

regulations concern particulate matter ambient limits and episode regulations.

(i) Incorporation by reference. Illinois Administrative Code, Title 35: Environmental Protection, Subtitle B: Air Pollution, Chapter I: Pollution Control Board

(A) Part 212 Visible and Particulate Matter Emissions: Section 212.113 Incorporations by Reference; section 212.424 Fugitive Particulate Matter Control for the Portland Cement Manufacturing Plant and Associated Quarry Operations located in LaSalle County, South of the Illinois River; section 212.443 Coke Plants; section 212.445 Blast Furnace Cast Houses; adopted at 16 Illinois Register 8204, effective May 15, 1992.

(B) Part 243 Air Quality Standards: Section 243.108 Incorporations by Reference; section 243.120 PM<sub>10</sub>; section 243.121 Repealed; adopted at 16 Illinois Register 8185, effective May 15, 1992.

(C) Part 244 Episodes: Section 244.101 Definitions; section 244.106 Monitoring; section 244.107 Determination of Areas Affected; section 244.121 Local Agency Responsibilities; section 244.161 Advisory Alert and Emergency Levels; section 244.162 Criteria for Declaring and Advisory; section 244.163 Criteria for Declaring a Yellow Alert; section 244.166 Criteria for Terminating Advisory, Alert and Emergency; section 244.167 Episode Stage Notification; section 244.168 Contents of Episode Stage Notification; section 244.169 Actions During Episode Stages Adopted; section 244 appendix D; adopted at 16 Illinois Register 8191, effective May 15, 1992.

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#### 40 CFR Part 52

[KS-2-1-5640; FRL-4552-3]

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

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

**SUMMARY:** The Kansas Department of Health and Environment (KDHE) has submitted a revision to its State Implementation Plan (SIP), which revises the state prevention of significant deterioration (PSD) regulation to incorporate by reference the EPA revisions to 40 CFR 52.21 at 53 FR 40656 pertaining to PSD nitrogen oxide (NO<sub>x</sub>) increments. The state also revised its miscellaneous metal parts

surface coating rule and updated its continuous emission monitoring rule. EPA is taking final action to approve these revisions to the Kansas SIP. The effect of this action is to update and strengthen the Kansas SIP.

**EFFECTIVE DATE:** This action will be effective March 15, 1993 unless notice is received by February 11, 1993 that adverse or critical comments will be submitted. If the effective date is delayed, timely notice will be published in the *Federal Register*.

**ADDRESSES:** Copies of the documents relevant to this action are available for public inspection during normal business hours at the: Environmental Protection Agency, Air Branch, 726 Minnesota Avenue, Kansas City, Kansas 66101; Kansas Department of Health and Environment, Bureau of Air Quality and Radiation, Forbes Field, Building 740, Topeka, Kansas 66620; and the Public Information Reference Unit, Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.  
**FOR FURTHER INFORMATION CONTACT:** Wayne A. Kaiser at (913) 551-7603.

**SUPPLEMENTARY INFORMATION:** On October 17, 1988, EPA revised the PSD regulations at 40 CFR 52.21 (53 FR 40656) for NO<sub>x</sub>. These regulations establish the maximum increase in ambient nitrogen dioxide concentrations allowed in an area above the baseline concentration; these maximum allowable increase are called increments. The effect of these regulations is to require all applicants for major new stationary sources and major modification emitting nitrogen oxides to account for and, if necessary, restrict emissions so as not to cause or contribute to exceedances of the increment.

On September 29, 1992, the KDHE submitted revisions to its PSD rule, K.A.R. 28-19-17, which incorporates by reference the revisions to 40 CFR 52.21, effective October 17, 1988. The state rule became effective June 8, 1992.

The state also provided a demonstration that it meets the conditions for approval of adoption of the NO<sub>x</sub> increment program as detailed in the EPA guidance memorandum on the subject dated August 17, 1990.

The EPA memorandum above described specific conditions for EPA approval of a state's adoption of the NO<sub>x</sub> increment rule. Those conditions pertained to regulatory language, increment consumption analysis, increment consumption for the transition period, and legal authority. EPA has evaluated the state's submittal in accordance with the August 17, 1990,

guidance and finds that the state submittal is acceptable.

The state also revised rule K.A.R. 28-19-17 by replacing the existing 40 CFR 52.21 language with adoption by reference to the appropriate sections of 40 CFR 52.21 and, where appropriate, updated references to the federal rules. In so doing, the state adopted by reference two provisions which had previously been retained by EPA in 40 CFR 52.884. EPA previously retained the authority for the provisions of 52.21(v), innovative control technology (49 FR 48185), in 40 CFR 52.884(a)(2), but the state will now have that authority in its adoption by reference of 52.21(v) in rule 28-19-17q. Thus, 40 CFR 52.884(a)(2) is being deleted.

Also, EPA previously retained the authority to issue PSD permits to marine terminal facilities in 40 CFR 52.884(a)(3) (49 FR 48185) because of a pending court decision and because the state's definition of "building, structure, facility or installation" did not exclude vessels. Since the state's definition is now consistent with 52.21(b)(6), 40 CFR 52.884(a)(3) is being deleted, thus giving the state authority to act on PSD permits for marine terminals with vessel emissions.

The state also revised rule K.A.R. 28-19-19, continuous emission monitoring (CEM), to update the reference to 40 CFR part 60, appendix A, Method 19, as in effect July 1, 1989.

Finally, the state revised rule K.A.R. 28-19-73, surface coating of miscellaneous metal parts and products, and metal furniture. This rule generally requires a volatile organic compound (VOC) content of 3.5 pounds per gallon for surface coatings for applications subject to the rule. In this revision, the state adopted the reasonably available control technology (RACT) limit by allowing a VOC content of 4.3 pounds per gallon for coatings applied to the interior of metal pails and drums. This determination was made on the basis of the unavailability of lower VOC coatings that can withstand the harsh, toxic, and corrosive nature of many of the chemicals that are shipped in these containers. Only three sources are subject to this rule.

The 4.3 pound limit is consistent with the maintenance plan approved by EPA for the Kansas City metropolitan area. Because the 3.5 pound limit has not been achieved by sources subject to the limit, the emission inventory includes a 4.3 pound actual emission rate for the three sources subject to the rule. Since the plan's control strategy is based on 4.3 pounds, and the new allowable limit merely reflects that rate, EPA has concluded that no adjustments to the

maintenance plan are necessary as a result of this revision.

The state provided adequate opportunity for public notice and comment consistent with the requirements of 40 CFR 52.102 prior to rule adoption. These rule revisions were adopted by the Secretary of the KDHE on April 3, 1992, and became effective on June 8, 1992.

#### EPA Action

EPA is taking final action to approve certain rule revisions to the Kansas SIP. This includes revisions to rule K.A.R. 28-19-17, which adopts by reference the PSD NO<sub>x</sub> requirements of 40 CFR 52.21 at 53 FR 40656; to K.A.R. 28-19-19, the CEM rule; and to K.A.R. 28-19-73, a surface coating rule.

EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. This action will be effective March 15, 1993 unless, within 30 days of its publication, notice is received that adverse or critical comments will be submitted.

If such notice is received this action will be withdrawn before the effective date by publishing two subsequent notices. One notice will withdraw the final action, and another will begin a new rulemaking by announcing a proposal of the action and establishing a comment period. If no such comments are received, the public is advised that this action will be effective March 15, 1993.

Nothing in this action should be construed as permitting, or allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to the SIP shall be considered separately in light of specific technical, economic, and environmental factors, and in relation to relevant statutory and regulatory requirements.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities (5 U.S.C. 603 and 604). Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, Part D of the CAA do not create any new requirements, but simply approve requirements that the state is already imposing. Therefore, because the federal SIP approval does not impose any new requirements, EPA

certifies that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the federal/state relationship under the CAA, preparation of a regulatory flexibility analysis would constitute federal inquiry into the economic reasonableness of state action. The CAA forbids EPA to base its actions concerning SIPs on such grounds (*Union Electric Co. v. U.S. E.P.A.*, 427 U.S. 246, 256-66 (1976); 42 U.S.C. 7410(a)(2)).

This action has been classified as a Table 3 action by the Regional Administrator under the procedures published in the Federal Register on January 19, 1989 (54 FR 2214-2225). EPA has submitted a request for a permanent waiver for Table 2 and 3 SIP revisions from the requirements of Section 3 of Executive Order 12291. OMB has agreed to continue the temporary waiver until such time as it rules on EPA's request.

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by March 15, 1993. 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

Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Note: Incorporation by reference of the State Implementation Plan for the State of Kansas was approved by the Director of the Federal Register on July 1, 1982.

Dated: December 7, 1992.

Morris Kay,  
Regional Administrator.

40 CFR part 52, subpart R is amended as follows:

#### PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401-7671q.

#### Subpart R—Kansas

2. Section 52.870 is amended by adding paragraph (c)(27) to read as follows:

#### § 52.870 Identification of plan.

\* \* \* \* \*

(c) \* \* \*

(27) On September 15, 1992, the Secretary of KDHE submitted rule revisions to K.A.R. 28-19-17, the PSD rule; to K.A.R. 28-19-19, the CEM rule; and to K.A.R. 28-19-73, a surface coating rule. These rule revisions were adopted by KDHE on April 3, 1992.

(i) Incorporation by reference,

(A) Revised regulations K.A.R. 28-19-17 through 28-19-171, K.A.R. 28-19-19 and K.A.R. 28-19-73, and new regulations K.A.R. 28-19-17m through 28-19-17q, effective June 8, 1992.

(ii) Additional material.

(A) Letter and attachment from KDHE dated September 15, 1992 pertaining to PSD NO<sub>x</sub> requirements.

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#### § 52.884 [Amended]

3. Section 52.884 is amended by removing paragraphs (a)(2) and (a)(3).

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#### 40 CFR Part 61

[AL-34-1-5601; FRL-4534-3]

#### Designation of Areas for Air Quality Planning Purposes

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: On April 8, 1992, the Alabama Department of Environmental Management (ADEM) submitted a request for redesignation to attainment for sulfur dioxide (SO<sub>2</sub>) in Colbert and Lauderdale Counties, Alabama. The redesignation request included five years of quality assured monitoring data which showed no exceedances of the National Ambient Air Quality Standards (NAAQS) for SO<sub>2</sub>. The State has also implemented controls to reduce emissions to the level indicated by dispersion modeling. EPA is redesignating Colbert County, Alabama, and Lauderdale County, Alabama to attainment for sulfur dioxide (SO<sub>2</sub>).

DATES: This action will be effective March 15, 1993 unless notice is received within 30 days that someone wishes to submit adverse or critical comments. If the effective date is delayed, timely notice will be published in the Federal Register.