

**List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Oxides of Nitrogen, Ozone, Particulate matter, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: December 7, 1999.

**David P. Howekamp,**

*Acting Regional Administrator, Region IX.*

Part 52, 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 F—California**

2. Section 52.220 is amended by adding paragraphs (c)(6)(xvii) to (6)(xviii), (47)(i)(D), (68)(ii), and (121)(i)(D) to read as follows:

**§ 52.220 Identification of plan.**

\* \* \* \* \*

(c) \* \* \*

(6) \* \* \*

(xvii) Los Angeles County Air Pollution Control District.

(A) Previously approved on September 22, 1972 and now deleted without replacement Rule 51.

(xviii) Orange County Air Pollution Control District.

(A) Previously approved on September 22, 1972 and now deleted without replacement Rules 51, 67.1 and 68.

(xvii) Riverside County Air Pollution Control District.

(A) Previously approved on September 22, 1972 and now deleted without replacement Rule 51.

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(47) \* \* \*

(i) \* \* \*

(D) Previously approved on May 9, 1980 and now deleted without replacement for implementation in the South Coast Air Quality Management District, Rule 1231. (JR)

\* \* \* \* \*

(68) \* \* \*

(ii) Previously approved on January 21, 1981 and now deleted without replacement Rule 1311.

\* \* \* \* \*

(121) \* \* \*

(i) \* \* \*

(D) Previously approved on October 11, 1983 and now deleted without replacement Rule 107.

\* \* \* \* \*

[FR Doc. 99-32642 Filed 12-21-99; 8:45 am]

**BILLING CODE 6560-50-P**

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

**[Region VII Tracking No. MO-074-1074a; FRL-6512-2]**

**Approval and Promulgation of Implementation Plans; State of Missouri**

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

**ACTION:** Direct final rule.

**SUMMARY:** EPA is announcing a revision to the State Implementation Plan (SIP) which incorporates portions of new Kansas City rules contained in the Kansas City Air Pollution Control Ordinance in Sections 8-2 and 8-5. These Sections pertain to the emission of particulate matter from incinerators. This revision will concurrently remove incinerator SIP provisions contained in Chapter 18 of the 1972 version of the Kansas City Code. This action will unify the local, state, and Federal requirements for Kansas City incinerators.

**DATES:** This direct final rule is effective on February 22, 2000 without further notice, unless EPA receives adverse comment by January 21, 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: Wayne A. Kaiser at the Environmental Protection Agency, Air Branch, 901 North 5th Street, Kansas City, Kansas 66101.

Copies of the state submittals 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, S.W., Washington, D.C. 20460.

**FOR FURTHER INFORMATION CONTACT:** Wayne A. Kaiser at the Environmental Protection Agency at (913) 551-7603.

**SUPPLEMENTARY INFORMATION:**

**Background**

This section provides additional information by addressing the following questions:

What is an 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 action?

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 EPA 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 EPA for inclusion into the SIP. 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 EPA.

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 Promulgations 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 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, EPA is authorized to take enforcement action against violators. Citizens are also offered legal recourse to address violations as described in the CAA.

### **What Is Being Addressed in This Action?**

The Kansas City Air Pollution Control Code (KCAPCC) was originally submitted to EPA for approval in 1972. The incinerator provisions which were approved in 1972 are still in the Federally approved SIP today. The SIP contains two different particulate matter requirements for incinerators based on the capacity of the incinerator. Large capacity incinerators (with a charging capacity equal to or greater than 4166 pounds per hour) are required to meet an emission limit of 0.1 grains per dry standard cubic foot. Small capacity incinerators (with a charging capacity less than 4166 pounds per hour) are required to meet an emission limit of 0.2 grains per dry standard cubic foot.

The KCAPCC was amended in 1984; however, the SIP was not updated at that time. Consequently, two separate versions of the Kansas City incinerator regulations were in force at that time. The Kansas City Health Department Environmental Program enforced the 1984 version while EPA enforced the 1972 version in the SIP.

In 1996, the Air Pollution Control Code was again revised by the Kansas City Health Department. This time, a more stringent version of the incinerator rule was adopted which required incinerators of any charging capacity to meet a 0.1 grains per dry standard cubic foot particulate matter emission limit. Other limits were also included in the 1996 rule for pollutants such as hydrogen chloride, mercury, and dioxin and furans.

The Missouri Department of Natural Resources held a public hearing before the Missouri Air Conservation Commission (MACC) on October 29, 1998, on the replacement of the 1972 KCAPCC requirements for incinerators

with the 1996 KCAPCC provisions which pertain to incinerators. After considering comments on this issue, on December 10, 1998, the MACC approved the submission of certain provisions of Section 8-2, "Definitions," which pertain to incinerators and certain provisions of Section 8-5, "Emission of particulate matter," pertaining to the emission of particulate matter from incinerators with a request to amend the SIP to incorporate this submission. The MACC also approved the submittal of a request to remove the 1972 Kansas City incinerator requirements contained in KCAPCC Chapter 18, Sections 18.83, "Definitions," and 18.91, "Incinerators."

### **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 notice, the revision meets the substantive SIP requirements of the CAA, including section 110 and implementing regulations. The revision constitutes a slight increase in the stringency of requirements which pertain to incinerators operating in Kansas City, Missouri.

### **What Action Is EPA Taking?**

EPA is processing this action as a direct final action to approve the replacement of the 1972 KCAPCC incinerator provisions contained in Chapter 18, Sections 18.83, and 18.91, with the incinerator particulate matter provisions contained in the 1996 KCAPCC in Chapter 8, Sections 8-2, "Definitions," and 8-5, "Emission of particulate matter." Specifically, the following definitions are being approved from Section 8-2: Air contaminant, Ambient air, Building, Construction, Emission, Fugitive emissions, Incinerator, Installation, Open burning, Owner, Particulate matter, Refuse, Smoke, Source, Stack, Trade waste, and Uncombined water. EPA is approving the following provisions of Section 8-5: "Emission of Particulate Matter"; subsection 8-5(c)(1)b., "Emission of Particulate Matter, Incinerators—Test Schedule"; subsection 8-5(c)(1)c., "Emission of Particulate Matter, Incinerators—Capacity"; subsection 8-5(c)(2)a., "Emission of Particulate Matter, Incinerators—Particulate and Opacity Limitations"; subsection 8-5(c)(3)a., "Emission of Particulate Matter,

Incinerators—Performance Testing, Representative Sample"; subsection 8-5(c)(3)b., "Emission of Particulate Matter, Incinerators—Performance Testing, Procedure"; subsection 8-5(c)(3)c., "Emission of Particulate Matter, Incinerators—Performance Testing, Compliance"; and subsection 8-5(c)(3)d., "Emission of Particulate Matter, Incinerators—Performance Testing, When Required."

EPA's direct final approval of this submittal incorporates incinerator provisions which are already in force under the authority of the Kansas City Health Department. These revisions make routine changes to the existing SIP rules to make them consistent with the local agency rules. EPA views these revisions as noncontroversial. Therefore, we do not anticipate any adverse comments.

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, 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, 2000 without further notice unless the Agency receives adverse comments by January 21, 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 rule will be effective on February 22, 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. This action does not involve or impose any requirements that affect Indian tribes. 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 February 22, 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 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements.

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

Dated: December 2, 1999.

**William A. Spratlin,**

*Acting Regional Administrator, Region VII.*

Chapter I, title 40 of the Code of Federal Regulations is amended as follows:

#### EPA-APPROVED MISSOURI REGULATIONS

#### 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 in paragraph (c), the table for “Kansas City Article III—Air Pollution” is removed and to the table for “Kansas City Chapter 8—Air Quality 17” is revised to read as follows:

#### § 52.1320 Identification of plan.

\* \* \* \* \*

(c) EPA-approved regulations.

MISSOURI citation	Title	State effective date	EPA approval date	Explanations
* * *	* * *	* * *	* * *	* * *
<b>Kansas City Chapter 8—Air Quality</b>				
8–2 .....	Definitions .....	12/10/98	12/22/99	
* * *	* * *	* * *	* * *	* * *
8–5 .....	Emission of Particulate Matter .....	12/10/98	12/22/99	Only subsections 8–5(c)(1)b, 8–5(c)(1)c, 8–5(c)(2)a, 8–5(c)(3)a, 8–5(c)(3)b, 8–5(c)(3)c, 8–5(c)(3)d are approved in the SIP.
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[FR Doc. 99–32860 Filed 12–21–99; 8:45 am]

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#### ENVIRONMENTAL PROTECTION AGENCY

#### 40 CFR Part 52

[TX–115–1–7434a; FRL–6504–4]

#### Approval and Promulgation of Implementation Plans; Texas; Control of Air Pollution From Volatile Organic Compounds, Miscellaneous Industrial Sources, Cutback Asphalt

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

**ACTION:** Direct final rule.

**SUMMARY:** The EPA is taking direct final action on revisions to the Texas State Implementation Plan (SIP). These revisions concern Control of Air Pollution from Volatile Organic Compounds (VOC), Miscellaneous Industrial Sources, specifically, asphaltic operations in the Nueces County and the ozone nonattainment areas. The EPA is approving these revisions to regulate emissions of VOCs

in accordance with the requirements of the Federal Clean Air Act (the Act).

**DATES:** This rule is effective on February 22, 2000, without further notice, unless EPA receives adverse comment by January 21, 2000. If EPA receives such comment, EPA will publish a timely withdrawal in the **Federal Register** informing the public that this rule will not take effect.

**ADDRESSES:** Written comments on this action should be addressed to Mr. Thomas H. Diggs, Chief, Air Planning Section (6PD–L), at the EPA Region 6 Office listed below. Copies of documents relevant to this action, including the Technical Support Document (TSD), are available for public inspection during normal business hours at the following locations. Anyone wanting to examine these documents should make an appointment with the appropriate office at least two working days in advance. Environmental Protection Agency, Region 6, Air Planning Section (6PD–L), 1445 Ross Avenue, Dallas, Texas 75202–2733. Texas Natural Resource Conservation Commission, Office of Air Quality,

12124 Park 35 Circle, Austin, Texas 78753.

**FOR FURTHER INFORMATION CONTACT:** Mr. Alan Shar, P.E., Air Planning Section (6PD–L), EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, telephone (214) 665–6691.

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#### SUPPLEMENTARY INFORMATION:

Throughout this document “we,” “us,” and “our” means EPA.