health or safety risk addressed by the rule has a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This proposed rule is not subject to Executive Order 13045 because it is not an economically significant regulatory action as defined by Executive Order 12866, and it does not address an environmental health or safety risk that would have a disproportionate effect on children.

D. Executive Order 13084

Under E.O. 13084, EPA may not issue a regulation that is not required by statute, that significantly affects or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If EPA complies by consulting, E.O. 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments ''to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities.'' Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian Tribes. Accordingly, the requirements of section 3(b) of E.O. 13084 do not apply to this rule.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This proposed rule will not have a significant impact on a substantial number of small entities because SIP approvals under sections 110 and 301, 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, I certify 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 Clean Air Act, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

If the conditional approval is converted to a disapproval under section 110(k), based on the State's failure to meet the commitment, it will not affect any existing state requirements applicable to small entities. Federal disapproval of the state submittal does not affect its state-enforceability. Moreover, EPA's disapproval of the submittal does not impose a new Federal requirement. Therefore, I certify that this proposed disapproval action does not have a significant impact on a substantial number of small entities because it does not remove existing requirements nor does it substitute a new federal requirement.

F. Unfunded Mandates

Under Section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated annual costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under Section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the proposed approval action of Virginia's NO_X RACT regulations do not include a Federal mandate that may result in estimated annual costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Nitrogen dioxide, Ozone.

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

Dated: January 7, 1999.

W. Michael McCabe,

Regional Administrator, Region III.

[FR Doc. 99–1648 Filed 1–25–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL–6225–5]

Approval and Promulgation of Implementation Plans; State of Kansas

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Kansas City ozone maintenance area experienced a violation of the National Ambient Air Quality Standard (NAAQS) for ozone in 1995. In response to this violation, Kansas submitted revisions to its ozone maintenance plan. These revisions pertain to the implementation of control strategies to achieve reductions in volatile organic compound (VOC) emissions within the Kansas portion of the Kansas City ozone maintenance area. A major purpose of these revisions is to provide a more flexible approach to maintenance of acceptable air quality levels in Kansas City, while achieving emission reductions equivalent to those required by the previously approved plan.

The EPA is proposing to conditionally approve the 1998 revisions to the Kansas City ozone maintenance plan as a revision to the Kansas State Implementation Plan (SIP). Final approval is contingent upon Kansas' submission of additional, enforceable control measures.

In a separate **Federal Register** notice published today, the EPA is also proposing conditional approval of a similar plan submitted by the Missouri Department of Natural Resources to address the Missouri portions of the ozone maintenance area.

DATES: Comments on this proposed rule must be received in writing on or before February 25, 1999.

ADDRESSES: Comments may be mailed to Royan Teter, Environmental Protection Agency, Air Branch, 726 Minnesota Avenue, Kansas City, Kansas 66101. The state submittal and the EPA-prepared technical support document are available for public review at the above address.

FOR FURTHER INFORMATION CONTACT: Royan Teter at (913) 551–7609.

SUPPLEMENTARY INFORMATION:

I. Background

The Kansas City metropolitan area (KCMA), consisting of Clay, Platte, and Jackson Counties in Missouri, and Johnson and Wyandotte Counties in Kansas, was designated nonattainment for ozone in 1978. The Clean Air Act (CAA) provides for areas with a prescribed amount of air quality data showing attainment of the standard to be redesignated from nonattainment to attainment, if the requirements of section 107(d)(3)(E) are met. One of these requirements is for the area to adopt a maintenance plan consistent with the requirements of section 175A. This plan must demonstrate attainment of the NAAQS with a margin of safety sufficient to remain in attainment for ten years. Also, the plan must contain a contingency plan to be implemented if the area once again violates the standard.

Ozone monitoring data from 1987 through 1991 demonstrated that the Kansas City nonattainment area had attained the ozone NAAQS. In accordance with the CAA, the Kansas Department of Health and Environment (KDHE) revised the ozone SIP for the Kansas portion of the Kansas City area to recognize the area's attainment status. The EPA published final approval of the Kansas SIP on June 23, 1992. The SIP became effective on July 23, 1992 (57 FR 27939). This action effected the redesignation of the area to attainment.

The contingency plan approved as part of the 1992 SIP identified four measures which were to be implemented upon subsequent violation of the standard in the Kansas City area. These contingency measures required: (1) certain new or expanding sources of ozone precursors to acquire emissions offsets; (2) the installation of Stage II vapor recovery systems at retail gasoline stations or the implementation of an enhanced inspection and maintenance (I/M) program for motor vehicles; (3) the implementation of transportation control measures achieving a 0.5 percent reduction in areawide VOC emissions; and (4) the completion of a comprehensive emissions inventory.

In a letter from Dennis Grams, EPA Region VII Administrator, to James J. O'Connell, KDHE Secretary, on January 31, 1996, the EPA informed the KDHE of a violation of the ozone NAAQS. Quality-assured air quality monitoring data indicated measured exceedances of the ozone standard on July 11, 12, and 13, 1995, at the Liberty monitoring site in Kansas City. The highest recorded value for each day was 0.128 ppm, 0.161 ppm, and 0.131 ppm, respectively. These exceedances, in combination with the measured exceedance of 0.128 ppm recorded on July 29, 1993, constitute a violation of the standard.

As a result of this violation, Kansas was required to implement the contingency measures identified in the approved SIP. In a July 28, 1995 letter from Roger Randolph (Air Pollution Control Program Director) to William Spratlin (Air, RCRA, and Toxics Division Director), Missouri requested guidance on responding to the KCMA ozone violation. Specifically, Missouri requested flexibility in utilizing control measures other than those identified in the approved SIP. Via an August 17, 1995, letter from William Spratlin to Roger Randolph, the EPA affirmed that Missouri and Kansas may substitute other contingency measures for those in the approved SIP, provided: (1) the substitute measures would achieve substantially equivalent emission reductions; (2) the substitute measures were submitted as a SIP revision; and (3) the substitute measures were implemented before the 1996 ozone season. It must be emphasized that this flexibility was extended to both Kansas and Missouri.

To address the short-term need to control emissions, Kansas promulgated a rule to limit the Reid Vapor Pressure (RVP) of the gasoline sold during the summer months in the KCMA to 7.2 per square inch (psi) (K.A.R. 28–19–79). This regulation became effective May 2, 1997. The EPA published final approval of Kansas' RVP rule on July 7, 1997 (**Federal Register** Vol. 62, No. 129, 36212). The approval became effective on August 6, 1997.

To address the longer-term need to reduce VOC and nitrogen oxides (NO_X) emissions, the Mid-America Regional Council's Air Quality Forum (MARC AQF), comprised of representatives from local governments, business, and health and environmental organizations, agreed to examine various alternative control strategies and recommend a suite of viable measures to Missouri and Kansas. The AQF recommended: (1) expanding public education efforts; (2) low RVP gasoline; (3) motor vehicle I/M, (4) seasonal no-fare public transit; (5) a voluntary clean fuel fleets program; and (6) additional transportation control measures. The AQF also recommended a group of supplemental measures aimed at reducing ozone levels. The emissions reductions associated with the voluntary measures, specifically clean fuel fleets and transportation control, cannot be quantified due to their voluntary nature.

The Missouri Department of Natural Resources (MDNR) presented a maintenance SIP, with the AQF recommendations, to the Missouri Air Conservation Commission (MACC) on June 24, 1997. At that time, the MACC recommended inclusion of a more timely and less politically sensitive control measure in place of the I/M provision. As a result, on October 7, 1997, the AQF recommended the implementation of a reformulated gasoline (RFG) program in the KCMA. In response, Kansas intends to include RFG as a control measure in a year 2000 transitional attainment plan to demonstrate compliance with the revised NAAQS for ozone, should the area be eligible for transitional nonattainment status outlined in the President's July 16, 1997, directive to Administrator Browner. The intent is to have the RFG control measure in place prior to the beginning of the 2001 ozone season. Kansas reserves the option to use gasoline blends other than the Federal RFG blend, provided their use achieves similar VOC and NO_X emission reductions.

The final state submittal includes an emissions inventory; the two creditable control strategies—7.2 RVP gasoline, RFG; additional unquantifiable measures including voluntary clean fuel fleets and seasonal low-fare transit; continued monitoring; verification of continued attainment; and a contingency plan.

Because limiting the RVP of gasoline to 7.2 psi achieves VOC emissions reductions of only 4.0 tons per day, additional reductions are necessary to provide for reductions substantially equivalent to those obtainable by implementing the contingency measures approved in the 1992 SIP. The implementation of an RFG program is therefore critical to meeting Kansas' obligation to achieve the necessary reductions.

II. Evaluation Criteria

To evaluate the maintenance plan, the EPA referred to requirements of section 175A of the Act. The EPA also issued guidance specifically to address applicable procedures for handling

redesignation requests, including maintenance plan provisions ''Procedures for Processing Requests to Redesignate Areas to Attainment,'' John Calcagni, Director, Air Quality Management Division, to EPA Regional Division Directors, dated September 4, 1992. In addition, the EPA reviewed the revised maintenance plan for evidence that the substitute control measures provide for emissions reductions which are substantially equivalent to those approved in the 1992 SIP, pursuant to guidance given in the August 17, 1995, letter, from William Spratlin to Roger Randolph. Finally, the EPA evaluated the revised maintenance plan with respect to the ''Guidance for Implementing the 1-Hour Ozone and Pre-Existing PM_{10} NAAQS,'' from Richard D. Wilson, Acting Assistant Administrator for Air and Radiation, to EPA Regional Administrators.

III. Review of Submittal

According to the September 4, 1992, memo from John Calcagni regarding ''Procedures for Processing Requests to Redesignate Areas to Attainment,'' a maintenance plan must provide for maintenance of the ozone NAAQS for at least ten years after redesignation. Section 175A of the CAA defines the general framework of a maintenance plan. The Calcagni memo identifies the following list of core provisions necessary to ensure maintenance of the ozone NAAQS: emissions inventory, maintenance demonstration (including control measures), air monitoring network, verification of continued attainment, and a contingency plan. Below is a discussion of each of these provisions, as addressed in the 1998 Revision to the Kansas City State Implementation Plan for Control of Ozone.

A. Emissions Inventory

The emissions inventory for the KCMA was revised in 1995. In a direct final rule (61 FR 18251), published on April 25, 1996, the EPA approved the revised emissions inventory. The emissions inventory estimated VOC and NO_X actual emissions for 1990 and 1992 while using industrial growth factors to project VOC and NO_X emissions for 1995, 2000, 2005, and 2010. Point, area, mobile, biogenic, VOC, and NO_X emission totals were estimated. The inventory summarized totals for each emissions category and reported emissions by source type. VOC emissions for the entire KCMA were estimated at 322,557 and 286,279 kilograms per summer day in 1990 and 1992, respectively. The present SIP revisions are based on the inventory as revised in 1995.

B. Control Measures

The state has provided estimates of the achievable emissions reductions for only two of the many measures (7.2 RVP gasoline and RFG) included in the SIP. These estimates were evaluated to determine whether they are substantially equivalent to the reductions for which the 1992 SIP provides. In accord with the original maintenance plan, implementation of a regulation requiring Stage II vapor recovery systems at retail gasoline stations would result in daily VOC emissions reductions of 6.9 tons per day. An additional 1.5 tons per day of VOC reductions would be achieved through implementation of transportation control measures, making the 1992 SIP designed to reduce VOC emissions by a minimum of 8.4 tons per day. Accordingly, Kansas must demonstrate the substitute control measures will provide for areawide VOC reductions of at least 8.4 tons per day.

1. Gasoline Volatility Control

Typically reported as RVP, volatility is a measure of the tendency of gasoline to evaporate. RVP, expressed in psi, denotes the pressure exerted by a vapor at 100°F. The evaporation of gasoline adds to the quantity of VOCs in the atmosphere which contribute to ozone formation.

As a result of the ozone violation in 1995, Kansas promulgated a rule to limit the summertime RVP of gasoline sold in the Kansas portion of the KCMA to 7.2 psi (K.A.R. 28–19–79). This regulation became effective May 2, 1997. The EPA published final approval of Kansas' RVP rule on July 7, 1997 (**Federal Register** Vol. 62, No. 129, 36212). The approval became effective on August 6, 1997.

Emissions estimates for on-road mobile sources were developed using the EPA MOBILE5a model. Evaporative emissions from off-road mobile sources were estimated to decrease by 2.7 percent, assuming 90 percent of the off-road emissions are combustive and 10 percent are evaporative. Kansas has demonstrated that limiting the volatility of gasoline to 7.2 pounds psi will reduce VOC emissions by 4.0 tons per day within the KCMA.

2. RFG

RFG is a blend of gasoline containing oxygenates and lower levels of toxic substances. It is designed to reduce emissions of pollutants, including VOC from motor vehicle exhaust. RFG contains many of the same ingredients found in conventional gasoline, but in different quantities. The addition of oxygenates, such as ethanol or methyl tertiary butyl ether, increases its oxygen content and thereby increases the combustion efficiency of the vehicle. The evaporative emissions can also be reduced depending on the RVP of the base gasoline to which the oxygenates are added.

The RVP requirement for RFG in Kansas, as defined in 40 CFR 80.71(a), is 7.2 psi. Emission reductions from RFG were modeled using the EPA's MOBILE5a emissions model and estimates of the number of vehicle miles traveled in the KCMA. Emissions are projected to be 96.65 tons per day in 2000. After implementation of 7.2 RVP, the emissions in 2000 are projected to be reduced to 89.22 tons per day. If RFG were to be implemented in 2000, emissions are projected to be reduced to 74.88, for an estimated incremental reduction of 14.34 tons per day.

As part of this proposed SIP revision, the KDHE commits to include RFG as a control measure in its year 2000 transitional plan as required to demonstrate compliance with the revised ozone NAAQS. The intent is to have the RFG control measure in place prior to the beginning of the 2001 ozone season. Kansas cited a preference for a 2001 implementation schedule because it is consistent with the AQF recommendations and the year 2000 transitional SIP planning process, and it provides reasonable opportunity for fuel refiners nearest the KCMA to complete the necessary capital improvements to compete for the newly created market for RFG. Previously, Kansas was prohibited from implementing RFG because the EPA had not promulgated the final regulation, making it possible for former nonattainment areas to participate in the Federal RFG program. However, this obstacle has been lifted by the EPA's rulemaking signed by the Administrator September 21, 1998, and published in the **Federal Register** on September 29, 1998 (63 FR 52093). Therefore, the EPA expects that the Governor of Kansas will request that the KCMA be included in the Federal RFG program. Upon fulfillment of this commitment, the EPA will propose to fully approve this revision to the maintenance SIP.

If the state does not opt in to the RFG program or adopt an equivalent state fuel program, the state must, by the deadline established in the final conditional approval, implement the contingency measures identified in the 1992 SIP. In this event, the state must adopt and submit any necessary regulations to implement the 1992 SIP contingency measures. If the state fails

to make a submittal by the deadline specified in the final conditional approval, the conditional approval converts to a disapproval.

3. Clean Fuel Fleets

Clean fuel fleets programs take advantage of vehicles relying on cleaner burning energy sources for fuel. These vehicles may operate on an array of fuels including electricity, compressed natural gas, propane, and ethanol blended gasolines. Because this program is voluntary, Kansas is not seeking and the EPA is not approving credit for emissions reductions under the maintenance plan.

4. Seasonal Low-fare Transit

The AQF and the MARC board recommended the area's transit providers provide no-fare transit during peak ozone season beginning in 1997. The Kansas City Area Transportation Authority requested the AQF endorse a reduced-fare program, commencing in 1998. Participation in this program is voluntary and difficult to estimate, and no permanent funding source has been identified. Therefore, Kansas is not seeking and the EPA is not approving credit for emission reductions for this program under this maintenance plan.

5. Additional Supplemental Measures

The EPA supports Kansas' commitment to implement various additional programs aimed at reducing VOC and NO_X emissions. Implementation of these programs will assist the KCMA in meeting both the 1-hour and 8-hour ozone standards. Kansas is not claiming and the EPA is not approving emissions reductions from these programs for purposes of the SIP. These measures include enhanced traffic signalization, a potentially expanded transit system, enhanced land-use planning, stationary source emissions controls, expanded public education programs, and air quality data collection.

C. Air Monitoring Network

The ambient air monitoring network which measures ozone concentrations in the KCMA consists of six monitoring stations. Five are located in Missouri at Liberty, Watkins Mill, Worlds of Fun, Kansas City International Airport (KCI), and Richards Gebaur Airport. The remaining monitoring station is located in Kansas City, Kansas. Liberty and Watkins Mill are downwind, assuming predominant winds are from the southwest. Two monitors, Worlds of Fun and KCI, are placed in populated areas. Richards Gebaur is considered an upwind site, designed to monitor ozone transport from outside the area. The final monitor is located in downtown Kansas City, Kansas, in Wyandotte County.

Ozone concentrations may not exceed the 1-hour standard more than an average of once per year at any single monitoring site over any given three-year period. Eighteen (18) exceedances of the ozone standard have been recorded in the KCMA from 1990 through 1998. Nine of these exceedances occurred in 1995, with three each at the Liberty and Watkins Mill sites, two at Worlds of Fun site, and one at the KCI site. Four exceedances recorded at the Liberty monitor constituted the violation triggering the implementation of the previously approved contingency plan.

D. Maintenance of the Standard

By virtue of the approval of the 1992 maintenance SIP, the Administrator deemed the VOC reductions for which the contingency measures provided, necessary to promptly correct any violation of the 1-hour ozone standard which might occur subsequent to redesignation. Hence, the revised contingency measures must provide for the equivalent level of reductions. The Agency has determined that if Kansas meets the conditions set forth in this action, the revised plan will achieve the required reductions. The state has provided VOC emissions projections for the ten-year period following maintenance plan development. In addition, the state has committed to regularly updating the emissions inventory for the KCMA to ensure that emissions trends are appropriately tracked to facilitate future air quality planning activities.

E. Contingency Plan

The revised maintenance plan includes additional control measures to replenish the contingency measures that are being implemented in response to the 1995 violation of the standard. These measures are to be implemented in the event that additional violations are recorded. The KDHE is committed to reducing combined Johnson County and Wyandotte County VOC emissions by 5 percent in response to a future violation of the 1-hour ozone standard.

In implementing this 5 percent reduction, the KDHE will review the latest emission inventory data, perform a comprehensive evaluation of available control strategies, and select those control measures that provide the greatest air quality benefits and most cost-effective response. The options to be considered for this shall include, but not be limited to the following: stationary source controls (NO_X and/or VOC), Stage II vapor recovery, and enhanced vehicle emissions reductions programs. These options will be considered in the order listed, as necessary to fulfill the 5 percent reduction obligation. If further violations of the 1-hour ozone standard occur, the KDHE will again review the data and evaluate additional control strategies.

F. Additional Reasonably Available Control Technology (RACT) Regulations

As a submarginal nonattainment area, the KCMA was required to implement RACT controls under section 182(a)(2)(A) of the CAA. The states of Missouri and Kansas implemented these regulations prior to the redesignation of the area. The KDHE implemented RACT on all major sources that were covered by control technique guideline (CTG) categories I, II, and III. In addition, the KDHE implemented non-CTG RACT on three source categories.

Kansas is currently developing a RACT rule to regulate the bakery source category in the area. Presently only one source is known to exist in the Kansas portion of the KCMA to require adoption of this RACT regulation. In response to the 1995 ozone standard violation, Kansas also initiated a source study to identify any additional facilities or categories requiring the adoption of additional specific RACT rules.

IV. Policy Review

Because Kansas City has recorded a violation of the 1-hour ozone standard in 1995, and recent air quality analyses performed by Kansas suggest Kansas City is likely to violate the new 8-hour standard, Kansas must proceed to expeditiously implement the provisions of the maintenance plan measures which are the subject of today's action. Protecting the 1-hour ozone standard becomes increasingly important in light of new requirements being established to implement the revised 8-hour ozone standard, which was finalized July 16, 1997. For this new standard, the EPA will establish a special ''transitional'' classification for areas that participate in a regional strategy or that opt to submit early plans addressing the 8-hour standard. The transitional classification will be available only to those areas meeting certain criteria, including having air quality data meeting the 1-hour standard by 2000. These transitional areas will be subject to less restrictive new source review and transportation conformity requirements than other ozone nonattainment areas. These less restrictive requirements are

important to companies seeking to expand existing operations or start new operations. Therefore, achieving the reductions associated with the maintenance plan proposed for approval today have critical implications for the ability of the KCMA to meet the requirements of the new 8-hour ozone standard. However, the control measures which would be conditionally approved are required to be implemented first and foremost to protect the 1-hour ozone standard.

Based on air quality data from 1996 through 1998 (after the violation which triggered the contingency measures in the 1992 maintenance plan), the Kansas City area may be able to demonstrate that it has now achieved the 1-hour ozone standard. However, the EPA's ''Guidance for Implementing the 1-Hour Ozone and Pre-Existing PM_{10} NAAQS'' states that, in general, contingency measures which were triggered prior to revocation of the 1-hour standard must be retained. Therefore, although the EPA believes that the 1996 through 1998 data justify the brief delay in implementation of the substitute contingency measures, it does not relieve the states of the need to implement RFG, an equivalent state fuel, or one of the contingency measures identified in the 1992 SIP.

V. Conclusion

The EPA is soliciting public comments on this notice and on issues relative to the EPA's proposed action. Comments will be considered before taking final action. Interested parties may participate in the Federal rulemaking procedure by submitting written comments to the address above.

VI. Proposed Action

In today's notice, the EPA proposes to conditionally approve Kansas' 1998 revisions to the Kansas City ozone maintenance plan. This includes the VOC control measures described above, the associated emissions reductions, and the commitment to implement the additional reductions as expeditiously as practicable. Full approval of the SIP is conditioned upon receipt of one of the following: (1) a request from the Governor of Kansas to require the sale of Federal RFG within the Kansas portion of the KCMA; (2) adopted regulations implementing the contingency measures identified in the 1992 maintenance plan, i.e., Stage II vapor recovery or an enhanced I/M program; or (3) adopted regulations to implement a state fuel program which will achieve reductions equivalent to a Federal RFG program. In the case of options 2 or 3, upon receipt of regulations implementing these provisions and a request to amend the maintenance plan accordingly, the EPA will initiate rulemaking on this subsequent revision. If the state fails to submit one of the above, the conditional approval converts to a disapproval. The EPA proposes to establish a deadline for meeting the condition which is one year from the effective date of the final rule conditionally approving the state's 1998 submittal. The statute requires that the condition be met within one year of the conditional approval. The EPA seeks comments on whether a shorter deadline should be established.

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.

VII. Administrative Requirements

A. Executive Order (E.O.) 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866, entitled ''Regulatory Planning and Review.''

B. E.O. 12875

Under E.O. 12875, the EPA may not issue a regulation that is not required by statute and that creates a mandate upon a state, local, or tribal government, unless the Federal Government provides the funds necessary to pay the direct compliance costs incurred by those governments, or the EPA consults with those governments. If the EPA complies by consulting, E.O. 12875 requires the EPA to provide to the OMB a description of the extent of the EPA's prior consultation with representatives of affected state, local, and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, E.O. 12875 requires the EPA to develop an effective process permitting elected officials and other representatives of state, local, and tribal governments ''to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates.''

Today's proposal would not create a mandate on state, local, or tribal governments. It would merely approve actions which the state has already chosen to take. Accordingly, the requirements of Section 1(a) of E.O. 12875 do not apply to this rule.

C. E.O. 13045

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997) applies to any rule that: (1) is determined to be ''economically significant'' as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that the EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to E.O. 13045 because it does not involve decisions intended to mitigate environmental health or safety risks that the EPA has reason to believe may have a disproportionate effect on children.

D. E.O. 13084

Under E.O. 13084, the EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal Government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or the EPA consults with those governments. If the EPA complies by consulting, E.O. 13084 requires the EPA to provide to the OMB, in a separately identified section of the preamble to the rule, a description of the extent of the EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, E.O. 13084 requires the EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments ''to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities.''

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian tribes. Accordingly, the requirements of Section 3(b) of E.O. 13084 do not apply to this rule.

E. Regulatory Flexibility Act (RFA)

The RFA generally requires an agency to conduct a regulatory flexibility

analysis of any rule subject to notice and comment rulemaking requirements, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This proposed rule will not have a significant impact on a substantial number of small entities because 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 has already chosen to impose. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-state relationship under the CAA, preparation of 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. EPA,* 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

F. Unfunded Mandates

Under Section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, the EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated annual costs to state, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under Section 205, the EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires the EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

The EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated annual costs of $100 million or more to either state, local, or tribal governments in the aggregate, or to the private sector. This Federal action would approve requirements which the state has chosen to undertake under state or local law, and imposes no new requirements. Accordingly, no additional costs to state, local, or tribal governments, or to the private sector, would result from this action. This action would not result in annualized costs of 100 million dollars or more.

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

Dated: January 15, 1999.

Dennis Grams, P.E.,

Regional Administrator, Region VII.

[FR Doc. 99–1760 Filed 1–25–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL–6225–6]

Approval and Promulgation of Implementation Plans; State of Missouri

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Kansas City ozone maintenance area experienced a violation of the National Ambient Air Quality Standard (NAAQS) for ozone in 1995. In response to this violation, Missouri submitted revisions to its ozone maintenance plan. These revisions pertain to the implementation of control strategies to achieve reductions in volatile organic compound (VOC) emissions within the Missouri portion of the Kansas City ozone maintenance area. A major purpose of these revisions is to provide a more flexible approach to maintenance of acceptable air quality levels in Kansas City, while achieving emission reductions equivalent to those required by the previously approved plan.

The EPA is proposing to conditionally approve the 1998 revisions to the Kansas City ozone maintenance plan as a revision to the Missouri State Implementation Plan (SIP). Final approval is contingent upon Missouri's submission of additional, enforceable control measures.

In a separate **Federal Register** notice published today, the EPA is also proposing conditional approval of a similar plan submitted by the Kansas Department of Health and Environment to address the Kansas portions of the ozone maintenance area.

DATES: Comments on this proposed rule must be received in writing on or before February 25, 1999.

ADDRESSES: Comments may be mailed to Royan Teter, Environmental Protection Agency, Air Branch, 726 Minnesota Avenue, Kansas City, Kansas 66101. The state submittal and the EPA-prepared technical support document are available for public review at the above address.

FOR FURTHER INFORMATION CONTACT: Royan Teter at (913) 551–7609.

SUPPLEMENTARY INFORMATION:

I. Background

The Kansas City metropolitan area (KCMA), consisting of Clay, Platte, and Jackson Counties in Missouri and Johnson and Wyandotte Counties in Kansas, was designated nonattainment for ozone in 1978. The Clean Air Act (CAA) provides for areas with a prescribed amount of air quality data showing attainment of the standard to be redesignated from nonattainment to attainment, if the requirements of section 107(d)(3)(E) are met. One of these requirements is for the area to adopt a maintenance plan consistent with the requirements of section 175A. This plan must demonstrate attainment of the NAAQS with a margin of safety sufficient to remain in attainment for ten years. Also, the plan must contain a contingency plan to be implemented if the area once again violates the standard.

Ozone monitoring data from 1987 through 1991 demonstrated that the Kansas City nonattainment area had attained the ozone NAAQS. In accordance with the CAA, the Missouri Department of Natural Resources (MDNR) revised the ozone SIP for the Missouri portion of the Kansas City area to recognize the area's attainment status. The EPA published final approval of the Missouri SIP on June 23, 1992. The SIP became effective on July 23, 1992 (57 FR 27939). This action effected the redesignation of the area to attainment.

The contingency plan approved as part of the 1992 SIP identified four measures which were to be implemented upon subsequent violation of the standard in the Kansas City area. These contingency measures required: (1) Certain new or expanding sources of ozone precursors to acquire emissions offsets; (2) the installation of Stage II vapor recovery systems at retail gasoline stations or the implementation of an enhanced inspection and maintenance (I/M) program for motor vehicles; (3) the implementation of transportation control measures achieving a 0.5 percent reduction in areawide VOC emissions; and (4) the completion of a comprehensive emissions inventory.

In a letter from Dennis Grams, EPA Region VII Administrator, to David Shorr, MDNR Director, on January 31, 1996, the EPA informed the MDNR of a violation of the ozone NAAQS. Quality-assured air quality monitoring data indicated measured exceedances of the