



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 70

[EPA-R07-OAR-2023-0462; FRL-11395-01-R7]

Air Plan Approval; Kansas; Annual Emission Inventory and Fees

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve revisions to the State Implementation Plan (SIP) and Operating Permits Program and the 112(l) plan submitted by the State of Kansas on February 20, 2023. The revised Kansas rules update the Class I emission fee and emissions inventory regulations, establish a Class II fee schedule and ensure that Kansas's Operating Permits Program is adequately funded. Approval of these revisions ensures consistency between the State and federally-approved rules and does not impact air quality.

DATES: Comments must be received on or before **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: You may send comments, identified by Docket ID No. EPA-R07-OAR-2023-0462 to www.regulations.gov. Follow the online instructions for submitting comments.

Instructions: All submissions received must include the Docket ID No. for this rulemaking. Comments received will be posted without change to www.regulations.gov, including any personal information provided. For detailed instructions on sending comments and additional information on the rulemaking

process, see the "Written Comments" heading of the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: William Stone, Environmental Protection Agency, Region 7 Office, Air Permitting and Planning Branch, 11201 Renner Boulevard, Lenexa, Kansas 66219; telephone number: (913) 551-7714; email address: stone.william@epa.gov.

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

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I. Written Comments

Submit your comments, identified by Docket ID No. EPA-R07-OAR-2023-0462, at www.regulations.gov. Once submitted, comments cannot be edited or removed from Regulations.gov. The 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. The 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 www.epa.gov/dockets/commenting-epa-dockets.

II. What is Being Addressed in this Document?

The EPA is proposing to approve revisions to the Kansas SIP and the Operating Permits Program received on February 20, 2023.

The revisions incorporate recent changes to Kansas Administrative Regulations (K.A.R.). The following regulations are amended:

- K.A.R. 28-19-517. *Class I operating permits; annual emission inventory and fees.*
- K.A.R. 28-19-546. *Class II operating permits; annual emission inventory and fees.* and
- K.A.R. 28-19-564. *Class II operating permits; permits-by-rule; sources with actual emissions less than 50 percent of major source thresholds.*

The revisions restructure and update the Kansas Class I Operating Permit Program fee schedule for calendar year 2025 and beyond to bring in adequate revenue to support the Class I Operating Permit Program and establish a fee schedule for the Class II Federally Enforceable State Operating Permit (FESOP) Program. EPA proposes to find that these revisions meet the requirements of the Clean Air Act, do not impact the stringency

of the SIP, and do not adversely impact air quality. The full text of these changes can be found in the State's submission, which is included in the docket for this action.

On November 26, 2024, Kansas requested that EPA exclude the term "electronically" from two places in the February 20, 2023, submittal because KDHE's State and Local Emissions Inventory System (SLEIS) is not currently approved by the EPA to meet the Cross-Media Electronic Reporting Rule (CROMERR) at 40 CFR part 3.

III. What operating permit plan revisions are being proposed by EPA?

The EPA is proposing to approve the following revision to the Operating Permit Program:

K.A.R. 28-19-517. Class I operating permits; annual emission inventory and fees.

The State amended K.A.R. 28-19-517(b) annual emission fee language to maintain the existing fee schedule of \$1,000 base fee or \$53 per ton criteria emissions fee for calendar year 2022, 2023 and 2024 and to establish a new fee schedule for calendar year 2025 and each subsequent year to be the sum of the facility fee, the hazardous air pollutant (HAP) emissions fee, and the criteria emissions fee. The revisions to K.A.R. 28-19-517(b) (2) (A) maintains the minimum \$1,000 facility fee, but applies it in addition to the revised criteria emissions fee and new hazardous air pollutant (HAP) fee; all applied in calendar year 2025 and beyond. The revision to K.A.R. 28-19-517(b) (2) (B)

establishes an annual hazardous air pollutant (HAP) fee of \$80.00 per ton of total HAP emissions for calendar year 2025 and beyond. The revisions to K.A.R. 28-19-517(b)(2)(C) amends the existing criteria emissions fee from \$53.00 (effective through calendar year 2024) to \$56.00 per ton of criteria emissions for calendar year 2025 and beyond.

EPA finds these changes meet the requirements of 40 CFR part 70 and do not negatively impact the stringency of the Operating Permit Program.

IV. What SIP revisions are being proposed by EPA?

The EPA is proposing the following revisions to the Kansas SIP:

K.A.R. 28-19-546. Class II operating permits; annual emission inventory and fees: The State amended K.A.R. 28-19-546 by adding new paragraphs (a) through (d) to align with the Class I annual emissions inventory and fee regulation K.A.R. 28-19-517. New paragraph (b) establishes annual emission fees beginning in calendar year 2025 of \$56 per ton of criteria emissions and \$80 per ton of HAP emissions. New paragraph (c) describes the submittal requirements for both inventory and fees and new paragraph (d) adds late fee and refund language. EPA finds this change meets the requirements of CAA section 110 and does not negatively impact the stringency of the SIP.

K.A.R. 28-19-564. Class II operating permits; permits-by-rule; sources with actual emissions less than 50 percent of major source thresholds: The State amended K.A.R. 28-19-564 paragraph

(e) to require all permits-by-rule Class II sources and those with actual emissions less than 50 percent of major source thresholds to submit annual emissions inventory and fees by April 1 of each year (currently February 15) as required by the proposed K.A.R. 28-19-546. EPA finds this change meets the requirements of CAA section 110 and does not negatively impact the stringency of the SIP.

V. Have the requirements for approval of a SIP and the operating permit plan revisions 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 25, 2022, to November 3, 2022, and received four comments. Kansas did not revise the rule based on public comment prior to submitting to EPA, as noted in the State submission included in the docket for this action. In addition, as explained above the revision meets the substantive SIP requirements of the CAA, including section 110 and implementing regulations.

VI. What Action is the EPA Taking?

We are processing this as a proposed action because we are soliciting comments on this proposed action. Final rulemaking will occur after consideration of any comments.

VII. Incorporation by Reference

In this document, the EPA is proposing to include regulatory text in an EPA final rule that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is finalizing the incorporation by reference of K.A.R. 28-19-546 and K.A.R. 28-19-564 as discussed in sections II and IV of this preamble and set forth below in the proposed amendments to 40 CFR part 52. The EPA has made, and will continue to make, these materials generally available through www.regulations.gov and at the EPA Region 7 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

VIII. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Clean Air 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 Clean Air Act. 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 14094 (88 FR 21879, April 11, 2023);
- 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 (Pub. L. 104-4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997) because it approves a State program;
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001); and
- 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 Clean Air Act.

In addition, 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).

Executive Order 12898 (Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations, 59 FR 7629, Feb. 16, 1994) directs Federal agencies to identify and address "disproportionately high and adverse human health or environmental effects" of their actions on communities with environmental justice (EJ) concerns to the greatest extent practicable and permitted by law. Executive Order (E.O.) 14096 (Revitalizing Our Nation's Commitment to Environmental Justice for All, 88 FR 25251, April 26, 2023) builds on and supplements E.O. 12898 and defines EJ as, among other things, the just treatment and meaningful involvement of all people, regardless of income, race, color, national origin, or Tribal affiliation, or disability in agency decision-making and other Federal activities that affect human health and the environment.

The Kansas Department of Health and Environment (KDHE) did not evaluate EJ considerations as part of its SIP submittal; the CAA and applicable implementing regulations neither prohibit nor require such an evaluation. EPA did not perform an EJ analysis and did not consider EJ in this action. Due to the nature of the action being taken here, this action is expected to have a neutral to positive impact on the air quality of the affected area. Consideration of EJ is not required as part of this action, and there is no information in the record inconsistent with the stated goal of E.O. 12898/14096 of achieving EJ for communities with EJ concerns.

List of Subjects

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.

40 CFR Part 70

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Operating permits, Reporting and recordkeeping requirements.

Dated: December 30, 2024.

Meghan A. McCollister,
Regional Administrator,
Region 7.

For the reasons stated in the preamble, the EPA proposes to amend 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. 28-19-546” and “K.A.R. 28-19-564” to read as follows:

§52.870 Identification of plan.

* * * * *

(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				
* * * * *				
Class II Operating Permits				
* * * * *				
K.A.R. 28-19-546	Definitions Class II operating permits; annual emission inventory	12/23/2022	[Date of publication of the final rule in the Federal Register], [Federal Register citation of the final rule]	
* * * * *				
K.A.R. 28-19-564	Permit-by- Rule; Sources with Actual Emissions Less Than 50 Percent of Major Source Thresholds	12/23/2022	[Date of publication of the final rule in the Federal Register], [Federal Register citation of the final rule]	
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PART 70—STATE OPERATING PERMIT PROGRAMS

3. The authority citation for part 70 continues to read as follows:

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

4. Appendix A to part 70 is amended by adding paragraph (h) under "Kansas" to read as follows:

Appendix A to Part 70—Approval Status of State and Local Operating Permits Programs

* * * * *

Kansas

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(h) The Kansas Department of Health and Environment submitted revisions to Kansas rules K.A.R. 28-19-517, on February 20, 2023. The State effective date is December 23, 2022. This revision is effective [30 days after date of publication of the final rule in the **Federal Register**].

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[FR Doc. 2024-31626 Filed: 1/14/2025 8:45 am; Publication Date: 1/15/2025]