

Court of Appeals for the appropriate circuit by January 24, 1989. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

#### List of Subjects in 40 CFR Part 52

Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone.

**Note.** The Director of the *Federal Register* approved the incorporation by reference of the Tennessee SIP on July 1, 1982.

Date: August 26, 1988.

Lee M. Thomas,  
Administrator.

Part 52 of Chapter I, Title 40, 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. 7401-7642.

#### Subpart RR—Tennessee

2. Section 52.2220 is amended by adding paragraph (c)(94) to read as follows:

#### § 52.2220 Identification of plan.

\* \* \* \* \*

(c) \* \* \*

(94) A revision of Rule 1200-3-18-.02(m) was submitted to EPA on January 6, 1988, by the Tennessee Department of Health and Environment.

(i) *Incorporation by reference.* (A) Amendment to Tennessee Department of Health and Environment rules (revision of Paragraph 1200-3-18-.02(m)), State-effective on November 10, 1986.

(ii) Other materials—none.

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#### 40 CFR Part 52

[FRL-3473-9]

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

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

**ACTION:** Final rule.

**SUMMARY:** Section 110(a)(2)(F)(ii) of the Clean Air Act, as amended, requires that a state plan include a program to provide for installation of equipment to monitor emissions from stationary sources. In order to satisfy the requirements of the Act and EPA's plan requirements at 40 CFR 51.214, the Kansas Department of Health and

Environment (KDHE) adopted K.A.R. 28-19-19 *et seq.*, Continuous emission monitoring (CEM). These rules were submitted to EPA on January 6, 1988, and became effective May 1, 1988.

Today's action approves Kansas' CEM rules. Approval of these rules repairs an outstanding state implementation plan (SIP) deficiency.

EPA is acting on these rules using the direct-to-final procedures.

**DATES:** The effective date of this rulemaking is January 24, 1989, unless EPA receives notice that someone wishes to make adverse or critical comments by December 27, 1988.

**ADDRESSES:** Comments should be sent to Robert J. Chanslor, Environmental Protection Agency, Region VII, 726 Minnesota Avenue, Kansas City, Kansas 66101. Copies of the state's submittal are available for public inspection during normal business hours at the above address and at the Kansas Department of Health and Environment, Bureau of Air Quality and Radiation Control, Forbes Field, Topeka, Kansas 66620; Public Information Reference Unit, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460; and Office of the Federal Register, 1100 L Street NW., Room 8301, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Robert J. Chanslor at (913) 236-2893; FTS 757-2893.

#### SUPPLEMENTARY INFORMATION:

##### Introduction

On October 6, 1975 (40 FR 46247), EPA promulgated regulations implementing section 110(a)(2)(F)(ii) of the Clean Air Act, as amended, which require that SIPs contain legally enforceable procedures to require stationary sources subject to emission standards as part of an applicable plan to install, calibrate, maintain, and operate equipment for continuously monitoring and recording emissions; and to provide other information as specified in Appendix P of 40 CFR Part 51. EPA's regulations requiring CEM were originally codified at 40 CFR 51.19(e). EPA recodified its Part 51 regulations on November 7, 1986 (40 FR 40656). The CEM requirements are now found at 40 CFR 51.214.

After public notification and a public hearing held on November 13, 1987, the KDHE adopted rules requiring CEM systems. The Kansas CEM requirements are contained in K.A.R. 28-19-19 *et seq.* The state's notification and public hearing satisfy the requirements of 40 CFR 51.102. The state's submittal meets the 60-day timeframe for submitting SIP revisions in 40 CFR 51.104(d).

#### Review of Regulations

40 CFR Part 51, Appendix P, sets forth the minimum requirements for CEM and recordkeeping that a SIP must include in order to be approved under 40 CFR 51.165(b). K.A.R. 28-19-19(a) requires that all sources subject to the regulation install CEMs and comply with the data reduction and report requirements contained therein. This is approvable.

K.A.R. 28-19-19(b) (1) and (2) exempt units subject to the state's New Source Performance Standards (NSPS) in K.A.R. 28-19-83 *et seq.* This is acceptable since the state adopted EPA's NSPS by reference and the NSPS contain provisions for CEM for affected facilities subject to NSPS. The exemption is extended to fossil fuel-fired steam generators where an operating permit issued by the state under K.A.R. 28-19-14 limits the operating capacity to less than 30 percent. The exemption is terminated if the capacity restriction is removed. In such cases, the source owner or operator must have a CEM system installed and operational within six months of removal of the operational restriction. This is consistent with Part 51, Appendix P.

K.A.R. 28-19-19(c) identifies sources to which the regulations apply. This is consistent with sections 1.1.1 and 1.1.2 of Appendix P. Appendix P requires CEMs on sulfuric acid plants with a capability greater than 300 tons per day and nitric acid plants with a capacity greater than 300 tons per day if a control strategy for nitrogen dioxide is required in that Air Quality Control Region. The state's CEM regulations do not address sulfuric acid or nitric acid plants. This is acceptable. The state's section 111(d) plan identifies one sulfuric acid plant, but that plant's maximum is 300 tons per day. Thus, a CEM is not required. Existing sulfuric acid plants are regulated under K.A.R. 28-19-26. No nitrogen dioxide control strategy is required in Kansas; thus, CEM is not required for nitric acid plants.

The Kansas rules require that subject sources complete the installation and demonstrate compliance by November 1, 1987. This is approvable. K.A.R. 28-19-19(e) provides for an extension of time for installation, but in no case is an extension beyond November 1, 1988, to be granted. K.A.R. 28-19-19(f) requires that the owner or operator of an affected emission unit notify the state not less than 30 days prior to the anticipated installation and the date of the anticipated performance tests. The extension is consistent with Part 51, Appendix P, section 3.1. This extension does not prevent attainment of any

primary ambient air quality standard because they are applicable only to stationary sources which do not impact on ozone or carbon monoxide nonattainment areas.

K.A.R. 28-19-19(g) adopts by reference the performance specifications and test procedures in 40 CFR Part 60, Appendix B, in effect on July 1, 1986. This is approvable. The performance specifications in the state regulation are identical to EPA's specifications for opacity, SO<sub>2</sub>, CO<sub>2</sub>, and O<sub>2</sub>. The regulation requires that the source owner or operator subject to the requirements maintain records of all measurements, including performance test measurements, performance evaluations, calibration checks, adjustments, and maintenance, as well as emissions measurements. The regulation requires maintenance of records for at least two years. This is approvable.

The state rules require that the CEM system be operated except for down time during repairs, calibration checks, and zero and span checks. The rule requires monitoring of source emissions when the source is in operation. This is approvable.

The provisions of K.A.R. 28-19-19(k) require that the owners or operators of a source subject to the CEM regulations submit quarterly excess emissions reports. The data reductions requirements for the quarterly reports are clearly described in K.A.R. 28-19-19(e). This is consistent with Part 51, Appendix P, section 5.0, and is approvable.

The provisions of K.A.R. 28-19-19(m) require that an owner or operator of a source subject to the CEM rules develop and submit to the state an approvable quality assurance (QA) plan. When approved, the QA plan becomes enforceable as a part of the state CEM requirements. The quality control (QC) requirements are consistent with the QC requirements of Part 60, Appendix F, for CEMs and are approvable.

K.A.R. 28-19-19(o) allows a source owner or operator to use different but equivalent procedures and requirements for CEM systems, provided that a demonstration of equivalency is made, satisfactory to the department with EPA concurrence, that the alternative is equivalent. This rule is approvable with the understanding that all such equivalent procedures and requirements must be submitted to EPA as individual SIP revisions. In the absence of such

approval, the enforceable requirements of the remaining rules shall be applicable.

#### Conclusion

EPA believes that the CEM regulations adopted by the state of Kansas are consistent with the technical requirements of 40 CFR Part 51, Appendix P. EPA believes the state's CEM regulations satisfy the requirements of 40 CFR 51.165(b) and 51.214.

#### Action

EPA approves the Kansas regulations K.A.R. 28-19-19(a) through K.A.R. 28-19-19(1) which govern the use and operation of CEM operating systems.

EPA believes there is good cause to approve the state's CEM rules without prior proposal. The rules adopted by the state of Kansas are consistent with the EPA requirements at 40 CFR 51.165 and 51.214 and satisfy the requirements of section 110(a)(2)(F)(ii) of the Clean Air Act, as amended. Further, the state's adoption of these rules and procedures cures an outstanding Kansas SIP deficiency. When EPA approves these state rules, they become federally enforceable and provide EPA with an additional means of tracking major sources of SO<sub>2</sub> and other pollutants. EPA believes that approval of these rules is noncontroversial.

The public should be advised that action will be effective January 24, 1989. However, if notice is received within 30 days that someone wishes to make adverse or critical comments, this action will be withdrawn and two subsequent notices will be published prior to the effective date. One notice will withdraw final action and another will begin a new rulemaking by announcing a proposal of action and establishing a comment period.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Under section 307(b)(1) of the Clean Air Act, as amended, judicial review in the United States Court of Appeals for the appropriate circuit within 60 days of today. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

Under 5 U.S.C. section 605(b), I certify that this SIP revision will not have a significant impact on a substantial number of small entities. (See 46 FR 8709.)

#### List of Subjects in 40 CFR Part 52

Air pollution control, Incorporation by reference, Nitrogen dioxide, Particulate matter, Reporting and recordkeeping requirements, and Sulfur dioxide.

Note.—Incorporation by reference of the SIP for the state of Kansas was approved by the Director of the *Federal Register* on July 1, 1982.

Date: October 28, 1988.

Lee M. Thomas,  
Administrator.

40 CFR Part 52 is amended as follows:

#### PART 52—[AMENDED]

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

Authority: 42 U.S.C. 7401-7642.

#### Subpart R—Kansas

2. Section 52.820 is amended by adding paragraph (c)(23) to read as follows:

#### § 52.870 Identification of plan.

\* \* \* \* \*

(c) \* \* \*

(23) Kansas Administrative Regulations (K.A.R.) 28-19-19(a) through 28-19-19(o) pertaining to continuous emission monitoring at certain stationary sources were submitted on January 6, 1988, by the Kansas Department of Health and Environment. K.A.R. 28-19-19(o) allows for departmental discretion on use of different but equivalent procedures than those specified in 28-19-19(a) through 28-19-19(n). EPA approves this rule with the understanding that all such equivalent procedures and requirements must be submitted to EPA as individual SIP revisions. In the absence of such approval, the enforceable provisions of K.A.R. 28-19-19(a) through 28-19-19(n) shall be applicable.

(i) *Incorporation by reference.* (A) K.A.R. 28-19-19(a) through 28-19-19(o), continuous emission monitoring, as submitted by the Secretary of the Kansas Department of Health and Environment. These regulations became effective on May 1, 1988.

(B) Letter of January 6, 1988, from the Secretary of the Kansas Department of Health and Environment. This letter establishes the effective date for the revised regulations referenced in paragraph (23)(i)(A) of this section.

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