this action is limited to deleting obsolete regulatory provisions.

Description of Changes

The following paragraphs describe the individual revisions that are being adopted in this rule.

1. Part 9 is amended by removing references to any sections which are being removed from part 86.

2. Part 86 is being amended by removing certain sections which are obsolete because they do not regulate future conduct but only apply to prior conduct, affecting prior model year motor vehicles and engines. However, any conduct or actions involving such vehicles or engines occurring prior to the deletion of these provisions will be controlled by the provisions in effect when the action or conduct occurred.

3. Section 86.113 is being amended by deleting paragraphs (g)(1)(iii), (g)(1)(iv), and (g)(1)(v). This action eliminates the calculation that adjusts the payment of a nonconformance penalty to the federal government based on payment of a nonconformance penalty to the state of California. California does not collect nonconformance penalties. This action makes clear that the penalty will be paid in full to the Federal Government. Additionally, paragraph(g)(1)(ii) is being amended to eliminate references to the subparagraphs deleted.

Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A) as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. Senate, House of Representatives and the Comptroller General of the General Accounting Office prior to publication of the rule in today's Federal Register. This is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects

40 CFR Part 9

Reporting and recordkeeping requirements.

40 CFR Part 86

Environmental protection, Administrative practice and procedure, Motor vehicle pollution.

Dated: September 23, 1996.

Mary Nichols,

Assistant Administrator for Air and Radiation.

For the reasons set forth in the preamble, title 40, chapter I, parts 9 and 86 of the Code of Federal Regulations are amended as set forth below:

PART 9—[AMENDED]

1. The authority citation for part 9 continues to read as follows:

Authority: 7 U.S.C. 135 et seq., 136–136y; 15 U.S.C. 2001, 2003, 2005, 2006, 2601–2671; 21 U.S.C. 331j, 346a, 348; 31 U.S.C. 9701; 33 U.S.C. 1251 et seq., 1311, 1313d, 1314, 1321, 1326, 1330, 1344, 1345(d) and (e), 1361; E.O. 11735 38 FR 21243, 3 CFR 1971–1975 Comp. p. 973; 42 U.S.C. 241, 242b, 243, 246, 300f, 300g–1, 300g–2, 300g–3, 300g–4, 300g–5, 300g–6, 300j–1, 300j–2, 300j–3, 300j–4, 300j–9, 1857 et seq., 6901–6992k, 7401–7671q, 7542, 9601–9657, 11023, 11048.

§ 9.1 [Amended]

2. Section 9.1 is amended by removing from the table entries for 86.1003–88, 86.1005–88, 86.1008–88.

PART 86—[AMENDED]

3. The authority citation for part 86 continues to read as follows:

Authority: Secs. 202, 203, 204, 205, 206, 207, 208, 209, 213, 215, 216, and 301(a) of the Clean Air Act as amended (42 U.S.C. 7521, 7522, 7523, 7524, 7525, 7541, 7542, 7543, 7547, 7549, 7550, and 7601(a)).

§§ 86.610–84, 86.1003–88, 86.1005–88, 86.1008–88, 86.1010–84 [Removed]

4. Part 86 is amended by removing §§ 86.610–84, 86.1003–88, 86.1005–88, 86.1008–88, 86.1010–84.

5. Section 86.1113–87 is amended by revising paragraph (g)(1)(ii) and by removing paragraphs (g)(1)(iii), (g)(1)(iv) and (g)(1)(v) to read as follows:

§ 86.1113–87 Calculation and payment of penalty.

* * * * *

(g) * * *

(1) * * *

(ii) The penalty shall be payable to U.S. Environmental Protection Agency, NCP Fund, P.O. Box 360277M, Pittsburgh, PA 15251.

* * * * *

[FR Doc. 96–25232 Filed 10–1–96; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 52

[KS 008–1008(a); FRL–5556–8]

Approval and Promulgation of Implementation Plans; State of Kansas

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: By this action the EPA gives full approval to the State Implementation Plan (SIP) submitted by the state of Kansas for the purpose of fulfilling the requirements set forth in the EPA's General Conformity rule. The SIP was submitted by the state to satisfy the Federal requirements in 40 CFR 51.852 and 93.151. Additionally, the EPA is approving in the SIP revisions to the state's open burning rules. SIP approval of revised state rules ensures that the SIP is current and permits Federal enforceability of the state rules.

DATES: This action is effective December 2, 1996 unless by November 1, 1996 adverse or critical comments are received.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal business hours at the: Environmental Protection Agency, Air Planning and Development Branch, 726 Minnesota Avenue, Kansas City, Kansas 66101; and the EPA Air & Radiation Docket and Information Center, 401 M Street, SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Wayne Kaiser at (913) 551–7603.

SUPPLEMENTARY INFORMATION:

General Conformity

Section 176(c) of the Clean Air Act (CAA), as amended (the Act), requires the EPA to promulgate criteria and procedures for demonstrating and ensuring conformity of Federal actions to an applicable implementation plan developed pursuant to section 110 and Part D of the Act. Conformity to a SIP is defined in the Act as meaning conformity to an SIP's purpose of eliminating or reducing the severity and number of violations of the National Ambient Air Quality Standards, and achieving expeditious attainment of such standards. The Federal agency responsible for the action is required to determine if its actions conform to the applicable SIP. On November 30, 1993, the EPA promulgated the final rule (hereafter referred to as the General Conformity rule), which establishes the criteria and procedures governing the determination of conformity for all Federal actions, except Federal highway and transit actions.

The General Conformity rule also establishes the criteria for the EPA approval of SIPs. See 40 CFR 51.851 and 93.151. These criteria provide that the state provisions must be at least as stringent as the requirements specified in the EPA's General Conformity rule, and that they can be more stringent only if they apply equally to Federal and nonfederal entities (section 51.851(b)).

On June 23, 1992, the EPA promulgated the Kansas City ozone redesignation and maintenance plan for Wyandotte and Johnson counties in Kansas, and three adjoining counties in Missouri. Section 51.851 and section

93.151 of the General Conformity rule require that states submit a SIP revision containing the criteria and procedures for assessing the conformity of Federal actions to the applicable SIP, within 12 months after November 30, 1993. As the rule applies to all nonattainment areas and maintenance areas, a SIP revision which addresses the requirements of the General Conformity rule became due on November 30, 1994.

On June 6, 1996, the state of Kansas submitted a SIP revision meeting the requirements of sections 51.851 and 93.151 of the General Conformity rule. The submission adopts by reference 40 CFR 93, subpart B, except 40 CFR 93.151. The omitted section contains the criteria for the EPA approval of General Conformity SIP revisions, and also states the effect of the EPA approval of a SIP revision. It is not a necessary component of the state's substantive rules governing general conformity determinations.

The Kansas rule also does not adopt paragraph 40 CFR 93.160(f), which states that written commitments to mitigation measures must be obtained prior to a positive conformity determination and that such commitments must be fulfilled. However, these requirements are contained in paragraph 93.160(b), which the state did adopt, so its omission is not significant.

This SIP revision was adopted by the Secretary of the Kansas Department of Health and Environment on February 21, 1996, and became effective on March 15, 1996.

Because the Kansas rule adopts the substantive requirements of the EPA's rule by reference, it meets the criteria in sections 51.851 and 93.151 for approval of General Conformity SIP revisions.

Open Burning Rules

The state revised its open burning regulations by revoking old rules and adopting similar renumbered, revised rules. One significant change was separating out the requirements for agricultural open burning as a separate rule in K.A.R. 28–19–648. Substantative change to the agricultural open burning rule includes more stringent conditions under which open burning can be approved by local authorities, and authorizing local authorities to adopt additional restrictions or requirements deemed appropriate. The state retains the authority to enforce the rule. The revisions provide added health and environmental protection.

EPA ACTION: By this action the EPA grants full approval of Kansas' June 6, 1996, submittal. This SIP revision meets all of the requirements set forth in 40 CFR 51.851 and 93.151, and Part 51.

The EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in a separate document in the Federal Register publication, the EPA is proposing to approve the SIP revision should adverse or critical comments be filed.

If the EPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent notice that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule, based on this action serving as a proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time.

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., the 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, the 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, the 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 the 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 (S.Ct. 1976); 42 U.S.C. 7410(a)(2)).

This action has been classified as a Table 3 action for signature by the Regional Administrator under the procedures published in the Federal Register on January 19, 1989 (54 FR 2214–2225), as revised by a July 10, 1995, memorandum from Mary Nichols, Assistant Administrator for Air and Radiation. The Office of Management and Budget has exempted this regulatory action from E.O. 12866 review.

Unfunded Mandates

Under sections 202, 203, and 205 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, the EPA must undertake various actions in association with proposed or final rules that include a Federal mandate that may result in estimated costs of $100 million or more to the private sector, or to state, local, or tribal governments in the aggregate.

Through submission of this SIP, the state has elected to adopt the program provided for under section 110 of the CAA. These rules may bind state and local governments to perform certain actions and also require the private sector to perform certain duties. To the extent that the rules being finalized for approval by this action will impose new requirements, sources are already subject to these regulations under state law. Accordingly, no additional costs to state or local governments, or to the private sector, result from this final action. The EPA has also determined that this final action does not include a mandate that may result in estimated costs of $100 million or more to state or local governments in the aggregate or to the private sector. The EPA has determined that these rules result in no additional costs to tribal government.

Under section 801(a)(1)(A) of the Administrative Procedure Act (APA) as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, the EPA submitted 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 General Accounting Office prior to publication of the rule in today's Federal Register. This rule is not a ''major rule'' as defined by section 804(2) of the APA as amended.

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 December 2, 1996. 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, Incorporation by reference, Intergovernmental relations, Lead, Ozone, Particulate matter, Reporting and recordkeeping requirements.

Dated: August 2, 1996.

William Rice,

Acting Regional Administrator.

Part 52, 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. 7401–7671q.

Subpart CC—Kansas

2. Section 52.870 is amended by adding paragraph (c)(32) to read as follows:

§ 52.870 Identification of plan.

* * * * *

(c) * * *

(32) A Plan revision was submitted by the Kansas Department of Health and Environment (KDHE) on June 6, 1996, which incorporates by reference the EPA's regulations relating to determining conformity of general Federal actions to State or Federal Implementation Plans, and which revokes old and adopts new open burning regulations.

(i) Incorporation by reference.

(A) Regulation K.A.R. 28–19–800, adopted by the Secretary of the KDHE on February 21, 1996, effective March 15, 1996.

(B) Regulations K.A.R. 28–19–645 to K.A.R. 28–19–648, adopted by the Secretary of KDHE on February 6, 1996, effective March 1, 1996.

(C) Regulations K.A.R. 28–19–45 to K.A.R. 28–19–47, revoked by the Secretary of KDHE on February 6, 1996, effective March 1, 1996.

[FR Doc. 96–24528 Filed 10–1–96; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 70

[AD–FRL–5612–6]

Clean Air Act Final Interim Approval of Operating Permits Program; Delegation of Section 112 Standards; State of Vermont

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final interim approval.

SUMMARY: The EPA is promulgating interim approval of the Operating Permits Program submitted by the State of Vermont for the purpose of complying with Federal requirements for an approvable State program to issue operating permits to all major stationary sources, and to certain other sources.

EFFECTIVE DATE: November 1, 1996.

ADDRESSES: Copies of the State's submittal and other supporting information used in developing the final interim approval are available for inspection during normal business hours at the following location: Office of Ecosystem Protection, U.S. Environmental Protection Agency, Region I, One Congress Street, 11th floor, Boston, MA.

FOR FURTHER INFORMATION CONTACT: Ida Gagnon, (617) 565–3500.

SUPPLEMENTARY INFORMATION:

I. Background

Title V of the 1990 Clean Air Act Amendments (sections 501–507 of the Clean Air Act (''the Act'')), and implementing regulations at 40 Code of Federal Regulations (CFR) Part 70 require that States develop and submit operating permits programs to EPA by November 15, 1993, and that EPA act to approve or disapprove each program within 1 year after receiving the submittal. The EPA's program review occurs pursuant to section 502 of the Act and the Part 70 regulations, which together outline criteria for approval or disapproval. Where a program substantially, but not fully, meets the requirements of Part 70, EPA may grant the program interim approval for a period of up to 2 years. If EPA has not fully approved a program by 2 years after the November 15, 1993 date, or by the end of an interim program, it must establish and implement a Federal program.

On May 24, 1996, EPA proposed interim approval of the operating permits program for the State of Vermont. See 61 FR 26145. The EPA received comments from the State of Vermont on the proposal. In this document EPA is taking final action to promulgate interim approval of the operating permits program for the State of Vermont.

II. Response to Comments

The comments received on the May 24, 1996 proposed rulemaking in the Federal Register proposing interim approval of the Vermont Program and EPA's response to those comments are as follows:

Comment: Vermont believes that EPA should grant Vermont ''full approval until, at a minimum, all relevant litigation pertaining to Part 70 is finalized and a static set of requirements to judge the approvability of Vermont's program is in place.'' Specifically, Vermont comments that ''EPA's interpretation of Section 502(b)(10) is currently the subject of litigation and is likely to change.'' In addition, Vermont asserts that its emissions trading requirements are more stringent than the requirements of the Act and therefore, are not preempted by federal law.

Response: Vermont's rule currently provides the State with the authority to prohibit emissions trades under an emissions cap and does not require that emissions be quantifiable as a precondition to allowing such trades when a permit does contain an emissions cap. In addition, Vermont's rule does not provide for ''Section 502(b)(10) changes.''

To address the emissions trading issue, EPA is requiring Vermont to adopt regulatory language *requiring* the State to include, upon request by a source, emission trading provisions in a title V permit for the purpose of complying with an emissions cap established in the permit, provided that the emissions involved in such trades are quantifiable. Vermont retains the option to include language in its regulation that would require all such trades to be consistent with State requirements as well as applicable requirements, and therefore EPA is not attempting to supersede more stringent State law. EPA is also requiring Vermont to adopt regulatory provisions to implement ''Section 502(b)(10) changes'' as defined in Part 70 so that both aspects of Part 70's operational flexibility requirement are met.

EPA understands Vermont's concerns about the pending litigation, but EPA is obligated to evaluate the State's program based on the Part 70 rules promulgated on July 21, 1992. Specifically, Part 70 currently requires both ''Section 502(b)(10) changes'' and emissions trading under emission caps established in a title V permit as mechanisms to implement operational flexibility. In an August 29, 1994 (FR 44572) rulemaking