



**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

**[EPA-R07-OAR-2020-0711; FRL-10021-10-Region 7]**

**Air Plan Approval; Kansas; Removal of Kansas City, Kansas Reid Vapor Pressure Fuel Requirement**

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

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is taking final action to approve a revision to the State Implementation Plan (SIP) for the State of Kansas. This final action will amend the SIP to remove the Kansas City, Kansas low Reid Vapor Pressure (RVP) fuel requirement which required gasoline sold in the Kansas City, Kansas area to have a seven pounds per square inch (psi) Reid Vapor Pressure from June 1 to September 15. The majority of the state is subject to the Clean Air Act (CAA) nine pounds per square inch Reid Vapor Pressure fuel requirement from June 1 to September 15. In addition, the EPA has issued a separate proposal for the Missouri side of the Kansas City metropolitan area.

**DATES:** This final rule is effective on **[insert date 30 days after date of publication in the Federal Register]**.

**ADDRESSES:** The EPA has established a docket for this action under Docket ID No. EPA-R07-OAR-2020-0711. All documents in the docket are listed on the <https://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 through <https://www.regulations.gov> or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional information.

**FOR FURTHER INFORMATION CONTACT:** Jed D. Wolkins, Environmental Protection Agency, Region 7 Office, Air Quality Planning Branch, 11201 Renner Boulevard, Lenexa, Kansas 66219; telephone number: (913) 551-7588; email address: wolkins.jed@epa.gov.

**SUPPLEMENTARY INFORMATION:** Throughout this document "we," "us," and "our" refer to the EPA.

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### **I. What is Being Addressed in this Document?**

The EPA is approving a revision to the Kansas SIP, submitted by the Kansas Department of Health and Environment (KDHE) on December 9, 2020. The revision removes the seven psi RVP fuel requirement for the Kansas City, Kansas, area: consisting of Johnson and Wyandotte Counties. The former SIP-approved rule, K.A.R. 28-19-719, required gasoline sold in the two counties to

have a RVP of seven psi or less from June 1 through September 15. After the effective date of this final action, the Kansas City, Kansas area will only be subject to the CAA RVP fuel requirement of nine psi or less from June 1 through September 15.

## **II. Background**

The EPA established a 1-hour ozone national ambient air quality standard (NAAQS) in 1971.<sup>1</sup> See 36 FR 8186 (April 30, 1971). On March 3, 1978, the EPA designated Johnson and Wyandotte Counties (hereinafter referred to in this document as the "Kansas City area") in nonattainment of the 1971 1-hour ozone NAAQS, as required by the CAA Amendments of 1977. See 43 FR 8962 (March 3, 1978). On February 8, 1979, the EPA revised the 1-hour ozone NAAQS, referred to as the 1979 ozone NAAQS. See 44 FR 8202 (February 8, 1979).

The EPA redesignated the Kansas City area to attainment of the 1979 1-hour ozone standard and approved Kansas's ozone maintenance plan for the Kansas City area on July 23, 1992. See 57 FR 27936 (June 23, 1992). Pursuant to section 175A of the CAA, the first 10-year maintenance period for the 1-hour ozone standard began on July 23, 1992, the effective date of the redesignation approval.

In 1995, the Kansas City area violated the 1979 1-hour

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<sup>1</sup> The 1-hour ozone NAAQS was originally promulgated as a photochemical oxidant standard. See 36 FR 8186 (April 30, 1971). In 1979, the EPA substituted the word "ozone" for "photochemical oxidant." See 44 FR 8202 (February 8, 1979). In doing so, the EPA stated that "(t)he intent of the standard (total-oxidant reduction), the control strategies, and the index of Progress toward attainment (measured ozone levels) remain unchanged." *Id.* at 8203.

ozone standard. Kansas revised the control strategy and contingency measures in the maintenance plan, which was approved on December 30, 2002. See 67 FR 66058 (October 30, 2002). The revised control strategy included K.A.R. 28-19-719, *Fuel Volatility*.

On May 2, 1997, Kansas adopted the seven and two tenths (7.2) psi RVP limit from June 1 to September 15.<sup>2</sup> The EPA approved this rule into the SIP on July 7, 1997.<sup>3</sup> Following a violation of the ozone standard for the three-year period of 1995-1997, on April 3, 2001, Kansas revised the rule to seven (7.0) psi RVP limit from June 1 to September 15.<sup>4</sup> The EPA approved this rule into the SIP on February 13, 2002.<sup>5</sup>

On July 18, 1997, the EPA established a new 8-hour ozone NAAQS (hereafter the 1997 8-hour ozone NAAQS). See 62 FR 38856 (July 18, 1997). This newly established 8-hour ozone NAAQS replaced the prior 1-hour ozone NAAQS.

On April 30, 2004, the EPA published a final rule in the *Federal Register* stating the 1979 1-hour ozone NAAQS would no longer apply (i.e., would be revoked) for an area one year after the effective date of the area's designation for the 1997 8-hour ozone NAAQS. See 69 FR 23951 (April 30, 2004). The Kansas City Area was designated as an unclassifiable area for the 1997 8-hour ozone NAAQS, effective June 15, 2004. See *id.* However, on May 3, 2005, the EPA published a final rule designating the

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<sup>2</sup> The Kansas rule allowed an additional one psi for gasoline containing 9 to 10 % ethanol.

<sup>3</sup> See 62 FR 36212

<sup>4</sup> The Kansas rule allows an additional one psi for gasoline containing 9 to 10 % ethanol.

<sup>5</sup> See 67 FR 6655

Kansas City area as an attainment area for the 1997 8-hour ozone NAAQS based on new monitoring data. See 70 FR 22801 (May 3, 2005). The effective date of the revocation of the 1979 1-hour ozone standard for the Kansas City area was June 15, 2005. See 70 FR 44470 (August 3, 2005). Kansas achieved the required maintenance of the 1979 1-hour ozone standard in 2014.

On December 9, 2020, Kansas requested that the EPA remove K.A.R. 28-19-719 from the SIP. Section 110(1) of the CAA prohibits the EPA from approving a SIP revision that interferes with any applicable requirement concerning attainment and reasonable further progress (RFP), or any other applicable requirement of the CAA. As detailed in the proposal, Kansas adequately demonstrated that removal of this rule will not affect the area's ability to attain or maintain any air quality standards.

### **III. The EPA's Response to Comments**

The public comment period on the EPA's proposed rule opened January 19, 2021 the date of its publication in the *Federal Register* and closed on February 18, 2021. During this period, EPA received three supportive comments and one adverse comment. The adverse comment is discussed below.

*Comment:* Jeopardizing the health of Kansas City residents is not worth the proposed change because cities are hotspots for air pollution, air pollution leads to respiratory issues and low income populations suffer more from air pollution.

*Response:* As discussed in our proposal, the increases in emissions from this change will be offset by emissions decreases from fleet turnover and the Tier 3 motor vehicle and fuel standards. In addition, the NAAQS are set at a level protective of public health allowing an adequate margin of safety,<sup>6</sup> and the Kansas City Area is currently monitoring air quality that is attaining all NAAQS.

To determine if the removal of the RVP requirement would interfere with attainment of the NAAQS, KDHE conducted emission calculations for a baseline year of 2017 (with the state RVP requirement) and an implementation year of 2020 (without the state RVP requirement). KDHE found that emissions from motor vehicles decreased from the baseline year to the implementation year. We find this analysis an acceptable showing that the removal of the RVP requirement will not interfere with the attainment of the NAAQS. See our proposal of this action and the KDHE submittal in the docket for more information.

In addition to comparing emissions between 2017 and 2020, KDHE also compared emissions in the same year with and without the state RVP requirement. While there is an increase in emissions from removing the state RVP requirement, the state has demonstrated that the removal of the RVP requirement will not interfere with attainment and maintenance of the NAAQS because emissions will be reduced by continued fleet turnover and Tier 3 motor vehicle and fuel standards. As such, the EPA finds that

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<sup>6</sup> See <https://www.epa.gov/naaqs> for more information on the NAAQS.

removal of the RVP requirement will not impair air quality in the Kansas City area and therefore will not result in the public health concerns expressed by the commenter.

#### **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. The State provided public notice on this SIP revision from August 27, 2020 to November 4, 2020 and held a public hearing on November 4, 2020. Kansas received eight comments. Kansas adequately responded to the comments but did not change the removal request based on the comments. In addition, as explained in the proposal, the revision meets the substantive SIP requirements of the CAA, including section 110 and implementing regulations.<sup>7</sup>

#### **V. What Action is the EPA Taking?**

The EPA is taking final action to approve Kansas's removal of the state RVP requirement from the SIP for the Kansas City, Kansas area. As discussed in the proposal the removal of the RVP requirement will not affect the area's ability to attain or maintain any air quality standard.

The EPA published the proposed approval of Kansas's removal of the state RVP requirement from the SIP for the Kansas City, Kansas area on January 19, 2021. The thirty-day public comment period closed on February 18, 2021. The EPA received four public

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<sup>7</sup> See 85 FR 83877 (December 23, 2020)

comments on the proposal, discussed above. Also, the proposal contained an error concerning 40 CFR 52.873, paragraph (a), as it included a rescinded date, February 18, 2021. The date should have contained a placeholder that indicated that the effective date of the rescission was 30 days following publication of the final rule in the *Federal Register*. We are noting the error here and are correcting 40 CFR 52.873 paragraph (a) to reflect the correct effective date of the rescission.

## **VI. Impacts on the Boutique Fuels List**

Section 1541(b) of the Energy Policy Act of 2005 required the EPA, in consultation with the U.S. Department of Energy, to determine the number of fuels programs approved into all SIPs as of September 1, 2004 and to publish a list of such fuels. On December 28, 2006, the EPA published the original list of boutique fuels. See 71 FR 78192 (December 28, 2006). On December 4, 2020 the EPA updated the list of boutique fuels to remove boutique fuels that were no longer in approved SIPs. See 85 FR 78412 (December 4, 2020). The EPA maintains the current list of boutique fuels on its website at: <https://www.epa.gov/gasoline-standards/state-fuels>. The boutique fuels list is based on a fuel type approach. CAA section 211(c)(4)(C)(v)(III) requires that the EPA remove a fuel from the published list if it is either identical to a Federal fuel or is removed from the SIP in which it is approved. Under the adopted fuel type approach, the EPA interpreted this requirement to mean that a fuel would have to be removed from all states' SIPs in which it was approved in

order to remove the fuel type from the list. See 71 FR 78195 (December 28, 2006). The 7.0 psi RVP fuel program as approved into Kansas's SIP, is a fuel type that is included in the EPA's boutique fuel list. See 85 FR 78412 (December 4, 2020).

Subsequent to the effective date of today's action, the EPA will update the State Fuels web page to remove Kansas's 7.0 psi RVP program from the list of boutique fuels.

### **VII. Incorporation by Reference**

In this document, the EPA is amending regulatory text that includes incorporation by reference. As described in the amendments to 40 CFR part 52 set forth below, the EPA is removing provisions of the EPA-Approved Kansas Regulations from the Kansas State Implementation Plan, which is incorporated by reference in accordance with the requirements of 1 CFR part 51.

### **VIII. Statutory and Executive Order Reviews**

Under the Clean Air Act (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, the 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.*);
- 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 the National Technology Transfer and Advancement Act (NTTA) because this rulemaking does not involve technical standards; and
- Does not provide the 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).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where the 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. 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 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 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: \_\_\_\_\_

March 2, 2021

Edward H. Chu,  
Acting Regional Administrator,  
Region 7.

For the reasons stated in the preamble, the 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 removing the entry "K.A.R. 28-19-719" under the heading "Volatile Organic

Compound Emissions”.

3. In §52.873, paragraph (a) is revised to read as follows:

**§52.873 Approval status.**

(a) Kansas rule K.A.R. 28-19-719 was rescinded on **[insert date 30 days after date of publication in the Federal Register]**.

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[FR Doc. 2021-04763 Filed: 3/11/2021 8:45 am; Publication Date: 3/12/2021]