



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R07-OAR-2017-0512; FRL-9967-97-Region 7]

**Approval of Kansas Air Quality State Implementation Plans;
Construction Permits and Approvals Program**

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: Environmental Protection Agency (EPA) is taking direct final action to approve revisions to the Kansas State Implementation Plan (SIP) and the 112(1) program. The submission revises Kansas' construction permit rules. Specifically, these revisions implement the revised National Ambient Air Quality Standard (NAAQS) for fine particulate matter; clarify and refine applicable criteria for sources subject to the construction permitting program; update the construction permitting program fee structure and schedule; and make minor revisions and corrections. Approval of these revisions will not impact air quality, ensures consistency between the State and Federally-approved rules, and ensures Federal enforceability of the State's rules.

DATES: This direct final rule will be effective [**INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER**], without further notice, unless EPA receives adverse comment by [**INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER**].

If EPA receives adverse comment, we 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-2017-0512, to <https://www.regulations.gov>. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from Regulations.gov. EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (i.e. on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general

guidance on making effective comments, please visit <https://www2.epa.gov/dockets/commenting-epa-dockets>.

FOR FURTHER INFORMATION CONTACT: Deborah Bredehoft, Environmental Protection Agency, Air Planning and Development Branch, 11201 Renner Boulevard, Lenexa, Kansas 66219 at (913) 551-7164, or by email at bredehoft.deborah@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document "we," "us," and "our" refer to EPA. This section provides additional information by addressing the following:

- I. What is Being Addressed in this Document?
- II. What Part 52 Revision is EPA Approving?
- III. What 112(l) Revision is EPA Approving?
- IV. Have the Requirements for Approval of a SIP Revision Been Met?
- V. What Action is EPA Taking?
- VI. Incorporation by Reference
- VII. Statutory and Executive Order Reviews

I. What is Being Addressed in this Document?

EPA is taking direct final action to approve revisions to the Kansas SIP and 112(l) program submission received on December 5, 2016. The SIP submission requests revisions to K.A.R. 28-19-300 that include: implementing revisions to include fine particulate matter (PM_{2.5}) to implement the prevention of significant deterioration permitting component of section 110(a)(2)(C) for the 1997 and 2006 PM_{2.5} NAAQS, pursuant to EPA's NSR PM_{2.5} Implementation Rule (2008 NSR Rule), (73 FR 28321, May 16, 2008); clarifying and refining applicability criteria for

sources subject to construction permitting program by proposing the following: (1) eliminating the requirements for all Title IV Acid Rain sources to obtain construction permits that would not have otherwise been required; (2) clarifying the construction review requirements for sources emitting hazardous air pollutants, or sources subject to standards promulgated by the USEPA; (3) eliminating the requirement for sources to obtain an approval solely due to being subject to standards promulgated by the EPA without regard to emissions for insignificant activities; and making minor revisions and corrections. The SIP submission also requests revisions to K.A.R. 28-19-304 that include: (1) updating the construction permitting program fee structure from an estimated capital cost mechanism to one based on complexity of source and permit type and (2) updating the fee schedule to bring in sufficient revenue to adequately administer the Kansas Air Quality Act. The SIP submission also makes minor revisions and corrections.

II. What Part 52 Revision is EPA Approving?

EPA is approving requested revisions to the Kansas SIP relating to the following:

- Construction Permits and Approvals. Kansas Administrative Regulations 28-19-300. Applicability; and

- Construction Permits and Approvals. Kansas Administrative Regulations 28-19-304. Fees.

EPA has conducted analysis on the state's revisions and has found that the revisions would not impact air quality, ensures consistency between the state and Federally-approved rules, and ensures Federal enforceability of the State's rules. Additional information on the EPA's analysis can be found in the Technical Support Document (TSD) included in this docket.

III. What 112(1) Revision is EPA Approving?

EPA is also taking direct final action to approve a portion of K.A.R. 28-19-300 under the 112(1) program pursuant to 40 CFR part 63, subpart E, as requested by the State of Kansas on April 19, 2017. The State of Kansas is requesting that the applicable portions of K.A.R. 28-19-300 pertaining to limiting the potential-to-emit hazardous air pollutants (HAPs) be approved under CAA 112(1) and 40 CFR part 63, subpart E, in addition to being approved under the SIP¹. Specifically, K.A.R. 28-19-300(a)(2) and (3) as well as K.A.R. 28-19-300(b)(4) through (6) are also approved under CAA section 112(1) because they require permits or approvals for hazardous air pollutants that may limit the potential-to-emit hazardous air pollutants by establishing permit conditions that are Federally-enforceable.

¹ State Implementation Plan provisions approved under section 110 of the Clean Air Act are for criteria pollutants. Sections related to hazardous air pollutants are approved under section 112 of the Clean Air Act.

IV. Have the Requirements for Approval of a SIP Revision Been Met?

The state submission has met the public notice requirements for SIP submissions in accordance with 40 CFR 51.102. The submission 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 docket, the revision meets the substantive SIP requirements of the CAA, including section 110 and implementing regulations.

V. What Action is EPA Taking?

EPA is taking direct final action to amend the Kansas SIP and 112(1) program by approving the State's request to amend K.A.R. 28-19-300 Construction Permits and Approvals - Applicability and to amend the Kansas SIP by approving K.A.R. 28-19-304 Construction Permits and Approvals - Fees. Approval of these revisions will ensure consistency between state and Federally-approved rules. The EPA has determined that these changes will not adversely impact air quality.

We are publishing this direct final rule without a prior proposed rule because we view this as a noncontroversial action and anticipate no adverse comment. However, in the "Proposed Rules" section of this **Federal Register**, we are publishing a separate document that will serve as the proposed rule to approve the SIP and 112(1) program revision, if adverse comments

are received on this direct final rule. We will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. For further information about commenting on this rule, see the **ADDRESSES** section of this document. If EPA receives adverse comment, we will publish a timely withdrawal in the **Federal Register** informing the public that this direct final rule will not take effect. We will address all public comments in any subsequent final rule based on the proposed rule.

VI. Incorporation by Reference

In this rule, EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is finalizing the incorporation by reference of the Kansas Regulations described in the direct final amendments to 40 CFR part 52 set forth below. EPA has made, and will continue to make, these materials generally available through www.regulations.gov and/or at the EPA Region 7 Office (please contact the person identified in the "For Further Information Contact" section of this preamble for more information).

Therefore, these materials have been approved by EPA for inclusion in the State implementation plan, have been incorporated by reference by EPA into that plan, are fully Federally enforceable under sections 110 and 113 of the CAA as

of the effective date of the final rulemaking of EPA's approval, and will be incorporated by reference by the Director of the Federal Register in the next update to the SIP compilation.²

VII. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);

² 62 FR 27968 (May 22, 1997).

- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

The SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

The Congressional Review Act, 5 U.S.C. section 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 action 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 [**INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER**]. Filing a

petition for reconsideration by the Administrator of this direct final rule does not affect the finality of this action 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: September 8, 2017.

Cathy Stepp,
Acting Regional Administrator,
Region 7.

For the reasons stated in the preamble, EPA amends 40 CFR part 52 as set forth below:

PART 52-APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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, the table in paragraph (c) is amended by revising the entries "K.A.R. 28-19-300" and "K.A.R. 28-19-304" to read as follows:

§52.870 Identification of plan.

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(c) * * *

EPA-Approved Kansas Regulations

Kansas citation	Title	State effective date	EPA approval date	Explanation
Kansas Department of Health and Environment Ambient Air Quality Standards and Air Pollution Control				
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Construction Permits and Approvals				
K.A.R. 28-19-300	Applicability	11/18/16	[insert date of publication in the Federal Register], [insert Federal Register citation]	
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K.A.R. 28-19-304	Fees	11/18/16	[insert date of publication in the Federal Register], [insert Federal Register citation]	
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