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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R07–OAR–2006–0365; FRL–8188–4]

Approval and Promulgation of Implementation Plans; State of Kansas

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: We are taking final action to approve a revision to the maintenance plan prepared by Kansas to maintain the national ambient air quality standard (NAAQS) for ozone in the Kansas portion of the Kansas City maintenance area. This plan is applicable to Johnson and Wyandotte counties in Kansas. The effect of this approval is to ensure Federal enforceability of the state air program plan and to maintain consistency between the state-adopted plan and the approved SIP.

DATES: This direct final rule will be effective August 25, 2006, without further notice, unless EPA receives adverse comment by July 26, 2006. If adverse comment is 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: Submit your comments, identified by Docket ID No. EPA–R07–OAR–2006–0365, by one of the following methods:

1. *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.

2. E-mail: *kneib.gina@epa.gov.*

3. Mail: Gina Kneib, Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101.

4. Hand Delivery or Courier. Deliver your comments to Gina Kneib, Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101.

Instructions: Direct your comments to Docket ID No. EPA–R07–OAR–2006–0365. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit through *http://www.regulations.gov* or e-mail information that you consider to be CBI or otherwise protected. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov,* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. 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. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the electronic docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *i.e.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101. The Regional Office's official hours of business are Monday through Friday, 8 to 4:30 excluding Federal holidays. 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: Gina Kneib at (913) 551–7078, or by e-mail at *kneib.gina@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?

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 Are the Criteria for Approval of a Maintenance Plan?

The requirements for the approval and revision of a maintenance plan are found in section 175A of the CAA. In general, a maintenance plan must provide a demonstration of continued attainment including the control measures relied upon, provide contingency measures for the prompt correction of any violation of the standard, provide for continued operation of the ambient air quality monitoring network, provide a means of tracking the progress of the plan, and include the attainment emissions inventory and new budgets for motor vehicle emissions. The requirement for a motor vehicle emissions budget is no longer applicable to the Kansas City area as explained below.

What Is Being Addressed in This Document?

By letter dated February 2, 2005, Kansas submitted a SIP revision that revised the prior plan for maintaining the 1-hour ozone standard in Kansas City. The maintenance plan includes Johnson and Wyandotte Counties in Kansas. The Kansas City area is designated as an attainment area for the 8-hour ozone standard, and was a ''maintenance'' area for the 1-hour ozone standard (an area redesignated from nonattainment to attainment with an approved maintenance plan).

The revision makes three substantive changes to the maintenance plan. It will add contingency measure triggers relating to the 8-hour ozone standard; remove language relating to the motor vehicle emissions budgets; and remove the enhanced Inspection and Maintenance (I/M) program from the list of potential contingency measures.

With respect to removal of the I/M program, the CAA requires the inclusion of contingency measures that will promptly correct air quality problems, it does not mandate what measures must be included. In this case, KDHE's analysis showed that the I/M program cannot be promptly implemented, and that other measures identified in the plan address air quality violations more quickly. Since I/M has never been a mandatory requirement in the Kansas City area, and the plan includes other measures to promptly correct any violations of the ozone standard, it is appropriate to remove it from the list of contingency measures.

With respect to the removal of the language relating to motor vehicle emissions budgets for maintenance of the 1-hour ozone standard, we note that Kansas City is an attainment area for 8-hour ozone, and the 1-hour standard no longer applies. Therefore, the conformity requirement in section 176 no longer applies, and it is appropriate to remove language relating to conformity.

The plan also contains information about the 8-hour ozone standard. It provides updated information about the scope of the monitoring network and provides 8-hour ozone air quality data. The remaining substantive revision is the addition of contingency measure triggers relating to the 8-hour ozone standard. The changes made to the contingency measure triggers are addressed below.

What Is in the Contingency Measure Portion of the Maintenance Plan and Is It Approvable?

The triggers for implementation of contingency measures in the previously approved maintenance plan were based on the 1-hour ozone standard. Triggers for the contingency measures in the revised plan include a violation of the 8-hour ozone standard in addition to violation of the 1-hour standard. Except for the I/M program discussed previously, the contingency measures are the same as in the currently approved plan. In addition, the schedule for implementation of contingency measures (within 24-months of a violation of the 1-hour or 8-hour standard) remains the same.

We believe it is appropriate to include a trigger relating to the 8-hour ozone standard, since it is the relevant standard which applies to Kansas City. However, because Kansas has not yet adopted, and EPA has not yet approved a maintenance plan for the area as required by section 110(a) of the CAA (the submission is due in June 2007), Kansas must also retain the 1-hour violation trigger included in the previously approved maintenance plan (see 40 CFR 51.905 (e)(2)). Therefore, Kansas has included both 1-hour and 8-hour contingency measure triggers in its SIP.

Does the Phase-1 Rule for the 8-Hour Ozone Standard Have Any Bearing on This Revision?

This revision updates the 1-hour ozone maintenance plan in order to provide interim protection until a new plan for the 8-hour ozone standard is implemented. The Phase-1 Implementation Rule for the 8-hour ozone standard promulgated in April 2004 requires that former 1-hour maintenance areas, areas such as Kansas City, prepare and submit no later than June 15, 2007, a plan under section 110 of the CAA to maintain the 8-hour ozone standard for a ten-year period from the date of designation. We expect that Kansas will submit a new plan meeting the above requirements by the June 15, 2007, deadline. The revisions addressed in this final rule are revisions to the existing 1-hour maintenance plan and do not address the requirements in the implementation rule for the 8-hour ozone standard.

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 more detail in the technical support document which is part of this document, the revision meets the substantive SIP requirements of the CAA.

The requirements for maintenance plans are established in section 175A of the CAA. With the Maintenance plan revisions identified above, the plan continues to meet these requirements.

What Action Is EPA Taking?

Our review of the material submitted indicates that the state has revised the maintenance plan in accordance with the requirements of the CAA. We are fully approving Kansas's revised 1-hour maintenance plan for the Kansas portion of the Kansas City maintenance area.

We are processing this action as a direct final action because the revisions make routine changes to the existing SIP 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.

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 Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 25, 2006. 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, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: June 15, 2006.

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 R—Kansas

■ 2. In § 52.870(e) the table is amended by adding an entry in numerical order to read as follows:

§ 52.870 Identification of Plan.

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(e) * * *

EPA-APPROVED KANSAS NONREGULATORY SIP PROVISIONS

Name of nonregulatory SIP provision	Applicable geographic or non-attainment area	State submittal date	EPA approval date	Explanation
*	*	*	*	*
(29) Revision to Maintenance Plan for the 1-hour ozone standard in the Kansas portion of the Kansas City maintenance area for the second ten-year period.	Kansas City	02/10/06	06/26/06 (insert FR page number where the document begins].	

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