

comment and delayed effective date provisions of 5 U.S.C. 553.

The Secretary of Veterans Affairs hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–602, since this final rule does not contain any substantive provisions. Therefore, pursuant to 5 U.S.C. 605(b), this final rule is exempt from the regulatory flexibility analysis requirements of §§ 603 and 604.

Approved: December 6, 1999.

**Togo D. West, Jr.**

*Secretary of Veterans Affairs,*

For the reasons set out in the preamble, under 38 U.S.C. 501, 38 CFR chapter 1 is amended as set forth below:

#### **CHAPTER I—DEPARTMENT OF VETERANS AFFAIRS**

1. In chapter I, revise all references to “Office of Counsel to the Chairman (01C)” to read “Office of the Senior Deputy Vice Chairman (012)”.

[FR Doc. 00–606 Filed 1–10–00; 8:45 am]

**BILLING CODE 8320–01–P**

## **ENVIRONMENTAL PROTECTION AGENCY**

### **40 CFR Part 52**

[085–1085b; FRL–6517–9]

#### **Approval and Promulgation of Implementation Plans; State of Kansas**

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

**ACTION:** Direct final rule.

**SUMMARY:** EPA is approving a variety of revisions to the State Implementation Plan (SIP) for Kansas. These revisions include revising and renumbering regulatory definitions, streamlining opacity requirements, expanding testing of gasoline delivery vehicles, and methods for calculating actual emissions. These revisions enhance and strengthen the SIP to promote attainment and maintenance of established air quality standards.

**DATES:** This direct final rule is effective on March 13, 2000 without further notice, unless EPA receives adverse comment by February 10, 2000. If adverse comment is received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

**ADDRESSES:** All comments should be addressed to: Christopher D. Hess, U.S.

EPA Region VII, 901 North 5th Street, Kansas City, Kansas 66101, or via e-mail at [hess.christopher@epamail.epa.gov](mailto:hess.christopher@epamail.epa.gov).

Copies of the state submittal(s) are available at the following addresses for inspection during normal business hours: Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101; and the Environmental Protection Agency, Air and Radiation Docket and Information Center, Air Docket (6102), 401 M Street, SW, Washington, DC 20460.

#### **FOR FURTHER INFORMATION CONTACT:**

Christopher D. Hess, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101, (913) 551–7213.

#### **SUPPLEMENTARY INFORMATION:**

Information regarding this action is presented in the following order:

Why is EPA taking this action?

Who should be concerned with these revisions?

How does EPA decide these revisions are approvable?

“Final Action.”

Throughout this document, wherever “we, us, or our” is used, that means EPA.

#### **Why Is EPA Taking This Action?**

The state of Kansas maintains a SIP that contains regulations, control measures, and strategies to maintain national ambient air quality standards (NAAQS). Our process for approving revisions to the SIP allows all interested citizens, government agencies, and regulated groups and individuals to know precisely what is in the SIP. It also allows us or the public to take enforcement action to address violations of the approved regulations.

#### **Who Should Be Concerned With These Revisions?**

If you use the state of Kansas’ regulatory definitions, are concerned with opacity requirements (especially in Wyandotte County), operate a gasoline delivery vehicle in Kansas City, or need to know how to calculate actual emissions, the revisions we are approving may interest you. We are providing a summary of each revision in the next four sections.

##### *A. Kansas Regulatory Definitions*

K.A.R. 28–19–7 of the previously approved SIP contained the primary definitions for the Kansas air quality regulations. This section is now revoked. The definitions are now included in K.A.R. 29–19–200, which is a planned renumbering of the regulations by the state. Furthermore, the Federal lists of volatile organic

compounds (VOC) and hazardous air pollutants that were previously contained in K.A.R. 28–19–7 are now contained in K.A.R. 28–19–201. K.A.R. 28–19–16a, regarding new source permit requirements for designated nonattainment areas, is amended to remove duplications of certain terms previously contained in K.A.R. 28–19–7 that now appear in K.A.R. 28–19–200.

The net effect is that the definitions are now renumbered, free of duplications, and the Federal lists are now separated from the main body of definitions so that changes generated by Federal revisions can be made quickly and without reprinting the entire definitions section (e.g., the new K.A.R. 28–19–200) each time a Federal revision is enacted.

##### *B. Opacity*

K.A.R. 28–19–50 of the previously approved SIP contained the general opacity regulations (“opacity” is a term that describes the percentage of visible air emissions allowable from an emissions unit). K.A.R. 28–19–52 contained the exceptions to the general opacity requirements contained in K.A.R. 28–19–50.

Both of the existing opacity regulations are now revoked. Their content is now incorporated into K.A.R. 28–19–650. This new, single regulation also incorporates provisions for Wyandotte County regarding opacity.

The net effect of these revisions is that previous opacity requirements remain in effect but are now contained in renumbered regulations. Additionally, by including the local rules from Wyandotte County, the state rule is now consistent with the local rule, which was previously approved by EPA as part of the SIP as a local, but not a state, rule.

##### *C. Gasoline Delivery Vehicles in Kansas City*

K.A.R. 28–19–70 in the Kansas air quality regulations establish controls on emissions of VOCs from gasoline delivery vehicles. The regulation is now revised so that inspections of vehicles to determine compliance is expanded from two months to five months of each year. This change will increase the ability of Kansas to ensure that testing and compliance demonstrations are performed for gasoline delivery vehicles.

##### *D. Method for Determining Actual Emissions*

In regulation K.A.R. 28–19–20, the state outlines various alternatives for calculating actual emissions for owners or operators of an emissions unit or stationary source.

The regulation enables sources to determine actual emissions using data from continuous monitoring systems, approved emissions factors, material balances, or methods specified in an issued permit. If a source is unable to qualify for one of these methods, the calculation will be performed using the potential to emit of the emission unit or stationary source.

#### *E. Permit Applicability Limits*

We are not acting on one portion of the Kansas SIP submittal. The May 3, 1999, submittal contains a new regulation, K.A.R. 28-19-564, which provides an exemption from certain major source permitting requirements for sources which limit their emissions to specified levels. During the state's rule adoption process, we commented that the rule should be revised to define more clearly the records that sources must keep to demonstrate their emission levels. In response, Kansas indicated that it would make changes in the rule to address EPA concerns at a later date. EPA plans to propose action on K.A.R. 28-19-564 after the state has made revisions and submitted them to EPA.

If you are interested in a technical analysis of these revisions, please request the technical support document (TSD) from us. It is dated July 22, 1999, and titled "Kansas SIP Revisions, 1999." Please refer to the contact information provided in the summary section of this document to request the TSD.

#### **How Does EPA Decide These Revisions Are Approvable?**

First, we participate with the state to identify which portions of the SIP need to be revised to, for example, incorporate changes in Federal regulations or strengthen measures used to maintain the NAAQS. The state then initiates a public consultation process that allows anyone who is interested to provide comments on proposed regulations. Once these regulations are adopted as final by the state, they are submitted to us for Federal approval.

We then compare the state's revised regulations to established Federal criteria to ensure those regulations meet all Federal criteria. (Although we participate early in the rule revision process, the subsequent public review process can occasionally mean the state makes certain revisions to the proposed regulations. So, we make sure that any revisions still meet all applicable criteria after the state regulations are finalized).

The criteria we use are contained in a variety of documents such as the Clean Air Act (CAA) and the Code of Federal Regulations. When a state's

proposals fulfill Federal requirements, we propose approval through this **Federal Register** document.

As mentioned earlier, we have conducted a rigorous technical analysis of these revisions in our TSD, and anyone who is interested can request that document to examine these revisions more closely.

In summary, we consider all of the proposed revisions noncontroversial and fully approvable. Each revision is already an adopted requirement in Kansas and, as such, has undergone extensive public review and comment process. Therefore, we are not imposing any new requirements that are not already in effect in the state of Kansas or in Wyandotte County.

#### **Final Action**

EPA is approving revisions submitted by the state of Kansas regarding the topics outlined in this document. Nothing in this action should be construed as making any determinations or expressing any position with regard to Kansas' audit law (K.S.A. 60-3332, *et seq.*), and this action does not express or imply any viewpoint regarding any legal deficiencies in this or any other Federally authorized, delegated, or approved program resulting from the effect of Kansas' audit law.

EPA is publishing this document without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should adverse comments be filed. This action will be effective March 13, 2000 without further notice unless the Agency receives adverse comments by February 10, 2000.

If EPA receives such comments, then EPA will publish a document withdrawing the final rule and informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period. Parties interested in commenting should do so at this time. If no such comments are received, the public is advised that this action will be effective on March 13, 2000 and no further action will be taken on the proposed rule.

#### **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 13132*

Federalism (64 FR 43255, August 10, 1999) revokes and replaces Executive Order 12612 (Federalism) and Executive Order 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 final 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. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

##### *C. 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 is not an economically significant regulatory action as defined by Executive Order 12866, and it does not establish a further health or risk-based standard because it approves state rules which implement a previously promulgated health or safety-based standard.

#### D. Executive Order 13084

Under Executive Order 13084, Consultation and Coordination with Indian Tribal Governments, EPA may not issue a regulation that is not required by statute, that significantly 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 OMB, 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. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

#### E. Regulatory Flexibility Act (RFA)

The 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 final 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 CAA do not create any new requirements, but simply approve requirements that the state is already imposing. Therefore, 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 CAA, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The CAA 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 Section 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 annual 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 annual 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 preexisting 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 United States Senate, the United States House of Representatives, and the United

States Comptroller General prior to publication of the rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

#### H. Petitions for Judicial Review

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 March 13, 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, Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: November 29, 1999.

**Dennis Grams, P.E.,**

*Regional Administrator, Region VII.*

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 R—Kansas

2. In § 52.870 the table in paragraph (c) is amended by:

a. Removing entries "K.A.R. 28-19-7" and "K.A.R. 28-19-50";

b. Revising entries "K.A.R. 28-19-16a", "K.A.R. 28-19-20" and "K.A.R. 28-19-70";

c. Adding in numerical order entries "K.A.R. 28-19-200" and "K.A.R. 28-19-201" under the heading "General Provisions"; and

d. Adding in numerical order the entry "K.A.R. 28-19-650" under the heading "Open Burning Restrictions."

The revisions and additions read as follows:

#### § 52.870 Identification of plan.

\* \* \* \* \*

(c) EPA-approved regulations.

EPA-APPROVED KANSAS REGULATIONS

Kansas citation	Title	State effective date	EPA approval date	Explanations
<b>Kansas Department of Health and Environment Ambient Air Quality Standards and Air Pollution Control</b>				
<b>Nonattainment Area Requirements</b>				
K.A.R. 28-19-16a	Definitions	10/10/97	1/11/00, 65 FR 1548.	
<b>Processing Operation Emissions</b>				
K.A.R. 28-19-20	Calculation of Actual Emissions	9/28/93	1/11/00, 65 FR 1548.	
<b>Volatile Organic Compound Emissions</b>				
K.A.R. 28-19-70	Leaks from Gasoline Delivery Vessels and Vapor Collection Systems.	5/15/98	1/11/00, 65 FR 1548.	
<b>General Provisions</b>				
K.A.R. 28-19-200	General Provisions; definitions	10/10/97	1/11/00, 65 FR 1548	New rule. Replaces K.A.R. 28-19-7 definitions.
K.A.R. 28-19-201	General Provisions; Regulated Compounds List.	10/10/97	1/11/00, 65 FR 1548	New rule. Replaces Regulated Compounds in K.A.R. 28-19-7.
<b>Open Burning Restrictions</b>				
K.A.R. 28-19-650	Emissions Opacity Limits	3/1/96	1/11/00, 65 FR 1548	New rule. Replaces K.A.R. 28-19-50 and 28-19-52.

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 BILLING CODE 6560-50-P

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Parts 712 and 716**

[  
 OPPTS-82050; FRL-5777-2]  
 RIN-2070-AB08 and 2070-AB11

**Preliminary Assessment Information and Health and Safety Data Reporting; Addition and Removal of Certain Chemicals and Removal of Stay**

**AGENCY:** Environmental Protection Agency (EPA).  
**ACTION:** Final rule.

**SUMMARY:** This final rule addresses the recommendations of the 39th TSCA Interagency Testing Committee (ITC)

Report by adding 19 of 23 recommended nonylphenol ethoxylates to the Toxic Substances Control Act (TSCA) section 8(a) Preliminary Assessment Information Reporting (PAIR) rule. The TSCA ITC in its 39th Report to EPA revised the TSCA section 4(e) *Priority Testing List* by recommending testing for 23 nonylphenol ethoxylates, 19 of which are associated with unique Chemical Abstract Service (CAS) Registry numbers. The ITC recommendations are given priority consideration by EPA in promulgating TSCA section 4 test rules. This PAIR rule will require manufacturers (including importers) of the 19 CAS-numbered substances identified in this document to report certain production, use, and exposure-related information to EPA. This action also removes a stay for TSCA section 8(a) PAIR and section 8(d) Health and Safety Data Reporting rules issued previously for 18 nonylphenol

ethoxylates recommended by the TSCA ITC in its 38th Report to EPA and removes those 18 chemicals from these reporting rules.

**DATES:** This rule is effective on February 10, 2000.

**FOR FURTHER INFORMATION CONTACT:** For general information contact: Joseph S. Carra, Deputy Director, Office of Pollution Prevention and Toxics (7401), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; telephone numbers: (202) 554-1404 and TDD: (202) 554-0551; e-mail address: TSCA-Hotline@epa.gov.

For technical information contact: David R. Williams, Chemical Control Division (7405), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; telephone numbers: (202) 260-8130; e-mail address: ccd.citb@epa.gov.

**SUPPLEMENTARY INFORMATION:**