

knowledge and has not withheld any citations because of lack of employer knowledge. In addition, the State has promised to litigate if a citation for a non-serious violation is challenged on the basis of lack of employer knowledge. The State also promised to seek a legislative change to its Act if monitoring reveals any problems with this provision.

3. A written transmittal from the State of Arizona, dated August 4, 1980, from Larry Etchechury, Director, Arizona Occupational Safety and Health, states that, in accordance with Arizona State law, the State has no jurisdiction on Indian Reservations. This is a boundary-to-boundary restriction. Therefore, Federal OSHA will have sole jurisdiction on Indian Reservations.

#### Location of the Plan and its Supplements for Inspection and Copying

A copy of the supplements, along with the approved plan, may be inspected and copied during normal business hours at the following locations: Director, Federal Compliance and State Programs, Occupational Safety and Health Administration, 200 Constitution Avenue, N.W., Room N-3613, Washington, D.C. 20210; Regional Administrator, Occupational Safety and Health Administration, 450 Golden Gate Avenue, Room 11321, San Francisco, California 94102; and Division of Occupational Safety and Health, Industrial Commission of Arizona, 1601 West Jefferson St., Phoenix, Arizona 85005.

#### Public Participation

A notice was published on November 21, 1980 (45 FR 77048) announcing the submission of the Arizona plan supplements number one and two as set out above. Interested persons were given until December 22, 1980 to submit written data, views and arguments concerning whether the supplement should be approved. No comments were received.

The Assistant Secretary finds that the implementation of Federal OSHA jurisdiction on Indian Reservations in the State of Arizona is consistent with the governing legal principles. Therefore, good cause is found for approval of this supplement without public comment and notice.

#### Decision

After careful consideration, the Arizona plan supplements described above are hereby approved under Part 1953 of this Chapter. The decision above is hereby approved under Part 1953 of this Chapter. This decision incorporates the requirements of the Act and

implementing regulations applicable to State plans generally.

1. In accordance with this decision, § 1952.354 of Subpart CC of Part 1952 of this Chapter is amended by adding paragraph (k) to read as follows:

#### § 1952.354 Completed developmental steps.

(k) Legislative amendments required to bring the Arizona occupational safety and health law (Arizona Revised Statutes, Chapter 23) into conformity with Federal requirements were enacted effective August 27, 1977.

2. In accordance with this decision, Subpart CC of 29 CFR Part 1952 is amended by adding a new § 1952.355 as follows:

#### § 1952.355 Changes to approved plans.

On August 4, 1980, the State of Arizona formally withdrew its jurisdiction on Indian Reservations.

(Sec. 18, Pub. L. 91-596, 84 Stat. 1608 (29 U.S.C. 667))

Signed at Washington, D.C., this 27th day of March 1981.

Thorne G. Auchter,

*Assistant Secretary of Labor for Occupational Safety and Health.*

[FR Doc. 81-10255 Filed 4-2-81; 8:45 am]

BILLING CODE 4510-26-M

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[A-7-FRL 1788-5]

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

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

**ACTION:** Final rulemaking.

**SUMMARY:** Part D of the Clean Air Act (CAA) as amended 1977 requires that states revise their State Implementation Plans (SIP) for all areas that have not attained the National Ambient Air Quality Standards (NAAQS). The State of Kansas submitted revisions to its SIP to EPA on September 17, 1979, October 22, 1979, March 10, 1980, and September 22 and 25, 1980, in order to satisfy the requirements of Part D. Availability of the Kansas revisions was announced in the *Federal Register* on April 4, 1980 (45 FR 22981) and subsequent notices were published June 2, 1980 (45 FR 37224) and September, 24, 1980 (45 FR 63301), and the public was invited to make comments at that time. EPA's proposed action on the submittal was stated in the *Federal Register* on December 11, 1980

(45 FR 81608). Many of the issues were either satisfactory at the time of submission or have since been resolved by the Kansas Department of Health and Environment (KDHE) in a manner consistent with discussion in the proposed rulemaking. These items are approved without conditions.

EPA is taking final action to conditionally approve certain elements of the Kansas plan. A discussion of conditional approval and its practical effect appears in supplements to the General Preamble, on July 2, 1979 (44 FR 38583) and November 23, 1979 (44 FR 67182).

It is not possible to make a final approval/disapproval decision on the non-Part D portions of the State plan submittal. These are portions which are either not addressed or inadequately addressed in the September 17, 1979, October 22, 1979, March 10, 1980, and September 22 and 25, 1980, submittals.

**DATE:** This approval is effective April 3, 1981.

**ADDRESSES:** Copies of the state submission, all public comments received, and the EPA-prepared evaluation report are available during normal business hours at the following locations.

Environmental Protection Agency,  
Region VII, 324 East 11th Street,  
Kansas City, Missouri 64106;

Public Information Reference Unit,  
Environmental Protection Agency, 401  
M Street SW., Washington, D.C.  
20460;

Kansas Department of Health and  
Environment, Bureau of Air Quality  
and Occupational Health, Forbes  
Field, Topeka, Kansas 66101;  
Mid-America Regional Council, 20 West  
Ninth Street, Kansas City, Missouri  
64105.

A copy of the state submissions and this notice is available at: The Office of the Federal Register, 1100 L Street NW., Room 8401, Washington, D.C. 20460.

**FOR FURTHER INFORMATION CONTACT:**  
Gale A. Wright (816) 374-3791 (FTS 758-3791) (Region VII Office).

#### SUPPLEMENTARY INFORMATION:

##### A. Background

The Clean Air Act Amendments (CAA) of 1977 added requirements to the Act for revised State Implementation Plans (SIP) for areas which have not attained the National Ambient Air Quality Standards (NAAQS). These requirements are found in Part D which includes Sections 171 through 178 of the Act. The requirements for an approvable nonattainment plan are listed in Section 172.

The general requirements for all SIP revisions are found in Section 110(a). Section 121 requires the state to consult with local governments on certain matters. Section 123 limits the availability of dispersion techniques for certain sources. Section 126 relates to interstate abatement. Section 127 requires public notification of violations of health related standards. Section 128 imposes requirements on state boards. Sections 161 through 169A (Part C) require each state plan to contain measures for the prevention of significant deterioration (PSD) of air quality.

In order for a plan to be fully approvable, it must meet all of the requirements discussed above. EPA's Part D criteria were proposed in the *Federal Register* on April 4, 1979 (44 FR 20372), and supplemented July 2, 1979 (44 FR 38583). Additional supplements to the general preamble were published in the *Federal Register* on August 28, 1979 (44 FR 50371), September 17, 1979 (44 FR 53761), and November 23, 1979 (44 FR 67182). These notices contain the general preamble to the proposed rulemaking for all nonattainment plan submissions. They describe in detail the requirements for an approvable nonattainment plan. For a background discussion of the Kansas rulemaking, the reader is referred to the proposed rulemaking on the submittals which were published in the *Federal Register* on December 11, 1980 (45 FR 81608).

Certain portions of the Kansas SIP are being conditionally approved today. The conditional approval requires the state to submit additional materials by the deadlines specified in today's notice. There will be no extensions of conditional approval deadlines which are being promulgated today. EPA will follow the procedures described below, when determining if the state has satisfied the conditions.

1. If the state submits the required additional documentation according to schedule, EPA will publish a notice in the *Federal Register* announcing receipt of the material. The notice will also announce that the conditional approval is continued pending EPA's final action on the submission.

2. EPA will evaluate the state's submission to determine if the condition is fully met. After review is complete, a *Federal Register* notice will be published proposing or taking final action either to find the condition has been met and approve the plan, or to find the condition has not been met, withdraw the conditional approval and disapprove the plan. If the plan is disapproved, the Section 110(a)(2)(I) restrictions on construction will be in effect.

3. If the state fails to submit the required materials needed to meet a condition in a timely manner, EPA will publish a *Federal Register* notice shortly after the expiration of the time limit for submission. The notice will announce that the conditional approval is withdrawn, the SIP is disapproved, and Section 110(a)(2)(I) restrictions on growth are in effect.

The State of Kansas submitted the SIP revisions for nonattainment areas in Kansas on September 17, 1979, October 22, 1979, March 10, 1980, and September 22 and 25, 1980. The submissions include plans to attain the ozone standard in Wyandotte and Johnson Counties and Douglas County and the total suspended particulate (TSP) standard in Kansas City.

The final rulemaking appeared in the *Federal Register* on November 4, 1980 (45 FR 73046) for area designations under Section 107(d) of the Act and on December 2, 1980 (45 FR 79808) for an 18-month extension to July 1, 1980 for the submission of a plan to provide for attainment of the secondary particulate standard in Topeka. Those areas of the state where nonattainment plans are required, but for which plans have not been submitted are Wichita for carbon monoxide and Topeka and Kansas City for secondary TSP.

#### B. General Discussion

The State of Kansas has submitted revisions to its SIP as required by Part D and the other provisions of the CAA. The non-Part D requirements are not addressed in this rulemaking, since the state has only submitted a few of the required non-Part D revisions. Additionally some of these submissions do not adequately satisfy the non-Part D requirements. The non-Part D submissions include Intergovernment Cooperation, Malfunction Regulation, New Source Review (as required by Section 110(a)(2)(D), and Consultation. A discussion of these submissions and EPA's comments are given in the proposed rulemaking of February 11, 1980 (45 FR 9017-18) and December 11, 1980 (45 FR 81613). As stated in these proposals, EPA proposed to take no action on the non-Part D issues. Consequently, this final rulemaking takes no action on the non-Part D revisions to the Kansas SIP.

Several Part D requirements apply only to ozone and carbon monoxide nonattainment areas. These requirements include an extension of the attainment date to December 31, 1987, the implementation of an inspection and maintenance (I/M) program for areas with attainment dates after 1982, and the implementation of transportation

control measures (TCMs), as appropriate, to attain the NAAQS by the required deadlines. As explained in the December 11, 1980 proposed rulemaking (45 FR 81610 and 81612), of the three nonattainment areas under review, these requirements apply to the Wyandotte and Johnson Counties ozone nonattainment area. However, the state anticipates attaining the ozone standard in these counties by the 1982 deadline. Thus, neither an attainment date extension nor the implementation of an I/M program are necessary for the Kansas SIP. Furthermore, TCMs will not be required for the Wyandotte and Johnson Counties ozone SIP, since attainment of the ozone standard can be achieved by the projected reduction from the Federal Motor Vehicle Control Program and the control of major volatile organic compounds (VOC) sources. Consequently, these requirements will not be discussed further in this rulemaking.

Similarly, the Douglas County rural ozone plan does not need to address the following Part D requirements: Demonstration of Attainment, Reasonable Further Progress, and Margin of Growth. The December 11, 1980 proposed rulemaking (45 FR 81609) discusses further the Part D requirements for rural ozone nonattainment areas.

The December 11, 1980 proposed rulemaking constitutes a reproposal for the Wyandotte and Johnson Counties ozone plan. Kansas submitted the revisions for this nonattainment area on September 17, 1979. EPA published its comments and proposed action on this submission in the February 11, 1980 *Federal Register* (45 FR 9012). Reproposal of the Wyandotte and Johnson Counties ozone plan was necessary because the state chose to revise the regulatory elements affecting new and existing sources in the nonattainment area. The revised regulations corrected deficiencies and incorporated then-pending changes in EPA requirements on these regulatory elements. The December 11, 1980 proposed rulemaking contains a discussion of the revised regulations (45 FR 81609 and 81611-12).

Regarding the February 11, 1980 proposed rulemaking, EPA received comments on the proposed actions regarding deficiencies in the Part D new source review permit requirement. EPA proposed two options for correcting the deficiencies. During the 30 day public comment period, EPA received comments supporting the second option which consisted of EPA disapproving this element of the plan and

promulgating its own regulation. However, the state has pursued the first option which consisted of revision to the state regulation before EPA took final action on the submission. This issue is discussed further below in Section B(6).

### C. Nonattainment Plan Provisions

The following is a discussion of each of the requirements for the nonattainment plan provisions of the Act, and the approval status of the Kansas plan with respect to each of these requirements. Included in the discussions are summaries of public comments received on the December 11, 1980 proposed rulemaking (45 FR 81608) followed by EPA's response.

(1) *Adoption After Reasonable Notice and Hearing*—Section 172(b)(1) of the CAA requires the plan be adopted by the state after providing reasonable notice and public hearing.

EPA found Kansas has adequately satisfied this requirement. The state held a public hearing on July 12, 1979 on the Wyandotte and Johnson Counties ozone submission of September 17, 1979. Kansas held a public hearing on July 21, 1980 on the revised VOC regulations which the state submitted to EPA on September 25, 1980. The public hearing on the revised new source review permit regulation was held on October 27, 1980, and the Kansas City TSP SIP submission was discussed at the August 29, 1979 public hearing.

EPA proposed to approve the SIP as meeting this requirement. EPA received no comments on this proposed approval.

*Action:* EPA approves the Kansas submissions as meeting the public participation requirements of Section 172(b)(1).

(2) *Demonstration of Attainment*—Section 172(a)(1) requires the plan to provide for attainment of NAAQS as expeditiously as practicable. Primary standards are to be met no later than December 31, 1982 (or in certain instances not applicable to the Kansas SIP, December 31, 1987).

The State of Kansas demonstrated attainment of the ozone standard in Wyandotte and Johnson Counties and projected attainment of the TSP standard in Kansas City by the above deadline. EPA proposed to approve the SIP as meeting this requirement. EPA received no comments on this proposed action.

*Action:* EPA approves the Kansas plan as meeting the requirements of Section 172(a)(1).

(3) *Emission Inventory*—Section 172(b)(4) requires the plan to include a comprehensive, accurate, and current inventory of all sources of each pollutant for which an area is

nonattainment. It also requires the inventory to be updated as frequently as necessary to assure reasonable further progress is being made to insure the standard is attained.

As stated in the December 11, 1980 (45 FR 81610-11) proposed rulemaking, EPA found the inventories of VOC and TSP sources acceptable. While EPA found the Douglas County inventory deficient regarding cutback asphalt as a major VOC source, EPA proposed to approve the emission inventory if the state would submit an acceptable revised inventory prior to the close of the public comment period.

EPA received no comments on this proposed action.

On December 19, 1980, the state submitted an acceptable supplement to the Douglas County emission inventory.

*Action:* EPA approves the emission inventory portion of the plan as meeting the requirements of Section 172(b)(4).

(4) *Reasonable Further Progress (RFP)*—Section 172(b)(3) requires the state to demonstrate that it will make reasonable further progress toward attaining the standards by specific dates, including emission reductions which can be achieved by RACT.

Kansas presented an acceptable RFP curve for the Wyandotte and Johnson Counties ozone nonattainment area and for the Kansas City TSP nonattainment area. These submissions are discussed further in the December 11, 1980 proposed rulemaking (45 FR 81611). EPA proposed to approve the RFP submissions. No comments were received on the proposed action.

*Action:* EPA approves the Kansas SIP as meeting the requirements of Section 172(b)(3).

(5) *Margin of Growth*—Section 172(b)(5) requires the plan to expressly identify and quantify the emissions, if any, which will be allowed to result from the construction and operation of major new or modified stationary sources in a nonattainment area.

EPA found the state has adequately considered the growth of VOC and TSP emissions. For VOC emissions in the Wyandotte and Johnson Counties ozone nonattainment area, new sources will be accommodated without source specific offsets. This accommodation for new sources can be provided because existing emissions will be reduced more than needed for reasonable further progress and attainment of the ozone NAAQS. However, in the Kansas City TSP submission, emission offsets are required to accommodate any new major source construction or modifications in the nonattainment area. These submissions are discussed further in proposed rulemaking of February 11,

1980 (45 FR 9016) and December 11, 1980 (45 FR 81611).

EPA proposed to approve the state's submissions on margin of growth. No comments were received on this proposal.

*Action:* EPA approves the Kansas plan with respect to Section 172(b)(5).

(6) *Preconstruction Review Permits*—Section 172(b)(6) of the CAA requires that the plan include a permit program for the construction and operation of new or modified major stationary sources in accordance with the requirements of Section 173 of the Act.

In the September 17, 1979 submittal, the state proposed new amendments to the Kansas air quality regulations (28-19-7, 28-19-8, and 28-19-14) to carry out the provisions of Section 173 of the CAA. EPA noted deficiencies in the proposed regulations in the February 11, 1980 proposed rulemaking (45 FR 9016-15 and 9018-19). EPA identified the following two options for correcting these deficiencies: wait to take final action until the state corrected these deficiencies; or, disapprove this portion of the plan and promulgate its own Section 173 regulations based on Section 110(c) of the CAA. During the public comment period, EPA received numerous comments supporting the second option.

As explained in the General Discussion in Section B of the December 11, 1980 proposed rulemaking (45 FR 81609), early in 1980 the state decided to revise the proposed regulations to conform to the then-pending changes in EPA requirements for Section 173 of the CAA and to be consistent with EPA's comments in the February 11, 1980 proposed rulemaking. On September 22, 1980, the state submitted the revised regulation (28-19-16 through 16m) to replace the three previously proposed new source review permit regulations included in the September 17, 1979 submittal.

Because of the numerous changes in the revised regulation affecting new and existing sources in the Kansas nonattainment areas, the December 11, 1980 (45 FR 81614) proposed rulemaking constituted a reproposal of EPA's intended action. EPA proposed to conditionally approve the regulation provided the state: made minor changes to the text as discussed at the October 27, 1980 public hearing before adopting and filing the regulation with the state's Revisor of Statutes on or before the statutory December 31 deadline; and, after the final rulemaking is issued, revises the regulation to comply with the requirement of Section 173(3) of the

CAA. EPA received no comments on the conditional approval of the regulation.

EPA believes that Kansas has corrected the deficiencies identified in the proposal as necessary prior to the December 31, 1980 deadline. On November 21, 1980, the state notified EPA that it adopted regulation 28-19-16 through 16m as a temporary regulation and filed it with the Revisor of Statutes for the legislature's review during the 1981 session. Assuming the legislature does not change or reject the regulation, it will become a permanent one by May 1, 1981. Before filing the regulation, the state made the changes in the text of the regulation as discussed at the October 27, 1980 public hearing. This issue is discussed further below in Section C(8).

The state is working to get the statutory amendments passed which are necessary to revise the regulation to comply with Section 173(3) of the Act. Section 173(3) requires that before a permit is issued, the owner of the source must demonstrate that all major stationary sources owned or operated by the permit applicant, in the state, are subject to emission limitations and are in compliance with all emission limitations and standards under the CAA. The Kansas plan states that the Kansas Attorney General's Office has determined that this requirement cannot be adopted at this time, without changes in the state's statutory enabling authority. Thus, the existing regulation, subsection (16h), requires only that other sources owned or operated by the permit applicant must be in compliance with state regulations. To comply with this requirement of the CAA, the state must amend its statutes, accordingly, through legislative action and then revise the new source review permit regulation, as described above.

On January 7, 1981, the state wrote to EPA that the Governor is expected to propose the necessary statutory amendments in his legislative message and to assure that an appropriate bill is introduced in the legislature during the 1981 legislative session. Additionally, the Kansas Department of Health and Environment (KDHE) indicated it intended to present supportive testimony to the appropriate legislative committee, once the legislation is under consideration by the legislature. The state also reconfirmed its commitment to revise the new source review permit regulation according to the schedule given in the December 11, 1980 proposed rulemaking (45 FR 81614-15). The schedule is restated below.

In the January 7, 1981 submittal, the state reconfirmed its commitment for the interim period, before the requirement of Section 173(3) of the CAA is adopted as

a permanent amendment to the new source review permit regulation, to notify EPA when a new source permit applicant is an owner or operator of the sources in the state which are not in compliance with a requirement of the CAA.

*Action:* EPA conditionally approves the new source review permit submission for the Kansas SIP, provided the state carries out the following two conditions. First, the state adopts the regulation as a permanent amendment to the Kansas air quality regulations by May 1, 1981. Second, the state revises the regulation in keeping with the requirement of Section 173(3) of the CAA. Compliance with this condition includes the adoption of the statutory amendments necessary to revise the regulation by April 30, 1981, the adoption and filing of the revised regulation as a temporary amendment with the Revisor of Statutes by July 1, 1981, and the adoption of the revised regulation as a permanent amendment to the Kansas air quality regulations by May 1, 1982.

(7) *Reasonably Available Control Measures.*—Section 172(b)(2) requires implementation of all reasonably available control measures as expeditiously as practicable. Under this provision, reasonably available control technology (RACT) is required for stationary sources.

(7a) The December 11, 1980 proposed rulemaking constitutes a reproposal of the RACT submission for the Wyandotte and Johnson Counties ozone plan and an original proposal for the Douglas County rural ozone plan. As noted in the February 11, 1980 proposed rulemaking (45 FR 9017 and 9019), a regulation controlling VOC emissions from cutback asphalt sources in the Wyandotte and Johnson Counties ozone area and the Douglas County rural ozone nonattainment areas was needed for an approvable VOC submission.

The state revised the regulations, accordingly, and submitted them to EPA on September 25, 1980. The state also made a commitment to adopt and submit additional VOC regulations for any source covered by Control Technology Guidelines (CTGs) issued by EPA in the future. However, before EPA approves the VOC regulatory element, the state must adopt a regulation controlling leaks from tank trucks serving a bulk petroleum terminal and vapor recovery system. Continued satisfaction of the requirement of Section 172(b)(2) of the Act for the ozone portion of the Kansas SIP depends on the state adopting and submitting additional RACT requirements for sources covered by CTGs issued by EPA

in the future. The revised VOC regulations and the additional one covering tank trucks are discussed further in the December 11, 1980 proposed rulemaking (45 FR 81612).

EPA proposed to conditionally approve the VOC regulations as meeting the requirements of Section 172(b)(2), on condition that the state adopt the temporary VOC regulations as permanent ones by May 1, 1981 and amend the regulations to cover leaks from tank trucks and vapor recovery system. The schedule for the latter action consists of the state adopting and filing with the Revisor of Statutes a regulation on leak tight tank trucks and vapor recovery system by July 1, 1981; and, the state adopting this regulation as a permanent amendment to the Kansas air quality regulations by May 1, 1982. EPA received no comments on this proposal.

As discussed below in Section C(8), the state is taking satisfactory steps to meet these conditions.

*Action:* EPA approves the Kansas SIP for ozone as meeting the requirements of Section 172(b)(2) for sources of VOC with the condition that the state adopt the VOC regulations as permanent ones by May 1, 1981, and a regulation on leaks from tank trucks serving a bulk petroleum terminal and vapor recovery system according to the schedule given above.

(7b) Regarding the state's determination of control of major TSP sources in the Kansas City nonattainment area representing RACT, EPA proposed to conditionally approve this element. In the December 11, 1980 proposed rulemaking (45 FR 81614), EPA requested additional information on the state's determination of RACT for those sources listed in Appendix DK of the plan which are not equipped with control equipment. EPA stated that it believes further engineering evaluation of possible control equipment for those sources may be appropriate. EPA proposed to conditionally approve the TSP RACT submission provided the state commit to do the following: submit additional information on its determination of RACT for the above-referenced sources; and subsequently, implement any recommended control measures which might be identified by the further engineering study of the sources. EPA received no comments on this proposed conditional approval.

On December 22, 1980, Kansas wrote to EPA in response to the proposed conditional approval of the RACT submission for the TSP plan. The state agreed to accept the findings from the current RACT determination study

which is being conducted by the local agency, the Kansas City-Wyandotte County Department of Health. The findings will be available by July 1, 1981. The state further agreed to take such appropriate follow-up actions as may be necessary to implement RACT controls on these sources, if the current level of control is found to be inadequate. The state committed to carrying out these actions according to the schedule given below. EPA finds this commitment conforms to the proposed conditional approval.

*Action:* EPA approves the Kansas City TSP plan as meeting the requirements of Section 172(b)(2), provided the state carries out the following two conditions. First, the state must submit the additional information on the RACT determination for the sources without control equipment by September 1, 1981. Second, this submission must include an acceptable compliance schedule for completing the actions which may be necessary to control these sources at RACT. The state should develop the compliance schedule, so that, Kansas City attains the TSP standard by December 31, 1982 deadline.

(8) *Enforceability of the Regulations*—Section 172(b)(10) requires written evidence that all necessary measures have been adopted as legal requirements and that the agencies responsible are committed to their implementation and enforcement.

As noted in Section B(11) and D(4) of the December 11, 1980 proposed rulemaking (45 FR 81612-13 and 81614-15, respectively), EPA noted four deficiencies in the Kansas SIP submissions regarding this requirement.

(8a) Two deficiencies concern the adoption of the VOC and new source review permit regulations as permanent amendments to the Kansas air quality regulations. Presently, they are effective as temporary regulations. Under state statute, regulations adopted as temporary regulations are fully enforceable until April 30 of the year succeeding the year in which a temporary rule is filed with Revisor of Statutes. An explanation of the procedures for adopting a temporary or permanent regulation and statutory restraints relating to a permanent or temporary regulation is given in Section B(11) of the December 11, 1980 proposed rulemaking (45 FR 81612-13).

EPA proposed to conditionally approve the regulatory element of the SIP with the state's commitment to adopt these regulations as permanent amendments by May 1, 1981 and to correct the deficiencies regarding tank trucks and the requirement of Section 173(3) of the CAA. These corrective

measures are discussed further in Section D(3a) and (2) of the December 11, 1980 proposed rulemaking (45 FR 81614). EPA received no comments on this proposal.

The state has taken the necessary steps to have the regulations adopted as permanent ones by May 1, 1981. These steps are discussed further above in Section C(6) and (7).

*Action:* EPA conditionally approves the regulatory portion of the Kansas plan with the condition that the state adopt VOC and new source review permit regulations as permanent amendments to the Kansas air quality regulations by May 1, 1981. Additionally, the state must adopt a regulation covering VOC emissions from tank trucks as discussed above in Section (C)(7a) and revise the new source review permit regulation to comply the requirements of Section 173(3) of the CAA as discussed above in Section C(6).

(8b) As discussed above in Section C(7), the new source review permit regulation is deficient regarding the requirement of Section 173(3) of the CAA. The state has indicated that legislation to correct this deficiency would be placed on the legislature's agenda for action during the 1981 session.

EPA proposed to conditionally approve the new source review permit regulation with respect to Section 172(b)(6) on the condition that the state revise the regulation according to the schedule given in Section D(2b) of the December 11, 1980 proposed rulemaking (45 FR 81614) to meet the requirement of Section 173(3) of the CAA. Also, EPA stated that its issuance of the final rulemaking depended on the state making minor changes in the text before adopting and filing the regulation with the Revisor of Statutes as a temporary regulation by the December 31, statutory deadline, and adopting it as a permanent amendment by May 1, 1981. These issues are discussed further above in Section C(6).

As noted above in Section C(6), the state intends to take the necessary measures to have the legislation passed as a first step in revising the new source review permit regulation consistent with Section 173(3) of the Act. Kansas has also acted to meet the other conditions set forth in the proposed rulemaking.

*Action:* EPA conditionally approves the new source review permit regulation with respect to Section 172(b)(6) on the condition that the state revise the regulation as discussed in Section C(6) to meet the requirements of Section 173(3) of the CAA. In addition, the state

must comply with the conditions set forth in Section C(6) and (8a).

(8c) As noted above in Section B(7), the Kansas City TSP plan takes credit for an estimated 46 percent decrease in TSP emissions from point sources due to installation of scheduled control systems and anticipated shut-down of several facilities. The plan does not clearly indicate that the projected reduction is the result of enforceable regulatory requirements.

EPA proposed to conditionally approve this element of the plan if the state submitted enforceable compliance schedules to insure enforceability of emission reductions credited in the attainment demonstration. EPA received no comments on this proposal.

On December 22, 1981, Kansas submitted information to clarify this issue. The actions resulting in the estimated 46 percent emission reduction from TSP point sources have been completed. Plant shut-downs have occurred as anticipated by the state. The state also informed EPA that the identified TSP sources in the TSP plan have taken the necessary measures to bring their emissions into compliance with state regulations. Such actions have resulted in actual emission reductions comparable with the estimated reductions which are identified in the Kansas City TSP plan.

*Action:* EPA approves the Kansas plan with respect to Section 172(b)(10).

(9) *Commitment to Resources*—Section 172(b)(7) requires the state to identify and commit the personnel and financial resources necessary to carry out the plan provisions. EPA determined that the Wyandotte and Johnson Counties ozone, the Douglas County rural ozone, and the Kansas City TSP SIP contains adequate commitments to the resources necessary to carry out the plan revisions. EPA proposed to approve this element of the plan. EPA received no comments on this proposal.

*Action:* EPA approves the Kansas plan with respect to Section 172(b)(7).

(10) *Commitment to Comply with Schedules*—Section 172(b)(8) requires the plan to contain emission limitations, schedules of compliance and other measures as may be necessary to meet the requirements of Section 172. EPA determined that the Wyandotte and Johnson Counties ozone, the Douglas County ozone, and Kansas City TSP plan contains evidence that the state and other governmental bodies are committed to implement the appropriate elements of the plan. EPA proposed to approve this element of the plan. EPA received no comments on this proposal.

*Action:* EPA approves the Kansas plan with respect to Section 172(b)(8).

(11) *Public, Local Government and State Involvement*—Section 172(b)(9) requires evidence of involvement and consultation of the public, local government, and state legislature in the planning process. The section also requires an identification and analysis of various effects of the plan and a summary of public comment on this analysis.

EPA found the state adequately addresses this requirement for the Wyandotte and Johnson Counties ozone and for the Kansas City TSP SIP. The December 11, 1980 proposed rulemaking (45 FR 81613) contains a discussion of these components of the plan. However, regarding the Douglas County rural ozone plan, EPA found the plan deficient with respect to this requirement. The Douglas County rural ozone SIP contains no evidence of involvement and consultation of the public, local government and state legislature in the planning process. Additionally, the plan lacks a submission on the identification and analysis of the air quality, health, welfare, economic, energy and social effects of the revision and a summary of public comments on the analysis.

EPA proposed to approve this element of the plan if the state submitted the necessary documentation to correct these deficiencies in the Douglas County rural ozone plan by the close of the public comment period. EPA received no comments on its proposed action. On December 19, 1980, Kansas submitted satisfactory information regarding its compliance with this requirement for the Douglas County plan.

*Action:* EPA approves the Kansas SIP as meeting the requirements of Section 172(b)(9).

#### D. National Comments

One commentator submitted extensive comments which it requested be considered part of the record for each-state plan. Although some of the issues raised are not relevant to provisions in Kansas' submission, EPA is notifying the public of its response to these comments at this time. EPA's response is given in the *Federal Register* of April 9, 1980 (45 FR 24151). See also 45 FR 52676, August 7, 1980.

#### E. Conclusion

The Administrator's decision to approve or disapprove the proposed SIP revisions is based on the determination of whether or not the revisions meet the requirements of Part D and Section

110(a)(2) of the CAA and 40 CFR Part 51, Requirements for Preparation, Adoption and Submittal of Implementation Plans.

The revisions submitted by the State of Kansas were proposed in the *Federal Register* and public comments solicited. EPA received no public comment on this proposed conditional approval of the Kansas SIP revision. However, EPA received comments on the February 11, 1980 proposed rulemaking. These comments were addressed in Section B of this notice.

After a careful evaluation of the state submittal, the public comments received, and the additional information and commitments submitted by the state, the Administrator has determined that the actions taken in this notice are necessary and proper.

These actions amount to a conditional approval of the Kansas SIP revisions as meeting the requirements of Part D of the CAA. No action is taken with respect to non-Part D requirements.

EPA conditionally approves the plan provided the state adopts the VOC and new source permit review regulations as permanent ones; adopts a regulation covering leaks from tank trucks and vapor recovery system, revises the new source review permit regulation in keeping with Section 173(3) of the CAA, and submits additional information on its determination of uncontrolled TSP sources being at RACT and takes the follow up action as appropriate to control these sources at RACT. The schedules for completing these actions are given above in Section C (6), (7) and (8).

The 1980 edition of 40 CFR Part 52 lists for Kansas applicable deadlines for attaining ambient standards required by Section 110(a)(2)(A) of the Act. For each nonattainment area where a revised plan provides for attainment by the deadlines required by Section 172(a) of the Act, the new deadlines are substituted on the attainment date chart in 40 CFR Part 52. The earlier attainment dates under Section 110(a)(2)(A) will be referenced in a footnote to the chart. Sources subject to plan requirements and deadlines established under Section 110(a)(2)(A) prior to the 1977 Amendments remain obligated to comply with those requirements, as well as with the new Section 172 plan requirements.

Congress established new attainment dates under Section 172(a) to provide additional time for sources to comply with new requirements. These new deadlines were not intended to give sources that failed to comply with pre-1977 plan requirements by the earlier

deadlines more time to comply with those requirements.

Sources cannot be granted variances extending compliance dates beyond attainment dates established prior to the 1977 Amendments. EPA cannot approve such compliance date extensions even though a Section 172 plan revision with a later attainment date may be granted if it will not contribute to a violation of an ambient standard or PSD increment.

In addition, sources subject to preexisting plan requirements may be relieved of complying with such requirements if a Section 172 plan imposes new, more stringent control requirements that are incompatible with controls required to meet the preexisting regulations. Decisions on the incompatibility of requirements will be made on a case-by-case basis. A more detailed discussion of issues relating to compliance date extensions and compliance with preexisting regulations can be found at 45 FR 24152, Cols. 1 and 2 (April 9, 1980).

EPA finds that good cause exists for making these amendments effective immediately for the following reasons:

1. The approvals, conditional approvals and extension granted to day lift the construction restriction which went into effect on July 1, 1979; and
2. The immediate effectiveness enables sources to proceed with certainty in conducting their affairs and persons seeking judicial review of the amendments may do so without delay.

Under Section 307(b)(1) of the Clean Air Act, as amended, judicial review of this action is available only by the filing of a petition for review in the United States Court of Appeals for the appropriate circuit within 60 days of today. Under Section 307(b)(2), the requirements which are the subject of today's notice may not be challenged later in civil or criminal proceedings brought by EPA to enforce these requirements. In this case, the appropriate court is the Tenth Circuit Court of Appeals.

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, 1980.

The Office of Management and Budget has exempted this regulation from the OMB review requirements of Executive Order 12291 pursuant to Section 8(b) of that Order.

This rulemaking is issued under Section 110, 172, 173, and 301 of the CAA as amended.



Dated: March 23, 1981.

Walter C. Barber,  
Acting Administrator.

Part 52 of Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

1. Section 52.870 is amended by adding the following paragraph (c)(9):

**Subpart R—Kansas**

**§ 52.870 Identification of plan.**

(c) The plan revisions listed below were submitted on the dates specified.\* \* \*

(9) Kansas submitted State Implementation Plan (SIP) revisions to attain the National Ambient Air Quality Standards on September 17, 1979 for Wyandotte and Johnson Counties, on October 22, 1979 for Douglas County, and on March 10, 1980 for Kansas City of the state designated nonattainment areas under Section 107 of the Clean Air Act as amended in 1977. On September 22 and 25, 1980, the state submitted revised regulations on the control of volatile organic compounds and a regulation on the new source permit review program. Included in the plan are the following approved state air pollution control regulations:

(i) The VOC regulations which EPA approved as RACT: 28-19-61 Definitions, 28-19-62 Testing Procedures, 28-19-63 Automobile and Light Duty Trunk Surface Coating, 28-19-65 Petroleum Liquid Storage Tanks, 28-19-66 Petroleum Liquid Storage in External Floating Roof Tanks, 28-19-67 Petroleum Refineries, 28-19-68 Leaks from Petroleum Refinery Equipment, 28-19-69 Cutback Asphalt.

(ii) The New Source Permit Review regulation 28-19-16 through 16m which EPA conditionally approved as meeting the requirements of Sections 172(b)(6); 172(b)(11)(A), and 173.

(iii) The Kansas City-Wyandotte County air pollution control regulations which have been adopted by both the Kansas City, Kansas Board of City Commissioners and the Wyandotte County Board of County Commissioners: 2A-1 Jurisdiction, 2A-2 Purpose, 2A-3 Definitions, 2A-4 Powers of the Board, 2A-5 Facts and Circumstances Pertinent to Orders of Joint Board, 2A-6 Right of Entry for Inspection, 2A-7 Time for Compliance Schedule, 2A-8 Variance, 2A-9 Circumvention of Chapter or Regulations, 2A-10 Air Pollution Nuisances Prohibited; Additional Emission Restrictions; Interference with

the Enjoyment of Life and Property, 2A-11 Reserved, 2A-12 Confidential Information, 2A-13 Registration and Permit System; Exemptions, 2A-14 Review of New or Altered Sources, 2A-15 Public Hearings, 2A-16 Installations in which Fuel is Burned, 2A-17 Restriction of Emission of Particulate Matter from Industrial Processes, 2A-18 Open Burning Prohibition, 2A-19 Opacity Requirements, 2A-20 Exceptions Due to Breakdowns or Scheduled Maintenance, 2A-21 Preventing Particulate Matter from Becoming Air-Borne, 2A-22 Measurement of Emissions, 2A-23 Restriction of Emission of Odors, 2A-24 Sulfur Compound Emissions, 2A-24.1 Hydrocarbon Emissions; Stationary Sources, 2A-25 Control of Carbon Monoxide Emissions, 2A-26 Control of Nitrogen Oxide Emissions, 2A-26.1 Incinerators, 2A-27 Air Pollution Emergencies—General Provisions, 2A-28 Air Pollution Emergencies—Episode Criteria, 2A-29 Emission Reduction Requirements, 2A-30 Emergency Episode Plans, 2A-31 Penalties for Violation of Chapter or Air Pollution Control Regulations, and 2A-32 Conflict of Ordinances, Effect Partial Invalidation.

2. The following language is added at the end of § 52.873 to read as follows:

**§ 52.873 Approval status.**

\* \* \* Continued satisfaction of the requirements of Part-D for the ozone and TSP portions of the Kansas SIP depends on the adoption of the regulatory element of the plan as permanent amendments to the Kansas air quality regulations, the adoption of a regulation covering leaks from tank trucks serving bulk petroleum terminals and vapor recovery system, the adoption and submission of additional reasonably available control technology (RACT) requirements for any source covered by Control Technology Guidelines issued by EPA in the future, the revision of the new source review permit regulation to comply with Section 173(3) of the CAA, and the submission of the results from additional study of the state's determination that all major sources are controlled to a degree representing RACT and of a compliance schedule for recommended actions to bring these sources to RACT, as needed. No action was taken on the non-Part D requirements of the Act.

3. Section 52.875 is added to read as follows:

**§ 52.875 General requirements.**

(a) Conditional Approval. The following portions of the Kansas SIP developed pursuant to Part D of the 1977 CAA contain deficiencies which must be corrected within the time limit indicated for EPA to approve the Part D submission:

(1) To satisfy the requirements of Section 172(b)(10).

Enforceability of the Regulations, the state must adopt and submit the volatile organic compounds and the new source permit review regulations as permanent ones by May 1, 1981 and a regulation covering leaks from tank trucks serving bulk petroleum terminals and vapor recovery system by May 1, 1982.

(2) The new source permit review regulation is deficient regarding compliance with the requirements of Section 173(3) of the CAA. The state must pass the necessary legislation to allow the regulation to be revised. By July 1, 1981, the state must file the revised regulation with the Revisor of Statutes; so that, the legislature can consider it for permanent adoption during the 1982 session. The revised regulation must be adopted as a permanent amendment to the Kansas air quality regulations by May 1, 1982.

(3) To comply with Section 172(b)(2), Reasonably Available Control Measures, Kansas must take the following actions:

(i) Adopt and submit a regulation covering leaks from gasoline tank trucks serving bulk petroleum terminals and vapor recovery system by May 1, 1982. EPA requires the state to file the regulation with the Revisor of Statutes by July 1, 1981, so that, the legislature can consider it for permanent adoption by May 1, 1982.

(ii) Submit additional information by September 1, 1981 on the state's determination that the TSP sources without control equipment which are listed in Appendix DK of the Kansas City TSP plan are applying RACT. With this submission, the state must include a compliance schedule for completing the actions necessary to bring the uncontrolled sources to RACT as recommended by the additional RACT determination study. The compliance schedule should facilitate Kansas City attaining the TSP primary standard by the December 31, 1982 deadline.

4. Section 52.879 is amended by revising the Table and the Note to read as follows:

§ 52.879 Attainment dates for national standards.

| Air quality control region          | Pollutant          |           |               |           |                  |                 |                                       |
|-------------------------------------|--------------------|-----------|---------------|-----------|------------------|-----------------|---------------------------------------|
|                                     | Particulate matter |           | Sulfur oxides |           | Nitrogen dioxide | Carbon monoxide | Photochemical oxidants (hydrocarbons) |
|                                     | Primary            | Secondary | Primary       | Secondary |                  |                 |                                       |
| Metropolitan Kansas City Interstate | a                  | a         | C             | C         | C                | May 31, 1977.   | e.                                    |
| South Central Kansas Intrastate     | a                  | a         | C             | C         | C                | C               | a.                                    |
| Northeast Kansas Intrastate         | a                  | a         | C             | C         | C                | C               | e.                                    |
| Southeast Kansas Intrastate         | c                  | c         | C             | C         | C                | C               | e.                                    |
| North Central Kansas Intrastate     | a                  | a         | C             | C         | C                | C               | c.                                    |
| Northwest Kansas Intrastate         | a                  | a         | C             | C         | C                | C               | c.                                    |
| Southwest Kansas Intrastate         | a                  | a         | C             | C         | C                | C               | c.                                    |

Note.—Sources subject to plan requirements and attainment dates established under Section 110(a)(2)(A) prior to the 1977 Clean Air Act Amendments remain obligated to comply with those requirements by the earlier deadlines. The earlier attainment dates are set out at 40 CFR Part 52 (1980) 52.879.

- a. July 1975.
- b. Five years from plan approval or promulgation.
- c. Air quality levels presently below secondary standards.
- d. Transportation and/or land use control strategy to be submitted no later than April 15, 1973.
- e. December 31, 1982.
- f. Secondary standard attainment date to be determined by secondary attainment plan.

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40 CFR Part 52

[A-4-FRL 1788-1]

Approval and Promulgation of Implementation Plans; Kentucky: Clarification of Conditional Approval of 1979 Sulfur Dioxide Revision

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

**SUMMARY:** EPA herein clarifies portions of a notice in the Federal Register of October 31, 1980 (45 FR 72153) pertaining to ambient monitoring in the Boyd County, Kentucky sulfur dioxide (SO<sub>2</sub>) nonattainment area. In the October 31, 1980 notice, EPA conditionally approved Kentucky's Part D plan revisions for SO<sub>2</sub> in Boyd County. Condition 3 of the approval (45 FR 72153 at 72154) requires ambient monitoring around the Ashland Oil complex, and indicates that the plan must include a starting date, specify the duration of the program and require the use of the Federal equivalent method. Some readers of the October 31, 1980 rulemaking believe that the Federal reference method referred to in that rulemaking is the SO<sub>2</sub> bubbler method; this interpretation is not consistent with the discussions (Comments and Responses) in the October 31, 1980 rulemaking or the November 15, 1979 proposed rule (44 FR 65781). Today's notice makes it clear that continuous monitoring is required and that bubblers will not satisfy the monitoring requirement.

**DATE:** This action is effective April 3, 1981.

**ADDRESSES:** Copies of the materials submitted by Kentucky and comments received in response to the proposal notice of November 15, 1979 (44 FR 65781) may be examined during normal business hours at the following locations:

Public Information Reference Unit,  
Library Systems Branch,  
Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460  
Library, Environmental Protection Agency, Region IV, 345 Courtland Street NE., Atlanta, Georgia 30365  
The Office of the Federal Register, Room 8401, 1100 L Street NW., Washington, D.C. 20460

**FOR FURTHER INFORMATION CONTACT:** Melvin Russell of the Air Programs Branch at the EPA, Region IV address above or call 404/881-3286 or FTS 257-3286.

**SUPPLEMENTARY INFORMATION:** In the Federal Register of November 15, 1979, (44 FR 65781), EPA proposed to conditionally approve Kentucky's Part D revisions for the Boyd County SO<sub>2</sub> nonattainment area, Condition 3 of the proposal read as follows:

3. Continuous ambient monitoring should be conducted in the vicinity of the plant because a history of air quality violations and lack of reliable modeling techniques for this area.

In response to this proposal, several comments were received which contend that the use of continuous ambient SO<sub>2</sub> monitoring is technically impractical. EPA responded in the October 31, 1980 Federal Register (45 FR 72153), at page 72156 as follows:

Response: Since most State and local air pollution control agencies, many existing industries, and numerous industries desiring

PSD permits have been using continuous SO<sub>2</sub> monitors for several years, EPA believes a source can practicably and reliably monitor continuously for SO<sub>2</sub>.

EPA's position regarding this issue has not changed. The Agency offers the following addenda to the October 31, 1980, notice as clarification.

1. Regarding conditions of approval for the SO<sub>2</sub> control strategy for Boyd County, the October 31, 1980 notice at page 72154 lists deficiency number 3 as follows:

3. The plan's provisions for ambient monitoring around the Ashland Oil complex must include a starting date, specify the duration of the program and require the use of the Federal equivalent method. EPA considers the monitoring to be an essential feature of the control strategy and thus an enforceable obligation upon the State.

EPA here amends deficiency 3 to read just as it did in the November 15, 1979, proposal notice:

3. Continuous ambient monitoring should be conducted in the vicinity of the plant because of a history of air quality violations and the lack of reliable modeling techniques for this area.

2. In October 31, 1980, notice at page 72158 under "§ 52.928 Control Strategy: sulfur oxides" subdivision (a)(1)(iii) which reads:

(iii) A commitment, with regard to ambient monitoring around the Ashland Oil complex, that the monitoring will begin by a certain date, will be conducted for a specific length of time, and will be done with a Federal equivalent method.

is revised today to make it clear that continuous monitoring is required.

This action amending the October 31, 1980 notice makes the notice more compatible with the proposal notice of November 15, 1979 and is effective immediately. EPA feels it is fitting to make this action effective immediately since the effective date of the affected Federal Register notice has passed and neither the intent nor substance of that notice is altered by this action.

Under Section 307(b)(1) of the Clean Air Act, judicial review of this action is available *only* by the filing of a petition for review in the United States Court of Appeals for the appropriate circuit within 60 days of today. Under Section 307(b)(2) of the Clean Air Act, the requirements which are the subject of today's notice may *not* be challenged later in civil or criminal proceedings brought by EPA to enforce these requirements.

The Office of Management and Budget has exempted this regulation from the OMB review requirements of Executive