

Dated: January 29, 2002.

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

b. Adding an entry in numerical order for K.A.R. 28–19–719.

James B. Gulliford,

Regional Administrator, Region 7.

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:

Subpart R—Kansas

2. In § 52.870 the table in paragraph (c) is amended under the heading for “Volatile Organic Compound Emissions” by:

a. Removing the entry for K.A.R. 28–19–79.

The addition reads as follows:

§ 52.870 Identification of plan.

* * * * *
(c) * * *

EPA-APPROVED KANSAS REGULATIONS

Kansas citation	Title	State effective date	EPA approval date	Comments
Kansas Department of Health and Environment Ambient Air Quality Standards and Air Pollution Control				
*	*	*	*	*
Volatile Organic Compound Emissions				
*	*	*	*	*
K.A.R. 28–19–719	Fuel Volatility	4/27/01	2/13/02 [insert FR cite]	
*	*	*	*	*

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MO 0148–1148; FRL–7141–6]

Approval and Promulgation of Implementation Plans; State of Missouri

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is announcing approval of a revision to the State Implementation Plan (SIP) for the control of the volatility of gasoline during the summertime in the Missouri portion of the Kansas City area. This action approves amendments to Missouri’s control on the summertime Reid Vapor Pressure (RVP) of gasoline distributed in Clay, Jackson, and Platte Counties. This revision changes the RVP limit from 7.2 pounds per square inch (psi) to 7.0 psi, and from 8.2 psi to 8.0 psi for gasoline containing at least 9.0 percent by volume but not more than 10.0 percent by volume ethanol. This is a part of the State’s plan to maintain clean air quality in Kansas City.

DATES: This rule is effective on March 15, 2002.

FOR FURTHER INFORMATION CONTACT:

Leland Daniels at (913) 551–7651.

SUPPLEMENTARY INFORMATION:

Throughout this document whenever “we”, “us”, or “our” is used, we mean EPA. This section provides additional information by addressing the following questions:

- What is a SIP?
- What is the Federal approval process for a SIP?
- What are the criteria for SIP approval?
- What does Federal approval of a state regulation mean to me?
- What is being addressed in this document?
- Have the requirements for approval of a SIP revision been met?
- What action is EPA taking?

What Is a SIP?

Section 110 of the Clean Air Act (CAA) requires states to develop air pollution regulations limiting emissions and control strategies to ensure that state air quality meets the national ambient air quality standards (NAAQS) established by EPA. These ambient standards are established under section 109 of the CAA, and they currently address six criteria pollutants. These pollutants are: Carbon monoxide, nitrogen dioxide, ozone, lead, particulate matter, and sulfur dioxide.

Each state must submit these regulations and control strategies to us for approval and incorporation into the Federally-enforceable SIP.

Each Federally-approved SIP protects air quality primarily by addressing air

pollution at its point of origin. These SIPs can be extensive, containing state regulations or other enforceable documents and supporting information such as emission inventories, monitoring networks, and modeling demonstrations.

What Is the Federal Approval Process for a SIP?

In order for state regulations to be incorporated into the Federally-enforceable SIP, states must formally adopt the regulations and control strategies consistent with state and Federal requirements. This process generally includes a public notice, public hearing, public comment period, and a formal adoption by a state-authorized rulemaking body.

Once a state rule, regulation, or control strategy is adopted, the state submits it to us for inclusion into the SIP. We must provide public notice and seek additional public comment regarding the proposed Federal action on the state submission. If adverse comments are received, they must be addressed prior to any final Federal action by us.

All state regulations and supporting information approved by EPA under section 110 of the CAA are incorporated into the Federally-approved SIP. Records of such SIP actions are maintained in the Code of Federal Regulations (CFR) at Title 40, Part 52, entitled “Approval and Promulgation of

Implementation Plans.” The actual state regulations which are approved are not reproduced in their entirety in the CFR outright but are “incorporated by reference,” which means that we have approved a given state regulation with a specific effective date.

What Are the Criteria for SIP Approval?

In order to be approved into a SIP, the submittal must meet the requirements of section 110. In determining the approvability of a SIP revision, EPA must evaluate the proposed revision for consistency with the requirements of the CAA and our regulations, as found in section 110 and part D of Title I of the CAA amendments and 40 CFR Part 51 (Requirements for Preparation, Adoption, and Submittal of Implementation Plans).

The CAA has additional requirements for the approval of SIPs containing certain state fuel controls. Section 211(c)(4)(A) of the CAA prohibits states from prescribing or attempting to enforce regulations respecting fuel characteristics or components if EPA has adopted Federal controls under section 211(c)(1) applicable to such fuel characteristics or components, unless the state control is identical to the Federal control. Section 211(c)(4) includes two exceptions to this prohibition. First, under section 211(c)(4)(B), California is not subject to the preemption in section 211(c)(4)(A). Second, a State may prescribe or enforce such otherwise preempted fuel controls if the measure is approved into a SIP.

Under section 211(c)(4)(C), we may approve such state fuel controls into a SIP, if the state demonstrates that the measure is necessary to achieve the NAAQS. Section 211(c)(4)(C) specifies that a state fuel requirement is “necessary” if no other measures would bring about timely attainment, or if other measures exist but are unreasonable or impracticable. As discussed in more detail below, the State rule approved today merely amends the State fuel control that has already been approved into the SIP and addresses emissions reductions shortfalls that EPA has already determined are required under the Act. Therefore, a new demonstration of necessity under section 211(c)(4)(C) is not required.

What Does Federal Approval of a State Regulation Mean to Me?

Enforcement of the state regulation before and after it is incorporated into the Federally-approved SIP is primarily a state responsibility. However, after the regulation is Federally approved, we are

authorized to take enforcement action against violators. Citizens are also offered legal recourse to address violations as described in section 304 of the CAA.

What Is Being Addressed in This Document?

Fuel Volatility

RVP is a measure of a fuel’s volatility and thereby affects the rate at which gasoline evaporates and emits volatile organic compounds (VOCs), an ozone forming pollutant. VOCs are an important component in the production of ground-level ozone in the hot summer months. RVP is directly proportional to the rate of evaporation. Consequently, the lower the RVP, the lower the rate of evaporation. Lowering the RVP in the summer months can offset the effect of summer temperature upon the volatility of gasoline, which, in turn, lowers emissions of VOCs. Reduction of the RVP will help the state’s effort to maintain the NAAQS for ozone.

State Submittal

On May 17, 2001, MDNR requested that we revise the SIP to reflect its amendments to the State RVP controls. On June 13, 2001, Missouri submitted an addendum. Included in the submittal was a letter from Roger Randolph, Director, Air Pollution Control Program, MDNR, to William W. Rice, Acting EPA Region 7 Administrator, requesting a SIP revision, the regulation 10 CSR 10–2.330, and supporting documentation. The state held a public hearing on December 7, 2000; the rule was adopted on February 6, 2001, and the rule became effective on May 30, 2001.

Analysis of the SIP

As mentioned above, section 211(c)(4) of the CAA prohibits states from adopting or attempting to enforce controls or prohibitions respecting certain fuel characteristics or components unless the SIP for the State so provides. The CAA specifies that we may approve such state fuel controls into a SIP only upon a finding that the control is “necessary” to achieve a NAAQS as defined under section 211(c)(4)(C). Section 211(c)(4)(C) does not, however, address the ability of states to modify fuel control programs that have already been deemed necessary and approved into a SIP.

Missouri is not seeking approval of a new control or prohibition respecting a fuel characteristic or component. Instead, Missouri is seeking approval of a change to the approved RVP control to adjust the level of the standard. Given

the original 1998 (final approval) determination that the State RVP control was necessary to respond to the violations of the NAAQS, the violation and the additional exceedances which occurred after the implementation of the 7.2 psi RVP control, and the fact that the necessary reductions called for in the State’s maintenance plan have still not been achieved, we believe it is reasonable to approve the amendments to the RVP standard without a new demonstration of necessity under section 211(c)(4)(C). This action approves the State’s amendments to its RVP standards and revises the SIP.

Have the Requirements for Approval of a SIP Revision Been Met?

The State submittal has met the public notice requirements for SIP submissions in accordance with 40 CFR 51.102. The submittal also satisfied the completeness criteria of 40 CFR part 51, appendix V. In addition, as explained above and in the technical support document which is part of this document, the revision meets the substantive SIP requirements of the CAA, including section 110 and part D of Title I and implementing regulations. Our proposed rulemaking, which included a detailed discussion of our rationale for proposing to approve the rule, was published November 16, 2001 (66 FR 57693), and no comments were received on the proposal.

What Action Is EPA Taking?

We are approving this revision to the Missouri SIP concerning 10 CSR 10–2.330 as it meets the requirements of the CAA.

Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a “significant regulatory action” and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, “Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use” (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not

contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does 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 (64 FR 43255, August 10, 1999). This action 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 CAA. This rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority

to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the CAA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

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).

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 April 15, 2002. 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: January 29, 2002.

James B. Gulliford,
Regional Administrator, Region 7.

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 AA—Missouri

2. In § 52.1320 the table in paragraph (c) is amended by revising the entry for 10-2.330, under Chapter 2, to read as follows:

§ 52.1320 Identification of plan.

* * * * *
(c) * * *

EPA—APPROVED MISSOURI REGULATIONS

Missouri citation	Title	State effective date	EPA approval date	Explanation
Missouri Department of Natural Resources				
Chapter 2—Air Quality Standards and Air Pollution Control Regulations for the Kansas City Metropolitan Area				
*	*	*	*	*
10-2.330	Control of Gasoline Reid Vapor Pressure.	5/30/01	2-13-02 [insert FR cite]	*
*	*	*	*	*

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 194

[FRL-7142-2]

RIN 2060-AG85

Waste Characterization Program Documents Applicable to Transuranic Radioactive Waste From Los Alamos National Laboratories for Disposal at the Waste Isolation Pilot Plant

AGENCY: Environmental Protection Agency.

ACTION: Notice of availability; opening of public comment period.

SUMMARY: The Environmental Protection Agency (EPA) is announcing the availability of, and soliciting public comments for 30 days on, Department of Energy (DOE) documents applicable to characterization of transuranic (TRU) radioactive waste at Los Alamos National Laboratories (LANL) proposed for disposal at the Waste Isolation Pilot Plant (WIPP). The documents (Item II-A2-37, Docket A-98-49) are available for review in the public dockets listed in **ADDRESSES**. EPA will conduct an inspection of waste characterization systems and processes for waste characterization at LANL to verify that the site can characterize transuranic waste in accordance with EPA's WIPP compliance criteria. EPA will perform this inspection the week of February 25, 2002. This notice of the inspection and comment period accords with 40 CFR 194.8.

DATES: EPA is requesting public comment on the documents. Comments must be received by EPA's official Air Docket on or before March 15, 2002.

ADDRESSES: Comments should be submitted to: Docket No. A-98-49, Air Docket, Room M-1500, U.S. Environmental Protection Agency, 401 M Street, SW, Mail Code 6102, Washington, DC 20460. The DOE documents are available for review in the official EPA Air Docket in Washington, DC, Docket No. A-98-49, Category II-A2, and at the following three EPA WIPP informational docket locations in New Mexico: in Carlsbad at the Municipal Library, Hours: Monday-Thursday, 10am-9pm, Friday-Saturday, 10am-6pm, and Sunday 1pm-5pm; in Albuquerque at the Government Publications Department, Zimmerman Library, University of New Mexico, Hours: vary by semester; and in Santa

Fe at the New Mexico State Library, Hours: Monday-Friday, 9am-5pm.

As provided in EPA's regulations at 40 CFR part 2, and in accordance with normal EPA docket procedures, if copies of any docket materials are requested, a reasonable fee may be charged for photocopying. Air Docket A-98-49 in Washington, DC, accepts comments sent electronically or by fax (fax: 202-260-4400; e-mail: *a-and-r-docket@epa.gov*).

FOR FURTHER INFORMATION CONTACT: Ed Feltcorn, Office of Radiation and Indoor Air, (202) 564-9422. You can also call EPA's toll-free WIPP Information Line, 1-800-331-WIPP or visit our website at <http://www.epa.gov/radiation/wipp>.

SUPPLEMENTARY INFORMATION:

Background

DOE is developing the WIPP near Carlsbad in southeastern New Mexico as a deep geologic repository for disposal of TRU radioactive waste. As defined by the WIPP Land Withdrawal Act (LWA) of 1992 (Pub. L. No. 102-579), as amended (Pub. L. No. 104-201), TRU waste consists of materials containing elements having atomic numbers greater than 92 (with half-lives greater than twenty years), in concentrations greater than 100 nanocuries of alpha-emitting TRU isotopes per gram of waste. Much of the existing TRU waste consists of items contaminated during the production of nuclear weapons, such as rags, equipment, tools, and sludges.

On May 13, 1998, EPA announced its final compliance certification decision to the Secretary of Energy (published May 18, 1998, 63 FR 27354). This decision stated that the WIPP will comply with EPA's radioactive waste disposal regulations at 40 CFR part 191, Subparts B and C.

The final WIPP certification decision includes conditions that (1) prohibit shipment of TRU waste for disposal at WIPP from any site other than the Los Alamos National Laboratories (LANL) until the EPA determines that the site has established and executed a quality assurance program, in accordance with §§ 194.22(a)(2)(i), 194.24(c)(3), and 194.24(c)(5) for waste characterization activities and assumptions (Condition 2 of Appendix A to 40 CFR part 194); and (2) (with the exception of specific, limited waste streams and equipment at LANL) prohibit shipment of TRU waste for disposal at WIPP (from LANL or any other site) until EPA has approved the procedures developed to comply with the waste characterization requirements of § 194.22(c)(4) (Condition 3 of Appendix A to 40 CFR part 194). The EPA's approval process for waste

generator sites is described in § 194.8. As part of EPA's decision-making process, the DOE is required to submit to EPA appropriate documentation of quality assurance and waste characterization programs at each DOE waste generator site seeking approval for shipment of TRU radioactive waste to WIPP. In accordance with § 194.8, EPA will place such documentation in the official Air Docket in Washington, DC, and informational dockets in the State of New Mexico for public review and comment.

EPA will perform an inspection of LANL's waste characterization systems and processes for TRU waste in accordance with Conditions 2 and 3 of the WIPP certification. More specifically, we will be focusing on the performance of a variety of new equipment (neutron, gamma, and other NDA-related systems) as well as their acceptable knowledge (AK) and WIPP Waste Information System (WWIS) interface used to characterize TRU waste. The inspection is scheduled to take place the week of February 25, 2002.

EPA has placed a number of documents pertinent to the inspection in the public docket described in **ADDRESSES**. The documents are listed as Item II-A2-37 in Docket A-98-49. In accordance with 40 CFR 194.8, as amended by the final certification decision, EPA is providing the public 30 days to comment on these documents.

If EPA determines as a result of the inspection that the proposed processes, systems, and equipment at LANL adequately control the characterization of transuranic waste, we will notify DOE by letter and place the letter in the official Air Docket in Washington, DC, as well as in the informational docket locations in New Mexico. A letter of approval will allow DOE to ship TRU waste to WIPP using the approved characterization processes. The EPA will not make a determination of compliance prior to the inspection or before the 30-day comment period has closed.

Information on the certification decision is filed in the official EPA Air Docket, Docket No. A-93-02 and is available for review in Washington, DC, and at three EPA WIPP informational docket locations in New Mexico. The dockets in New Mexico contain only major items from the official Air Docket in Washington, DC, plus those documents added to the official Air Docket since the October 1992 enactment of the WIPP LWA.