

**ENVIRONMENTAL PROTECTION AGENCY****40 CFR Part 52**

[MO 188-1188a; FRL-7542-3]

**Approval and Promulgation of Implementation Plans; State of MO****AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Direct final rule.

**SUMMARY:** EPA is announcing it is approving a revision to the Missouri State Implementation Plan (SIP) which establishes a state-wide air emissions banking and trading program. Approval of this revision will ensure consistency between the state and Federally-approved rules, and ensure Federal enforceability of the current state rules.

**DATES:** This direct final rule will be effective October 10, 2003, unless EPA receives adverse comments by September 10, 2003. If adverse comments are received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

**ADDRESSES:** Comments may be submitted either by mail or electronically. Written comments should be submitted to Wayne Kaiser, Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101. Electronic comments should be sent either to [kaiser.wayne@epa.gov](mailto:kaiser.wayne@epa.gov), or to <http://www.regulations.gov>, which is an alternative method for submitting electronic comments to EPA. To submit comments, please follow the detailed instructions described in "What action is EPA taking" in the **SUPPLEMENTARY INFORMATION** section.

Copies of documents relative to this action are available for public inspection during normal business hours at the above-listed Region 7 location. The interested persons wanting to examine these documents should make an appointment with the office at least 24 hours in advance.

**FOR FURTHER INFORMATION CONTACT:** Wayne Kaiser at (913) 551-7603, or by e-mail at [kaiser.wayne@epa.gov](mailto:kaiser.wayne@epa.gov).

**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 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 and control strategies to ensure that state air quality meets the national ambient air quality standards 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 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?***10 CSR 10-6.410 Emissions Banking and Trading*

In order to fulfill the requirements of Section 643.220 of the Revised Statutes of Missouri, the Missouri Department of Natural Resources (MDNR) proposed and adopted a new emissions banking and trading rule, 10 CSR 10-6.410. This rule became effective on April 30, 2003.

Banking and trading programs are a market-based approach to improving air quality. The basic unit for transactions in this program is the emission reduction credit (ERC), which is a certified, permanent emission reduction equal to one ton per year of a criteria pollutant or precursor. A facility generates ERCs by voluntarily emitting below applicable requirements. As this new, lower emission level is incorporated into the facility's operating permit, this reduction is permanent. These credits can be traded, sold, or banked for later use. Another facility can purchase these credits and use them to offset emissions from expansion of existing facilities or construction of new facilities. ERCs cannot be used to avoid New Source Review (NSR) applicability or requirements for technology-based standards such as lowest achievable emission rate, best available control technology or reasonably available control technology. Credits can also be purchased to be retired, thereby reducing potential emissions in an area.

Missouri's emissions banking and trading program contains a number of measures to ensure that air quality is protected. First of all, ERCs must be real, properly quantified, permanent and surplus (not already relied upon or required by the SIP, a state or local law, ordinance or regulation, the Clean Air Act or other Federal law or regulation, an enforcement action, or a consent decree). Second, ERCs may only be used in the same maintenance area, nonattainment area or modeling domain in which they were generated. ERCs

may be used to offset only emissions of the same criteria pollutant or precursor as were reduced to generate them. For example, volatile organic compound (VOC) reductions may only be used to offset VOC emissions. If credits are to be used in an area subject to an offset ratio, enough credits must be purchased to compensate for emissions plus the area's offset ratio. These credits are permanently retired. Also, the available emissions credits in an area are reduced by an annual three per cent (3%) from the pool of banked credits. Finally, nothing in the rule is intended to limit the authority of the Missouri Air Conservation Commission to terminate or limit a facility's authorization to emit.

We note, in particular, that the new rule merely provides a mechanism for tracking ERCs. It does not in any way impact how ERCs may be used under rules such as Missouri's prevention of significant deterioration and nonattainment new source review programs (10 CSR 10-6.410(3)(B)5).

The management of the emissions banking and trading program will be handled by the Air Pollution Control Program (APCP) of the MDNR.

#### 10 CSR 10-6.060 Construction Permits Required

The offset and banking provisions of this rule were deleted since these provisions were incorporated into the new emissions banking and trading rule. Specifically, Appendix C, Offsets, and Appendix D, Banking, were deleted. Additionally, references to these appendices were deleted and references to the new banking and trading rule were added in sections (7)(B), (8)(C), and (8)(E). This revision became effective April 30, 2003.

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 more detail 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 implementing regulations.

#### What Action Is EPA Taking?

We are approving as an amendment to the Missouri SIP a revision to rule 10 CSR 10-6.060 and new rule 10 CSR 10-6.410, which were effective in the state on April 30, 2003.

We are processing this action as a final action because the revisions make routine changes to the existing rules which are noncontroversial. Therefore, we do not anticipate any adverse

comments. Please note that if EPA receives adverse comment on part of this rule and if that part can be severed from the remainder of the rule, EPA may adopt as final those parts of the rule that are not the subject of an adverse comment.

You may submit comments either electronically or by mail. To ensure proper receipt by EPA, identify the appropriate rulemaking identification number, MO 188-1188a, in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments.

1. *Electronically.* If you submit an electronic comment as prescribed below, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

a. *Electronic mail.* Comments may be sent by e-mail to [kaiser.wayne@epa.gov](mailto:kaiser.wayne@epa.gov). Please include identification number, MO 188-1188a, in the subject line. EPA's e-mail system is not an "anonymous access" system. If you send an e-mail comment directly without going through *Regulations.gov*, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket.

b. *Regulations.gov.* Your use of *Regulations.gov* is an alternative method of submitting electronic comments to EPA. Go directly to <http://www.regulations.gov>, click on "To Search for Regulations," then select Environmental Protection Agency and use the "go" button. The list of current EPA actions available for comment will be listed. Please follow the online instructions for submitting comments. The system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or

other contact information unless you provide it in the body of your comment.

2. *By Mail.* Written comments should be sent to the name and address listed in the **ADDRESSES** section of this document.

#### Statutory and Executive Order Reviews

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 October 10, 2003. 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 40 CFR Part 52**

Environmental protection, Air pollution control, Carbon monoxide,

Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Particulate matter, Ozone, Reporting and recordkeeping requirements, Sulfur dioxide, Volatile organic compounds.

Dated: July 31, 2003.

**William Rice,**

*Acting 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(c) the table is amended under chapter 6 by revising the entry for 10–6.060 and adding a new entry for 10–6.410 to read as follows:

**§ 52.1320 Identification of plan.**

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(c) \* \* \*

**EPA-APPROVED MISSOURI REGULATIONS**

Missouri citation	Title	State effective date	EPA approval date	Explanation
<b>Missouri Department of Natural Resources</b>				
* * *	* * *	* * *	* * *	* * *
<b>Chapter 6—Air Quality Standards, Definitions, Sampling and Reference Methods, and Air Pollution Control Regulations for the State of Missouri</b>				
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10–6.060 .....	Construction Permits Required.	4/30/03	August 11, 2003 and [FR page citation].	Section 9, pertaining to hazardous air pollutants, is not SIP approved.
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10–6.410 .....	Emissions Banking and Trading.	4/30/03	August 11, 2003 and [FR page citation].	
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**ENVIRONMENTAL PROTECTION AGENCY**  
**40 CFR Part 52**  
[FL–078–200335(a); FRL–7541–9]  
**Approval and Promulgation of Implementation Plans Revisions to Florida State Implementation Plan: Transportation Conformity Rule**  
**AGENCY:** Environmental Protection Agency (EPA).  
**ACTION:** Direct final rule.

**SUMMARY:** The EPA is approving a revision to the Florida State Implementation Plan (SIP) submitted on August 14, 1998, with the exception of one state regulation pertaining to triggers. The revision contains the transportation conformity rule pursuant to the Clean Air Act as amended in 1990 (Act), including detailed consultation procedures for implementing the transportation conformity rule. The transportation conformity rule assures that projected emissions from transportation plans, improvement