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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[KS 173-1173a; FRL-7455-9]

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

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

**ACTION:** Direct final rule.

**SUMMARY:** EPA is taking final action to approve a State Implementation Plan (SIP) revision submitted by the state of Kansas. This revision is a new regulation entitled "Prevention of Significant Deterioration of Air Quality" (PSD) and will replace the existing state PSD regulation. This rule was last adopted as a state rule in 1990; therefore, this revision adopts by reference Federal PSD regulations, as in effect on July 1, 2000. The effect of this approval is to ensure Federal enforceability of the state air program rules and to maintain consistency between the state-adopted rules and the approved SIP.

**DATES:** This direct final rule will be effective April 28, 2003, unless EPA receives adverse comments by March 28, 2003. If adverse comments are received, EPA 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:** Comments may be mailed to Heather Hamilton, Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101.

Copies of documents relative to this action are available for public inspection during normal business hours at the above-listed Region 7 location. 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:** Heather Hamilton at (913) 551-7039.

#### 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 a SIP?

What is the Federal approval process for a SIP?

What does Federal approval of a state regulation mean to me?

What is being addressed in this document? Have the requirements for approval of a SIP revision been met? What action is EPA taking?

#### What Is a SIP?

Section 110 of the Clean Air Act (CAA) requires States to develop air pollution regulations and control strategies to ensure that State air quality meets the national ambient air quality standards established by EPA. These ambient standards are established under section 109 of the CAA, and they currently address six criteria pollutants. These pollutants are: carbon monoxide, nitrogen dioxide, ozone, lead, particulate matter, and sulfur dioxide.

Each State must submit these regulations and control strategies to us for approval and incorporation into the Federally-enforceable SIP.

Each Federally-approved SIP protects air quality primarily by addressing air pollution at its point of origin. These SIPs can be extensive, containing state regulations or other enforceable documents and supporting information such as emission inventories, monitoring networks, and modeling demonstrations.

#### 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 Does Federal Approval of a State Regulation Mean to Me?

Enforcement of the State regulation before and after it is incorporated into the Federally-approved SIP is primarily a state responsibility. However, after the regulation is Federally approved, we are authorized to take enforcement action against violators. Citizens are also offered legal recourse to address violations as described in section 304 of the CAA.

#### What Is Being Addressed in This Document?

This action approves the adoption of State rule K.A.R. 28-19-350, Prevention of Significant Deterioration of Air Quality, and approves the rescission of the existing rule sections K.A.R. 28-19-17a through 28-19-17q which comprised the prior body of Kansas' Prevention of Significant Deterioration of Air Quality regulations. K.A.R. 28-19-17 is being revised in order to provide a cross-reference to the new regulations. This revision adopts by reference 40 CFR 52.21, as in effect on July 1, 2000, with the exceptions of 52.21(a); 52.21(f) through (h); 52.21(m)(l)(v); 52.21(q); 52.21(s) through (u); and 52.21(w).

The proposed changes to the State Prevention of Significant Deterioration (PSD) program clarify that the following Federal changes have been adopted by the Kansas PSD Program: (1) Adoption of the PM10 (particulate matter with a nominal aerodynamic diameter of 10 micrometers or less) increment; (2) adoption of provisions regarding calculating actual emissions for electric utility steam generating units; (3) adoption of provisions relating to clean coal technology; (4) adoption of provisions relating to pollution control projects at existing electric utility steam generating units; (5) adoption of the significance level for non-methane organic compounds at municipal solid waste landfills; and (6) adoption of the significance levels for organics, metals and acid gases from municipal waste combustors. This action also allows the opportunity to renumber the PSD rules to further the ongoing renumbering of the Kansas Air Quality Regulations.

This regulation was adopted by the Kansas Department of Health and Environment on October 30, 2002, and became effective on November 22, 2002.

#### 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 technical support document which is part of this document, the revision meets the substantive SIP requirements of the CAA, including section 110 and implementing regulations.

#### What Action Is EPA Taking?

EPA is approving as a revision to the Kansas SIP rule K.A.R. 28–19–350, Prevention of Significant Deterioration of Air Quality; the rescission of existing K.A.R. 28–19–17a through 28–19–17q which comprised the prior body of Kansas' Prevention of Significant Deterioration of Air Quality regulations, and the revision to K.A.R. 28–19–17 which provides a cross-reference to the new regulations. These revisions were adopted by the State on October 30, 2002, and became effective on November 22, 2002. These revisions were submitted on December 10, 2002.

We are processing this action as a final action because it adds noncontroversial regulations to the SIP. We do not anticipate any adverse comments. Please note that if EPA receives adverse comment on part of this rule and if that part can be severed from the remainder of the rule, EPA may adopt as final those parts of the rule that are not the subject of an adverse comment.

#### 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 CAA. 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 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 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 April 28, 2003. 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: February 20, 2003.

**James B. Gulliford,**

*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 the table in paragraph (c) is amended:

a. Under the heading for "Attainment Area Requirements" by revising K.A.R. 28–19–17;

b. Under the heading for "Attainment Area Requirements" by removing the entries for K.A.R. 28–19–17a through K.A.R. 28–19–17q;

c. Under the heading for "Construction Permits and Approvals" by adding in numerical order an entry for K.A.R. 28–19–350.

The revision and addition read as follows:

#### § 52.870 Identification of plan.

\* \* \* \* \*

(c) \* \* \*

EPA-APPROVED KANSAS REGULATIONS

Kansas citation	Title	State effective date	EPA approval date	Comments
<b>Kansas Department of Health and Environment Ambient Air Quality Standards and Air Pollution Control</b>				
* * * * *				
<b>Attainment Area Requirements</b>				
K.A.R. 28-19-17 .....	Prevention of Significant Deterioration of Air Quality.	11/22/02	2/26/03 and FR page citation.	K.A.R. 28-19-17a through 28-19-17q revoked. Provision moved to K.A.R. 28-19-350.
* * * * *				
<b>Construction Permits and Approvals</b>				
* * * * *				
K.A.R. 28-19-350 .....	Prevention of Significant Deterioration of Air Quality.	11/22/02	2/26/03 and FR page citation.	
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**ENVIRONMENTAL PROTECTION AGENCY**  
**40 CFR Part 180**  
**[OPP-2003-0039; FRL-7291-7]**  
**Pesticides; Tolerance Exemptions for Polymers**  
**AGENCY:** Environmental Protection Agency (EPA).  
**ACTION:** Direct final rule.

**SUMMARY:** EPA is taking direct final rule action to shift certain polymeric substances from one section of the Code of Federal Regulations (CFR) to the section of CFR which lists the pesticide chemicals that are exempt from the requirement of a tolerance because they have been determined to meet the criteria identifying polymers that are of low risk.

**DATES:** This direct final rule is effective on May 27, 2003, without further notice, unless EPA receives a relevant adverse comment by March 28, 2003. If EPA receives a relevant adverse comment, EPA will publish a timely withdrawal in the **Federal Register** informing the public that this direct final rule will not take effect.

**FOR FURTHER INFORMATION CONTACT:** Kathryn Boyle, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington,

DC 20460-0001; telephone number: 703-305-6304; fax number: 703-305-0599; e-mail address: boyle.kathryn@epa.gov.

**SUPPLEMENTARY INFORMATION:**  
**I. General Information**  
*A. Does this Action Apply to Me?*

You may be affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

- Crop production (NAICS code 111)
- Animal production (NAICS code 112)
- Food manufacturing (NAICS code 311)
- Pesticide manufacturing (NAICS code 32532)
- Antimicrobial Pesticide (NAICS code 32561)

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

*B. How Can I Get Copies Of This Document and Other Related Information?*

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number OPP-2003-0039. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305-5805.

2. *Electronic Access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at <http://www.epa.gov/fedrgstr/>. A frequently updated electronic version of 40 CFR part 180 is available at [http://www.access.gpo.gov/nara/cfr/cfrhtml\\_00/Title\\_40/40cfr180\\_00.html](http://www.access.gpo.gov/nara/cfr/cfrhtml_00/Title_40/40cfr180_00.html), a beta site currently under development.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at <http://www.epa.gov/edocket/>