

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[KS-192-1192; FRL-7580-6]

Approval and Promulgation of Air Quality Implementation Plans; Kansas Update to Materials Incorporated by Reference

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; notice of administrative change.

SUMMARY: EPA is updating the materials submitted by Kansas that are incorporated by reference (IBR) into the state implementation plan (SIP). The regulations affected by this update have been previously submitted by the state agency and approved by EPA. This update affects the SIP materials that are available for public inspection at the Office of the Federal Register (OFR), Office of Air and Radiation Docket and Information Center, and the Regional Office.

EFFECTIVE DATE: This action is effective November 14, 2003.

ADDRESSES: SIP materials which are incorporated by reference into 40 CFR part 52 are available for inspection at the following locations: Environmental Protection Agency, Region VII, 901 North 5th Street, Kansas City, Kansas 66101; Office of Air and Radiation Docket and Information Center, Room B-108, 1301 Constitution Avenue, NW., (Mail Code 6102T), Washington, DC 20460, and Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Evelyn VanGoethem at (913) 551-7659, or at vangoethem.evelyn@epa.gov.

SUPPLEMENTARY INFORMATION: The SIP is a living document which the state can revise as necessary to address the unique air pollution problems in the state. Therefore, EPA from time to time must take action on SIP revisions containing new and/or revised regulations as being part of the SIP. On May 22, 1997 (62 FR 27968), EPA revised the procedures for incorporating by reference Federally-approved SIPs, as a result of consultations between EPA and the Office of Federal Register (OFR). The description of the revised SIP document, IBR procedures and "Identification of plan" format are discussed in further detail in the May 22, 1997, **Federal Register** document.

On February 12, 1999, EPA published a document in the **Federal Register** (64 FR 7091) beginning the new IBR

procedure for Kansas. In today's document EPA is updating the IBR material.

EPA is also making minor corrections to the table in § 52.870(c) as follows:

On June 27, 2000 (65 FR 39551), we inadvertently removed a rule heading and K.A.R. 28-19-20 from the table. K.A.R. 28-19-20 had previously been incorporated by reference and was not rescinded by the June 27, 2000, action. We are restoring the heading and K.A.R. 28-19-20 into the table.

On May 18, 1988 (53 FR 17700) we updated K.A.R. 28-19-64. In the table under § 52.870(c) the **Federal Register** page citation for K.A.R. 28-19-64 is shown as being 53 FR 17000, and it is being corrected to 53 FR 17700.

On October 30, 2002 (67 FR 66060) we approved a VOC rule, K.A.R. 28-19-714, and revoked K.A.R. 28-19-75. K.A.R. 28-19-714 was incorrectly located in the table. K.A.R. 28-19-714 should be placed immediately before rule K.A.R. 28-19-717.

EPA has determined that today's rule falls under the "good cause" exemption in section 553(b)(3)(B) of the Administrative Procedures Act (APA) which, upon finding "good cause," authorizes agencies to dispense with public participation and section 553(d)(3) which allows an agency to make a rule effective immediately (thereby avoiding the 30-day delayed effective date otherwise provided for in the APA). Today's rule simply codifies provisions which are already in effect as a matter of law in Federal and approved State programs. Under section 553 of the APA, an agency may find good cause where procedures are "impractical, unnecessary, or contrary to the public interest." Public comment is "unnecessary" and "contrary to the public interest" since the codification only reflects existing law. Immediate notice in the CFR benefits the public by updating citations.

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 Clean Air Act. 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 Clean Air Act. 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 Clean Air Act. 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