rate at which gasoline evaporates and VOC emissions occur as it is directly proportional to the rate of evaporation. Hence, the lower the RVP, the lower the rate of evaporation. RVP restrictions during the summer months can help offset the effect of summer temperatures upon the volatility of gasoline which, in turn, lowers emissions of VOCs. VOC emissions are an important component in the production of ground level ozone during the hot summer months. Hence, further restricting the allowable RVP of gasoline sold within the St. Louis nonattainment area will help the state's effort to attain and maintain compliance with the National Ambient Air Quality Standard (NAAQS) for ozone.

A. Background

In 1994, Missouri proposed the RVP rule as an interim and immediate strategy to reduce VOC emissions and was not intended as a permanent and long-term component of the 15% Plan. As such, the 1994 7.2 pounds per square inch (psi) low RVP rule was not submitted to the EPA prior to the 1994 ozone season and was not Federally enforceable. The proposed rule was not intended to imply a preference for either low RVP or reformulated gasoline (RFG) as a fuel control strategy for 1995 and

beyond. Missouri adopted an RVP strategy in light of the expediency with which it could be implemented to reduce VOC emissions in the St. Louis area. It was also recognized that the RVP of southern grade RFG is limited to a maximum of 7.2 psi RVP. An RVP limit of 7.2 psi for conventional gasoline would have an immediate impact on air quality while still providing the flexibility to opt into the RFG program, if the state legislature grants the enabling authority to select RFG as a fuel control strategy for St. Louis.

Almost immediately after the proposed 7.2 psi RVP rule was adopted by Missouri Air Conservation Commission (MACC) in March 1994, the state resumed discussions with several petroleum industry representatives on the option of further restricting the RVP of St. Louis's gasoline. An agreement was reached regarding the 15% Plan for the St. Louis area, which included lowering gasoline RVP control to 7.0 psi, as provided in the current state rule.

To meet the 15% VOC emission reduction requirement of the CAA, as well as to demonstrate attainment of the ozone standards by 1996, the Missouri Department of Natural Resources (MDNR) evaluated the Region's emission inventory to determine the feasibility of controlling emissions from all source categories. The selected emission controls were required to be timely, effective, and enforceable. Missouri investigated additional controls for a broad range of source categories including mobile sources, fuel distribution, fuel consumption, automobile refinishing, architectural surface coating, solvent cleaning, lithographic and graphic art processes, open burning, pesticide application, and several categories subject to Federal air toxics regulations. Based on the investigation of these and other potential emission control measures, Missouri concluded that a motor vehicle fuel control measure would be necessary to meet the CAA requirements for the St. Louis ozone nonattainment area. As such, Missouri revised the St. Louis RVP rule, thereby establishing an RVP limit of 7.0 psi with a 1 psi waiver for gasoline containing at least 9 percent, but no more than 10 percent, ethanol. The revised rule became effective on May 28, 1995, and was incorporated into Missouri's 15% Plan; however, Missouri did not address the prohibition of RVP restrictions beyond those established at the Federal level as prescribed in section 211(c)(4)(A) of the CAA or the provisions in section 211(c)(4)(C) which allow for a waiver from the prohibition under certain circumstances. Likewise, the EPA did

not address these issues in its March 18, 1996, proposal. Missouri has since addressed the requirements of the Act; thus, the EPA believes it appropriate to repropose approval of Missouri's RVP rule. What follows is a discussion of the requirements of the CAA and a description of how Missouri addressed these requirements.

B. Regulatory History

In August 1987, the EPA first proposed in the **Federal Register** (FR) a two-phase national program to reduce summertime gasoline volatility (52 FR 31274). The EPA's proposal resulted in a two-phase final regulation which was incorporated into the 1990 Amendments to the CAA in section 211(h). Phase I of the regulation took effect in 1990 for the years 1990 and 1991. Phase II of the regulation took effect in May 1992 (55 FR 23658). The rule separated areas of the country into two regions identified as Class B and Class C. Generally, Class B states are the warmer southern and western states, and Class C states are the cooler northern states. Some ozone nonattainment areas were also required to meet more stringent RVP requirements. For Class B geographical areas such as St. Louis, the Phase II regulation limits the volatility of gasoline sold during the high ozone season (June through September) to 9.0 and 7.8 psi RVP for attainment and nonattainment areas, respectively. Because of its nonattainment status, St. Louis was required to comply with 7.8 psi RVP.

C. Necessity Finding

As noted above, Missouri did not find the Phase II fuel volatility control regulation sufficient to ensure expeditious attainment of the NAAQS for ozone. A more stringent low RVP requirement was deemed necessary to ensure attainment and maintenance of the ozone standard.

Under sections 211(c) and 211(h) of the CAA, the EPA has promulgated nationally applicable Federal standards for RVP levels in motor vehicle gasoline. Because a Federal control promulgated under section 211(c)(1) applies to the fuel characteristic RVP, nonidentical state controls are prohibited under section 211(c)(4). Section 211(c)(4)(A) of the Act prohibits state regulation respecting a fuel characteristic or component for which the EPA has adopted a control or prohibition, unless the state control is identical to the Federal control. Under section 211(c)(4)(C), the EPA may approve a nonidentical state fuel control as a SIP provision, if the state demonstrates that the measure is necessary to achieve the

national primary or secondary ambient air quality standard that the plan implements. The EPA can approve a state fuel requirement as necessary only if no other measures would bring about timely attainment, or if other measures exist but are unreasonable or impracticable. While the Missouri low RVP requirement is preempted by the Federal RVP requirements, the state can implement the low RVP requirement if the EPA finds it necessary and approves it as a revision to the SIP.

On February 4, 1997, MDNR submitted to EPA Region VII a draft revision to the 15% ROPP in which the state requested authorization to regulate fuel volatility, in accord with section 211(c)(4)(C). Included in the submittal were materials providing justification for requesting an exemption under section 211(c)(4)(C) of the CAA. A public hearing in regards to the SIP was held on February 27, 1997. The SIP revision was adopted by the MACC on March 27, 1997, and submitted to the EPA on May 8, 1997.

In its submittal, Missouri showed that additional VOC reductions are needed to address St. Louis's recent history of nonattainment problems and to ensure attainment of the ozone NAAQS in the nonattainment area. While the area is designated as a moderate nonattainment area, the St. Louis area is currently in danger of being classified as a serious ozone nonattainment area due to exceedances occurring since 1993. Missouri estimates that the area needs to achieve approximately 53.8 tons per day of VOC reductions to attain the ozone NAAQS. Because emission trends continue to increase, the state believes it is important that control measures producing a significant portion of the needed reduction be implemented and enforceable in time to reduce emissions beginning in the 1997 ozone season. Otherwise, there is a significant risk of exceedances and violations in 1997, and this risk will increase over time. The EPA agrees that an important criterion in evaluating the reasonableness of each control measure is whether it will achieve significant emission reductions in the near term, beginning in the 1997 and 1998 ozone seasons.

Missouri evaluated a broad range of available control measures to determine whether there are sufficient reasonable and practicable measures available to produce the needed emissions reductions without requiring low RVP gasoline. In addition to assessing the quantity of emission reductions attributable to each control measure, the state also considered the time needed for implementation and cost effectiveness of each measure in

evaluating the reasonableness and practicability of the other control measures in comparison to the low RVP gasoline requirements. Missouri found that a 7.0 psi RVP requirement would produce an estimated 6.28 tons per day of VOC emissions reductions. Based on the state's evaluation, the EPA finds that there are not sufficient other reasonable and practicable measures available to produce the quantity of emissions reductions needed to continue to achieve the NAAQS, and thus a low RVP requirement is necessary.

Although, as mentioned previously, the state's adoption of a low RVP requirement would not preclude the state from subsequently opting in to the RFG program, Missouri's submittal did not include a demonstration that RFG is unreasonable. Missouri noted that RFG is not available in St. Louis as a matter of state law, since its enabling legislation does not allow it to establish both an RFG program and an enhanced motor vehicle inspection and maintenance program.

The EPA concurs with the state's analysis and its implicit determination that "other measures" (as specified in section 211(c)(4)) need not encompass other state fuel measures including state opt-in to Federal RFG. The Agency believes that the Act does not require a state to demonstrate that other fuel measures are unreasonable or impracticable, but rather section 211(c)(4) is intended to ensure that a state resorts to a fuel measure only if there are no available practicable and reasonable nonfuels measures. Thus, in demonstrating that measures other than requiring low RVP gasoline are unreasonable or impracticable, a state is not required to submit a demonstration that other state fuel requirements or state opt-in to RFG are unreasonable or impracticable. This interpretation resolves the ambiguity of the phrase "other measures" and reasonably balances the interests underlying the statutory preemption provision. In addition, the result preserves the state's role, specified in section 101(a)(3) of the Act, as the entity primarily responsible for determining the mix of controls to be used to achieve the required emission reductions.

The state has already implemented virtually every other reasonably available control measure. Other measures that could achieve emission reductions (such as Graphic Arts, Pesticide Application, Aircraft Emissions, Stage II Vapor Recovery, Marinas, Breweries, Asphalt Application, Barge Loading, Unloading, and Transport) would only achieve a small portion of the needed emission

reductions. A detailed discussion of Missouri's findings relative to the emission reduction potential of each of these measures can be found in the EPA's TSD, as well as a detailed discussion of the EPA's necessity finding.

D. Analysis of the Rule

The Missouri rule specifies that no person shall dispense, supply, exchange in trade, offer for sale or supply, and sell or store gasoline used as a fuel for motor vehicles that has an RVP greater than 7.0 psi, or 8.0 psi for gasoline containing at least 9.0 percent by volume but not more than 10.0 percent by volume of ethanol. This rule applies beginning June 1 through September 15 of each year.

In addition, facilities other than a gasoline dispensing facility shall keep and maintain at the facility, for two years following the date of the RVP test, records of the information regarding the RVP of gasoline that is to be used as a fuel for motor vehicles.

Gasoline used exclusively for fueling implements of agriculture and gasoline in any tank, reservoir, storage vessel, or other stationary container with a nominal capacity of 500 gallons or less shall be exempt from this regulation.

The sampling procedures and test methods are consistent with the EPA recommendations as described in 40 CFR part 80, Appendices D, E, and F.

II. 10 CSR 10-5.490, "Municipal Solid Waste Landfills"

A. Background

On March 12, 1996, the EPA adopted New Source Performance Standards for Municipal Solid Waste Landfills (Title 40 CFR part 60, subpart WWW) and Emission Guidelines (EG) and Compliance Times for Municipal Solid Waste Landfills (Title 40 CFR part 60, subpart Cc). The subpart Cc EGs apply to existing MSWLs.

Six MSWLs are located in the St. Louis area. Landfills emit VOCs, including methane, through the decomposition of solid waste. The 1990 base year inventory indicates the nonmethane VOCs emitted from these six landfills are 1.51 TPD. At the time of the EPA's previous proposal on Missouri's 15% Plan, the submitted plan included only a discussion of a rule which would result in a 1.48 TPD reduction in VOC emissions within the St. Louis nonattainment area. In part, the delay in adopting a final rule was related to the state's plans to model its rule after the EPA emission standards which at the time, were yet to be promulgated. Final promulgation of the

EPA's emission standards for landfills was significantly delayed. In an October 21, 1994, letter to Gale Wright, then Chief of the EPA Air Branch, from Roger Randolph, Director, MDNR, Air Pollution Control Program, the state committed to developing this rule with implementation in 1996. The state had made every effort to move forward with this rule despite delays in the promulgation of the EPA's emission standards. Missouri submitted a draft of a rule for the EPA comment on May 17, 1995. The EPA provided comments on the draft rule in June 1995. Noting the state's progress, the EPA proposed to conditionally approve the emissions reduction credit claimed in the submitted 15% Plan. Final approval was subject to the state's submittal of a final rule by no later than November 15, 1996. The public hearing for 10 CSR 10-5.490 was held July 25, 1996. The MACC adopted 10 CSR 10-5.490, "Municipal Waste Landfills," on August 29, 1996, and the rule became effective on December 30, 1996. The final rule was submitted to the EPA on February 24, 1997. Because the final rule was not available at the time of the EPA's previous proposal and the state has met the condition for final approval prior to the EPA having taken final action on the March 18, 1996, proposal it is necessary to repropose action on this element of Missouri's 15% Plan.

B. Analysis of the Rule

Rule 10 CSR 5.490, "Municipal Solid Waste Landfills," covers the St. Louis nonattainment area. This rule meets or exceeds the requirements of the EG. The EG requires that landfills having design capacities of two and a half (2.5) million Mg by mass or greater and NMOC emissions of 50 Mg or greater shall install a gas collection and control system. Rule 10 CSR 10-5.490 is more stringent in that it applies to landfills having a design capacity of one million Mg by mass or greater and NMOC emissions of 25 Mg per year. A detailed analysis of the state's rule can be found in the EPA's TSD.

III. Proposed Action

By this action, the EPA proposes to approve Missouri rules 10 CSR 10-5.443, "Control of Gasoline Reid Vapor Pressure," and 10 CSR 10-5.490, "Municipal Solid Waste Landfills," as part of Missouri's SIP to meet the 15% ROPP requirements of section 182(b)(1)(A) of the CAA. This proposed SIP revision meets the requirements of section 110 and Part D of Title I of the CAA and 40 CFR part 51.

As indicated above, this action proposes approval of two rules submitted as part of Missouri's 15% Plan. The EPA, as explained previously, had proposed to approve or conditionally approve the regulations included in the 15% Plan, and to give limited approval and limited disapproval to the reductions claimed in the 15% Plan. The rationale was detailed in the March 18, 1996, proposal also referenced previously in this notice. The EPA is considering taking final action on the regulations in the 15% Plan, including the specific regulations described in this notice, as a separate action from the final action on the 15% reduction credits. The EPA also requests comments on whether the regulations may be acted on separately from the 15% reduction credits.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for 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.

IV. Administrative Requirements

A. Executive Order 12866

This action has been classified as a Table 3 action for signature by the Regional Administrator under the procedures published in the FR 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 Executive Order 12866 review.

B. Regulatory Flexibility Act

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.

This Federal action authorizes and approves into the Missouri SIP requirements previously adopted by the state, and imposes no new requirements. Therefore, the Administrator 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)).

C. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, the 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 private sector, of \$100 million or more. Under section 205, the 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 the EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

The EPA has determined that the proposed action 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 authorizes and approves into the Missouri SIP requirements previously adopted by the state, and imposes no new requirements. Accordingly, no additional costs to state, local, or tribal governments, or to the private sector, result from this action.

List of Subjects in 40 CFR Part 52

Environmental protection, 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.

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

Dated: June 20, 1997.

William Rice,

Acting Regional Administrator.

[FR Doc. 97-17372 Filed 7-1-97; 8:45 am]

BILLING CODE 6560-50-P