

# Rules and Regulations

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## NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

### 36 CFR Part 1258

[FDMS Docket NARA-07-0002]

RIN 3095-AB49

### NARA Reproduction Fees

**AGENCY:** National Archives and Records Administration (NARA).

**ACTION:** Final rule.

**SUMMARY:** NARA is revising its regulations relating to reproduction of records and other materials in the custody of the Archivist of the United States. We have determined that it is not appropriate to include in those regulations the reproduction of records of other Federal agencies stored in NARA Federal records centers that are not in our legal custody. This final rule will affect individuals and Federal agencies who request copies of Federal agency records in NARA Federal records centers.

**DATES:** *Effective date:* May 29, 2007.

**FOR FURTHER INFORMATION CONTACT:**

Jennifer Davis Heaps at 301-837-1850 or fax at 301-837-0319.

**SUPPLEMENTARY INFORMATION:** On February 26, 2007, NARA published an interim final rule (72 FR 8279) for a 60-day public comment period removing records center holdings from our reproduction fee schedule. We received one responsive comment on the interim final rule. Other comments received through [www.regulations.gov](http://www.regulations.gov) in the interim final rule docket were nonresponsive because they related to the NARA proposed rule published in the **Federal Register** on the same day. We have transferred those comments to the proposed rule docket and will consider them as part of that rulemaking. The individual who commented on the interim final rule expressed concern about the absence of

set fees for copies of agency records from the NARA fee schedule. The commenter asked who would determine the reproduction fees and how would the fees be set. We did not adopt this comment because records stored in NARA's records centers still belong to the agencies that created them. As explained in the interim final rule, NARA provides copies according to the owning agency's instructions; the agency, not NARA, must determine the extent to which reproduction costs will be borne by the agency or the agency's customer.

This final rule is not a significant regulatory action for the purposes of Executive Order 12866 and has not been reviewed by the Office of Management and Budget. As required by the Regulatory Flexibility Act, I certify that this rule will not have a significant impact on a substantial number of small entities because it affects individual researchers. This regulation does not have any federalism implications. This rule is not a major rule as defined in 5 U.S.C. Chapter 8, Congressional Review of Agency Rulemaking.

### List of Subjects in 36 CFR Part 1258

Archives and records.

### PART 1258—FEES

■ Accordingly, the interim final rule amending 36 CFR part 1258 which was published at 72 FR 8279 on February 26, 2007, is adopted as a final rule without change.

Dated: May 23, 2007.

**Allen Weinstein,**

*Archivist of the United States.*

[FR Doc. E7-10359 Filed 5-25-07; 8:45 am]

**BILLING CODE 7515-01-P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R07-OAR-2006-0973; FRL-8318-6]

### Approval and Promulgation of Implementation Plans; State of Kansas

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

**ACTION:** Final rule.

**SUMMARY:** EPA is approving revisions to Kansas' State Implementation Plan (SIP)

to include updates to its Prevention of Significant Deterioration (PSD) of Air Quality rule, which incorporate portions of the New Source Review (NSR) program promulgated by the Environmental Protection Agency in December 2002. Specifically, these revisions adopt by reference provisions of 40 CFR 52.21 as in effect July 1, 2004, except for subsections with references to the clean unit exemptions, pollution control projects, and the record keeping provisions for the actual-to-projected-actual emissions applicability test. Kansas did not adopt the latter provisions because of the June 2005 decision by the United States Court of Appeals for the District of Columbia Circuit, which vacated the clean unit exemption and pollution control project provisions and remanded back to EPA the record keeping provisions for the actual-to-projected-actual emissions applicability test. We proposed to approve the revisions on January 31, 2007, and received no comments on the proposal.

**DATES:** This rule is effective on June 28, 2007.

**ADDRESSES:** EPA has established a docket for this action under Docket ID No. EPA-R07-OAR-2006-0973. All documents in the docket are listed on the <http://www.regulations.gov> Web site. 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 through <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, 8:00 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 Grier at (913) 551-7078, or by e-mail at [grier.gina@epa.gov](mailto:grier.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 the Federal Approval Process for a SIP?

What is the background of this action?

What is EPA's final action on Kansas' rule to incorporate NSR reform?

Have the requirements for approval of a SIP revision been met?

#### **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 is the Background of This Action?**

The 2002 NSR Reform rules made changes to five areas of the NSR programs. In summary, the 2002 rules: (1) Provide a new method for determining baseline actual emissions; (2) adopt an actual-to-projected-actual methodology for determining whether a major modification has occurred; (3) allow major stationary sources to comply with plant-wide applicability limits (PALs) to consider plant-wide emission changes in order to determine whether or not a significant emission increase has been triggered under the requirements of the major NSR program; (4) provide a new applicability provision for emissions units that are designated clean units; and (5) exclude pollution control projects (PCPs).

After the 2002 NSR Reform rules were finalized and effective, various petitioners challenged numerous aspects of these rules, along with portions of EPA's 1980 NSR rules (45 FR 5276, August 7, 1980). On June 24, 2005, the District of Columbia Circuit Court of Appeals issued a decision on the challenges to the 2002 NSR Reform Rules. See *New York v. United States*, 413 F.3d (DC Cir. 2005). In summary, the Court vacated portions of the rules pertaining to clean units and pollution control projects, remanded a portion of the rules regarding exemption from record keeping, e.g., 40 CFR 52.21(r)(6) and 40 CFR 51.166(r)(6), and let stand the other provisions included as part of the 2002 NSR Reform rules. EPA has not yet responded to the Court's remand regarding record keeping provisions.

The Kansas rule was submitted to EPA on July 25, 2006. The submission included comments on the rules made during the state's adoption process, the state's response to comments and other information necessary to meet EPA's completeness criteria.

This rule adopts by reference sections of 40 CFR 52.21 as in effect July 1, 2004, except for subsections with references to the clean unit exemptions, pollution control projects, and the record keeping provisions for the actual-to-projected-actual emissions applicability test. Kansas did not adopt the latter provisions because of the June 24, 2005, District of Columbia Court of Appeals decision.

#### **What is EPA's Final Action on Kansas' Rule to Incorporate NSR Reform?**

In this action, we are approving revisions to Kansas' air quality regulation, K.A.R. 28-19-350, entitled Prevention of Significant Deterioration (PSD) of Air Quality, into the SIP. The final action described in this section is identical to the action we proposed in the January 31, 2007, notice of proposed rulemaking (72 FR 4472). The rationale for this action is described in more detail in the proposal. EPA received no comments on the proposal. This SIP amendment incorporates by reference the Federal PSD program in 40 CFR 52.21, including the 2002 NSR Reform rules, except for subsections with references to the clean unit exemptions, pollution control projects, and the recordkeeping provisions for the actual-to-projected-actual emissions applicability test.

#### **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 proposed rule, EPA believes that the revisions meet the substantive SIP requirements of the CAA, including section 110 and implementing regulations.

#### **Statutory and Executive Order Reviews**

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this final 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 final 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 final 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 final 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 final 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 approves a

state rule implementing a Federal standard.

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 final 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 July 30, 2007. 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, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: May 14, 2007.

**John B. Askew**,  
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(c) the table is amended by revising an entry for K.A.R. 28–19–350 to read as follows:

**§ 52.870 Identification of plan.**

\* \* \* \* \*  
(c) \* \* \*

**EPA-APPROVED KANSAS REGULATIONS**

Kansas citation	Title	State effective date	EPA approval date	Explanation
* * * * *	* * * * *	* * * * *	* * * * *	* * * * *
K.A.R. 28–19–350 ...	Prevention of Significant Deterioration (PSD) of Air Quality.	06/30/06	05/29/07 [insert FR page number where the document begins].	Kansas did not adopt subsections with references to the clean unit exemptions, pollution control projects, and the recordkeeping provisions for the actual-to-projected-actual emissions applicability test because of the June 24, 2005, decision of the United States Court of Appeals for the District of Columbia Circuit relating to the Clean Unit Exemption, Pollution Control Projects and the recordkeeping provisions for the actual-to-projected-actual emissions applicability test.
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[FR Doc. E7–10235 Filed 5–25–07; 8:45 am]  
BILLING CODE 6560–50–P

**DEPARTMENT OF ENERGY**

**48 CFR Parts 913 and 970**

**RIN 1991–AB62**

**Acquisition Regulation: Technical Revisions or Amendments to Update Clauses**

**AGENCY:** Department of Energy.

**ACTION:** Final rule.

**SUMMARY:** The Department of Energy (DOE) is amending the Department of Energy Acquisition Regulation (DEAR) to remove clauses concerning simplified acquisition procedures and facilities management contracting and to add a clause addressing work authorization. This rule also revises associated regulatory coverage, as necessary.

**DATES:** *Effective Date:* June 28, 2007.

**FOR FURTHER INFORMATION CONTACT:** Sandra Cover at (202) 287–1344 or [Sandra.Cover@hq.doe.gov](mailto:Sandra.Cover@hq.doe.gov)

**SUPPLEMENTARY INFORMATION:**

- I. Background
- II. Comments, Responses, and Discussion
- III. Section-by-Section Analysis
- IV. Procedural Requirements
  - A. Review Under Executive Order 12866
  - B. Review Under Executive Order 12988
  - C. Review Under the Regulatory Flexibility Act
  - D. Review Under the Paperwork Reduction Act
  - E. Review Under the National Environmental Policy Act
  - F. Review Under Executive Order 13132
  - G. Review Under the Unfunded Mandates Reform Act of 1995