

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

[Region VII Docket No. 056-1056a; FRL-6206-1]

**Approval and Promulgation of Implementation Plans; Missouri; Designation of Areas For Air Quality Planning Purposes**

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

**ACTION:** Direct final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is taking final action to approve certain portions of the Missouri construction permits rule as an amendment to the Missouri State Implementation Plan (SIP). These revisions make minor corrections to the "Construction Permits Required" rule to increase readability and correct typographical and punctuation errors.

**DATES:** This direct final rule is effective on February 22, 1999 without further notice, unless the EPA receives adverse comment by January 21, 1999. If adverse comment is received, the 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:** Comments may be addressed to Kim Johnson, Environmental Protection Agency, Air Planning and Development Branch, 726 Minnesota Avenue, Kansas City, Kansas 66101.

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, 726 Minnesota Avenue, 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:** Kim Johnson at (913) 551-7975.

**SUPPLEMENTARY INFORMATION:****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 the 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 the EPA for approval and incorporation into the Federally enforceable SIP.

Currently each state has a Federally approved SIP which 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 the EPA for inclusion into the SIP. The EPA 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 the EPA.

All state regulations and supporting information approved by the 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 but are "incorporated by reference," which means that the EPA has 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, the EPA is authorized to take enforcement action against violators. Citizens are also offered legal recourse to address violators as described in the CAA.

**What is Being Addressed in this Notice?**

The revision to Rule 10 CSR 10-6.060, "Construction Permits Required," makes minor changes to the existing

rule to increase readability, correct typographical and punctuation errors, and maintain consistency with the Federal regulations. For example, changing "annual geometric mean" to "annual arithmetic mean" when referring to the total suspended particulate matter makes this rule consistent with the Federal regulations.

**What Is not Being Addressed in This Notice?**

The revision also adds a Section (9) to the rule which implements 112(g) requirements of the 1990 CAA Amendments. Section 112(g) of the CAA requires states to develop "case-by-case" maximum achievable control technology (MACT) standards if the EPA has not issued a MACT standard for that particular type of hazardous air pollutant source. These "case-by-case" standards apply to industries that are major sources of hazardous air pollutants and plan to construct or reconstruct before a standard is set.

We will not act on Section (9) in this action because it is a part of the Section 112 Air Toxics Program and not a part of the Section 110 Criteria Pollutant Program.

**What Action Is the EPA Taking?**

The EPA is processing this action as a direct final because the revisions make minor corrections to the existing rule which are noncontroversial. Therefore, we do not anticipate any adverse comments.

**Conclusion***Final Action*

The EPA is taking final action to approve, as an amendment to the SIP, the revision to Rule 10 CSR 10-6.060, "Construction Permits Required," submitted by the state of Missouri on May 28, 1998, except Section (9).

The EPA is publishing this rule 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, the EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should adverse comments be filed. This rule will be effective February 22, 1999 without further notice unless the Agency receives adverse comments by January 21, 1999.

If the EPA receives such comments, then the 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. The 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 rule will be effective on February 22, 1999, 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 (E.O.) 12866, entitled "Regulatory Planning and Review."

#### **B. Executive Order 12875**

Under E.O. 12875, the EPA may not issue a regulation that is not required by statute and that creates a mandate upon a state, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments, or the EPA consults with those governments. If the EPA complies by consulting, E.O. 12875 requires the EPA to provide to the OMB a description of the extent of the EPA's prior consultation with representatives of affected state, local and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, E.O. 12875 requires the EPA to develop an effective process permitting elected officials and other representatives of state, local and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates."

Today's rule does not create a mandate on state, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of E.O. 12875 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 E.O. 12866, and (2) concerns an environmental health or safety risk that the 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 E.O. 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

#### **D. Executive Order 13084**

Under E.O. 13084, the 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, E.O. 13084 requires the EPA to provide to the OMB, in a separately identified section of the preamble to the rule, a description of the extent of the 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, E.O. 13084 requires the 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. This action does not involve or impose any requirements that affect Indian tribes. Accordingly, the requirements of section 3(b) of E.O. 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,

because the Federal SIP approval does not create any new requirements, 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 the 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, 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 annual 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 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. The 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 U.S. 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 February 22, 1999. 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, Volatile organic compounds.

Dated: December 2, 1998.

**William Rice,**

*Acting 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 AA—Missouri

2. Section 52.1320 is amended by adding paragraph (c)(110) to read as follows:

##### § 52.1320 Identification of plan.

\* \* \* \* \*

(c) \* \* \*

(110) On May 28, 1998, the Missouri Department of Natural Resources submitted revisions to the construction permits rule.

(i) Incorporation by reference.

(A) Missouri Rule 10 CSR 10–6.060, "Construction Permits Required," except Section (9), effective April 30, 1998.

[FR Doc. 98–33835 Filed 12–21–98; 8:45 am]

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[MD068–3037; FRL–6202–6]

#### Approval and Promulgation of Air Quality Implementation Plans; Maryland; Control of Volatile Organic Compound From Sources That Store and Handle JP–4 Jet Fuel

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

**ACTION:** Final rule.

**SUMMARY:** EPA is approving a State Implementation Plan (SIP) revision submitted by the State of Maryland. This revision establishes and requires volatile organic compound (VOC) emission control requirements for sources that store or handle JP–4 jet fuel. The intended effect of this action is to approve revisions to COMAR 26.11.13 into the Maryland SIP in accordance with the Clean Air Act.

**EFFECTIVE DATE:** This final rule is effective on January 21, 1999.

**ADDRESSES:** Comments may be mailed to David L. Arnold, Chief, Ozone and Mobile Sources Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; the Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460; and the Maryland Department of the Environment, 2500 Broening Highway, Baltimore, Maryland 21224.

**FOR FURTHER INFORMATION CONTACT:** Kristeen Gaffney at (215) 814–2092, or by e-mail at gaffney.kristeen@epamail.epa.gov.

**SUPPLEMENTARY INFORMATION:** On August 26, 1998, EPA published a direct final rule [63 FR 45397] approving Maryland's revisions to COMAR 26.11.13, "Control of Gasoline and Volatile Organic Compound Storage and Handling." The formal SIP revision was submitted by Maryland on March 31, 1998. In the August 26, 1998 direct final rulemaking, EPA stated that if adverse comments were received on the final approval within 30 days of its publication, EPA would publish a document announcing the withdrawal of its direct final rulemaking action.

Because EPA received adverse comments on the direct final rulemaking within the prescribed comment period, EPA withdrew the August 26, 1998 final rulemaking action on Maryland's revisions to COMAR 26.11.13. This withdrawal document appeared in the **Federal Register** on October 9, 1998 [63 FR 54355]. A companion proposed rulemaking notice to approve Maryland's revisions to COMAR 26.11.13 was published in the Proposed Rules section of the August 28, 1998 **Federal Register** [63 FR 45443].

#### Response to Comments

EPA received two letters commenting on the August 26, 1998 direct final rulemaking from Boeing and the Air Transportation Association of America. The letters requested that EPA further clarify the intent of Maryland's regulation and whether Maryland's regulation could be construed to apply to the commercial airline industry. The following discussion summarizes and responds to the comments received.

**Comment:** Is it the EPA's intent that this regulation apply to all jet fuel storage and handling systems in Maryland, or only those that handle JP–4?

**Response:** The Technical Support Document (TSD) submitted in support of Maryland's SIP revision request suggests that COMAR 26.11.13 is intended to apply to military installations that handle JP–4 jet fuel. According to the State, "the purpose of the amendments to COMAR 26.11.13 is to establish reasonably available control technology (RACT) requirements for the storage and handling of JP–4, a jet fuel and volatile organic compound (VOC)." The State's TSD goes on to state that "JP–4 is used as a fuel primarily in military aircraft." Under the section entitled "Affected Industry in Maryland", the TSD notes that the following facilities in Maryland store and handle jet fuels: Andrews Air Force Base, Patuxent Naval Air Station and Steuart Petroleum.

COMAR 26.11.13 does not define the term "jet fuel" per se, but does define "gasoline" as follows: "Gasoline means a petroleum distillate or alcohol, or their mixtures, having a true vapor pressure within the range of 1.5 to 11 pounds per square inch absolute (psia) (10.3 to 75.6 kilonewton/square meter) that is used as fuel for internal combustion engines or aircraft [emphasis added]." According to the Maryland Department of Environment, JP–4 jet fuel has a vapor pressure of 1.6 psia at 70°F, and therefore, is defined as a gasoline under the regulation and subject to the rule's