

recommendations as described in 40 CFR Part 80, Appendices D, E, and F.

### Proposed Action

The EPA is proposing to approve this revision to the Missouri SIP concerning Missouri rule 10 CSR 10-2.330. At the state's request, the EPA is parallel processing this action.

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.

## VI. Administrative Requirements

### A. Executive Order 12866

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 (OMB) has exempted this regulatory action from E.O. 12866 review.

### B. Regulatory Flexibility Act

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.

This Federal action authorizes and approves into the Missouri SIP requirements previously adopted by the state, and imposes no new requirements. Therefore, the Administrator 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)).

### C. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 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 costs to State, local, and tribal governments in the aggregate, or to the private sector, of \$100 million or more in any one year. 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 proposed action does not include a Federal mandate that may result in estimated costs of \$100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action authorizes and approves into the Kansas SIP requirements previously adopted by the state, 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, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

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

Dated: March 14, 1997.

**William Rice,**

*Acting Regional Administrator.*

[FR Doc. 97-7347 Filed 3-21-97; 8:45 am]

BILLING CODE 6560-50-P

### 40 CFR Part 52

[KS 019-1019; FRL-5800-7]

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

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

**ACTION:** Proposed rule.

**SUMMARY:** The EPA proposes to approve the State Implementation Plan (SIP) revision concerning Kansas Air Regulation (K.A.R.) 28-19-79, Fuel Volatility, submitted by the Kansas

Department of Health and Environment. This revision would set a summertime gasoline Reid Vapor Pressure (RVP) limit of 7.2 pounds per square inch (psi), and 8.2 pounds per square inch for gasoline containing at least 9.0 percent by volume but not more than 10.0 percent by volume ethanol, for gasoline distributed in Wyandotte and Johnson Counties as part of the state plan to maintain its clean air quality.

**DATES:** Comments must be received on or before April 23, 1997.

**ADDRESSES:** Comments may be mailed to Stan Walker, Environmental Protection Agency, Air Branch, 726 Minnesota Avenue, Kansas City, Kansas 66101.

**FOR FURTHER INFORMATION CONTACT:** Stan Walker at (913) 551-7494.

### SUPPLEMENTARY INFORMATION:

#### I. Background

The Clean Air Act (CAA, or the Act) requires states which have areas failing to meet the National Ambient Air Quality Standard (NAAQS) for ozone to develop SIPs with sufficient control measures to attain and maintain the standard. The EPA designated the Kansas City Metropolitan Area (KCMA) as an area failing to meet the NAAQS on March 3, 1978. The area designated as nonattainment included five counties: Platte, Clay, and Jackson Counties in Missouri, and Johnson and Wyandotte Counties in Kansas. In spite of a series of SIP revisions, the area continued to experience violations of the ozone NAAQS throughout the 1980s. Each time violations occurred beyond an attainment date, the EPA notified the Governor and called for a revision to the Kansas SIP. In response to the last of these SIP calls, KDHE submitted a SIP revision which demonstrated attainment of the ozone NAAQS by December 31, 1987. Although the area experienced a number of violations in 1988, no violations were experienced during the subsequent three-year period.

In an effort to comply with the 1990 Amendments to the CAA, and to ensure continued attainment of the ozone NAAQS with an adequate margin of safety, the state submitted an ozone maintenance SIP for the Kansas portion of the KCMA on October 23, 1991. Accompanying the maintenance SIP were several new rules to control volatile organic compound (VOC) emissions from certain categories, the state's request to redesignate the KCMA as an attainment area with respect to the ozone NAAQS, and a commitment to implement certain contingency measures should the area exceed certain emission levels or experience additional violations. The EPA approved the

maintenance SIP and redesignated the KCMA to attainment on June 23, 1992.

During the three-year period following approval of the maintenance SIP, a number of exceedances of the ozone standard were recorded in the KCMA. As a result, the KCMA was once again in violation of the ozone NAAQS. The EPA notified the state of the violation on January 31, 1996, and requested that the contingency measures in the approved plan be implemented. Due to various problems associated with implementation of contingency measures in the approved contingency plan, the local community undertook an evaluation of substitute measures which could be implemented. After an extensive evaluation of available options, the Mid-America Regional Council (MARC), in conjunction with the Kansas City Air Quality Forum, recommended a package of measures to Kansas and Missouri. This recommendation contained a number of measures for implementation as contingency measures, including lower volatility gasoline. This notice and the accompanying technical support document (TSD) provide an analysis of the lower volatility gasoline portion of the package of substitute measures.

## II. Regulatory Objective

RVP is a measure of a fuel's volatility and thereby affects the rate at which gasoline evaporates and emits VOCs; RVP is directly proportional to the rate of evaporation. Consequently, the lower the RVP, the lower the rate of evaporation. Lowering the RVP in the summer months can offset the effect of summer temperature upon the volatility of gasoline, which, in turn, lowers emissions of VOCs. VOC is an important component in the production of ground level ozone in the hot summer months. Reduction of RVP will help the state's effort to attain and maintain compliance with the NAAQS for ozone.

## III. State Submittal

On December 5, 1996, KDHE submitted to the EPA Region VII a SIP revision to establish new limits on fuel volatility. These control measures were submitted as part of several contingency measures necessary for the KCMA to maintain clean air quality. Included in the submittal was a letter from Secretary James J. O'Connell, KDHE, to Dennis Grams, EPA Region VII Administrator, requesting authorization to implement a lower RVP requirement in the Kansas City area; Kansas Regulation, K.A.R. 29-19-79; and a Regulatory Impact Statement including an Environmental Impact Statement and an Economic Impact Statement. In addition, on December 19, 1996, John C. Irwin,

Director, Bureau of Air and Radiation, KDHE, also sent a letter requesting the EPA to parallel process the rule to provide adequate time for gasoline facilities to prepare for the change in fuel volatility. The state held a public hearing on January 23, 1997.

Pursuant to the December 19, 1996, request from the state, the EPA is parallel processing this SIP revision concurrently with the state's proposal and adoption procedures for amending its SIP.

In parallel processing, the EPA proposes rulemaking action concurrently with the state's procedures for amending its regulations. If the state substantially changes its proposed regulatory revision in areas other than those identified in this notice, the EPA will evaluate those changes and may publish another notice of proposed rulemaking. If no substantial changes are made other than those areas cited in this notice, the EPA will publish a final rulemaking notice on the revisions. The final rulemaking action by the EPA will occur only after the SIP revision has been adopted by Kansas and submitted formally to the EPA for incorporation into the SIP.

## IV. Analysis of the SIP

### A. Necessity Finding

Under sections 211(c) and 211(h) of the CAA, the EPA has promulgated nationally applicable Federal standards for RVP levels in motor vehicle gasoline. Because a Federal control promulgated under section 211(c)(1) applies to the fuel characteristic RVP, nonidentical state controls are prohibited under section 211(c)(4). Section 211(c)(4)(A) of the Act prohibits state regulation respecting a fuel characteristic or component for which the EPA has adopted a control or prohibition, unless the state control is identical to the Federal control. Under section 211(c)(4)(C), the EPA may approve a nonidentical state fuel control as a SIP provision, if the state demonstrates that the measure is necessary to achieve the national primary or secondary ambient air quality standard that the plan implements. The EPA can approve a state fuel requirement as necessary only if no other measures would bring about timely attainment, or if other measures exist but are unreasonable or impracticable. While the Kansas low RVP requirement is preempted by the Federal RVP requirements, the state can implement the low RVP requirement if the EPA finds it necessary and approves it as a revision to the SIP.

In its submittal, Kansas showed that additional VOC reductions are needed to address Kansas City's recent history

of nonattainment problems and to assure continued attainment of the ozone NAAQS in the KCMA. While the area is designated as attainment for the ozone NAAQS, the KCMA is currently in danger of violating the standard due to exceedances occurring in the 1995-1996 period. Kansas estimates that the area needs to achieve approximately 8.5 tons per day of VOC reductions to continue to achieve attainment of the ozone NAAQS. Because emission trends continue to increase, the state believes it is important that control measures producing a significant portion of the needed reductions be implemented in time to reduce emissions beginning in the 1997 ozone season. Otherwise, there is a significant risk of exceedances and violations in 1997, and this risk will increase over time. The EPA agrees that an important criteria in evaluating the reasonableness of each control measure is whether it will achieve significant emission reductions in the near term, beginning in the 1997 and 1998 ozone seasons.

Kansas evaluated a broad range of available control measures to determine whether there are sufficient reasonable and practicable measures available to produce the needed emissions reductions without requiring low RVP gasoline. In addition to assessing the quantity of emission reductions attributable to each control measure, the state also considered the time needed for implementation and cost-effectiveness of each measure in evaluating the reasonableness and practicability of the other control measures in comparison to low RVP gasoline requirements. The cost-effectiveness ratio is based on the cost expected to be incurred from 1997 through 2006, resulting from implementing the control measure, divided by the 10-year sum of the daily VOC reductions. Kansas found that a 7.2 psi low RVP requirement could be implemented in time for the 1997 ozone season, would produce an estimated 4.1 tons per day of VOC emissions reductions, and has an estimated cost-effectiveness ratio of 1.1. The state also evaluated the following other measures: Stage II vapor recovery, reformulated gasoline, vehicle I/M programs, clean fueled fleets (CFF) program, light rail transit, free transit, and parking surcharge. Based on the state's evaluation, the EPA finds that there are not sufficient other reasonable and practicable measures available to produce the quantity of emissions reductions needed to continue to

achieve the NAAQS, and thus a low RVP requirement is necessary.

Kansas found that free transit on red sky-cast days can be implemented in time for the 1997 ozone season and has a very favorable cost-effectiveness ratio, but would generate only 0.3 tons per day reductions, which is a very small fraction of the goal of 8.5 tons per day total reductions. Free transit throughout the ozone season could be implemented on the same time frame, is less cost-effective, and would generate an additional 0.3 tons per day reductions. A parking surcharge could also be implemented promptly, but has a very high cost-effectiveness ratio and would add only 0.6 tons per day reductions. Thus, even if the state were to implement all of these measures they would not produce a significant quantity of emissions reductions in the next few ozone seasons, and hence would not be sufficient to ensure that the state will continue to achieve the ozone NAAQS.

While a number of other measures would achieve substantially greater reductions than free transit and a parking surcharge, the state found that all of these measures would take considerably longer to implement than low RVP, and none would produce emission reductions beginning in the 1997 and 1998 ozone seasons. One option the state considered is Stage II vapor recovery, which would reduce emissions an estimated 6.9 tons per day. However, Stage II would take approximately 18 months to implement, which means it would not reduce emissions before the 1999 ozone season. Moreover, installation of the Stage II equipment would require additional underground piping as well as new hose and nozzle sets at each affected station. Stage II would require substantial compliance efforts by a larger number of entities than would a low RVP requirement, and it would mainly affect smaller entities, which may have more difficulty absorbing compliance costs.

Another potential option is either a centralized or decentralized I/M program, with emissions reductions estimated ranging between 2.4 tons per day (basic decentralized I/M) and 25 tons per day (the EPA recommended centralized enhanced I/M), depending upon the type of I/M program selected. Kansas estimated that an I/M program would take four to six years to fully implement and three to four years before producing any emissions reductions benefits. An I/M program would require legislative as well as regulatory action in both Missouri and Kansas. Additionally, an I/M program would require development of

substantial infrastructure (e.g., testing facilities) in the Kansas City area, and would require participation by every motor vehicle owner.

Kansas also considered light rail transit as a potential control measure, with estimated emissions reductions of 0.1 tons per day. The state considers light rail transit as an option only for the long term because it would require substantial lead time for implementation. Both Kansas and Missouri would have to pass authorizing legislation and secure funding sources. The states would also have to acquire land and undertake a large-scale construction project. Moreover, the state estimated that this option has a high cost-effectiveness ratio (compared to low RVP).

Finally, Kansas has been working to develop a CFF program by forming a workgroup to help develop an infrastructure for the program. Currently this program is in the planning stages and could take approximately two to three years to implement. Since this program is in the planning stages, exact emission reduction credits have not yet been identified. The expected reductions from the CFF program would produce only a portion of the identified goal of 8.5 tons per day leaving a need for additional significant reductions to continue to achieve attainment.

Given that low RVP is the only option that would produce substantial emissions reductions in the near term, and given its comparative ease of implementation (as well as superior cost-effectiveness to some of these options), the EPA finds that each of the measures discussed above is unreasonable in comparison to a low RVP requirement. This finding does not imply that these measures would be unreasonable if additional reductions were needed beyond those that would be produced by low RVP, or that these measures would be unreasonable given a longer time frame to reduce emissions. In addition to the measures discussed above, the state also evaluated opt-in to Federal reformulated gasoline (RFG) as another option. The EPA finds that opt-in to RFG is impracticable at this time because the area is a designated attainment area and, under current EPA regulations, only designated nonattainment areas can opt in to RFG.

#### *B. Emission Impact of the Fuel Volatility Control*

The fuel volatility control was identified by MARC as a control measure that could be implemented by the 1997 ozone season and will contribute significantly toward the established emission control. Reducing

the fuel volatility limit from 7.8 to 7.2 psi will reduce VOC emissions by an expected 4.1 tons per day. Most of the emission reductions will occur from vehicle emissions (4.0 tons per day), and 0.1 tons per day will come from nonroad emissions, including storage and refueling emission.

#### *C. Economic Impacts of the Fuel Volatility Control*

The fuel volatility control will affect the cost of producing the gasoline. It is estimated that it will cost refineries an additional 1.5 cents per gallon to produce 7.2 psi RVP gasolines. Some cost will be passed on to the consumer; therefore, consumers in the KCMA may experience a gasoline price increase of about 1.5 cents per gallon.

#### **V. Analysis of the Rule**

The Kansas rule specifies that no person shall dispense, supply, exchange in trade, offer for sale or supply, and sell or store gasoline used as a fuel for motor vehicles and that has an RVP greater than 7.2 psi, or 8.2 psi for gasoline containing at least 9.0 percent by volume but not more than 10.0 percent by volume ethanol. This rule applies beginning June 1 through September 15 of each year.

In addition, facilities other than a gasoline dispensing facility shall keep and maintain at the facility, for two years following the date of the RVP test, records of the information regarding the RVP of gasoline that is to be used as a fuel for motor vehicles.

Gasoline used exclusively for fueling implements of agriculture and gasoline in any tank, reservoir, storage vessel, or other stationary container with a nominal capacity of 500 gallons or less are exempt from this regulation.

The sampling procedures and test methods are consistent with the EPA recommendations as described in 40 CFR part 80, appendices D, E, and F.

#### *Proposed Action*

The EPA is proposing to approve this revision to the Kansas SIP concerning K.A.R. 28-19-79. At the state's request, the EPA is parallel processing this action.

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.

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This Federal action authorizes and approves into the Kansas SIP requirements previously adopted by the state, and imposes no new requirements. Therefore, the Administrator 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)).

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that may be significantly or uniquely impacted by the rule.

The EPA has determined that the proposed action does not include a Federal mandate that may result in estimated costs of \$100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action authorizes and approves into the Kansas SIP requirements previously adopted by the state, 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, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

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

Dated: March 14, 1997.

**William Rice,**

*Acting Regional Administrator.*

[FR Doc. 97-7348 Filed 3-21-97; 8:45 am]

BILLING CODE 6560-50-P

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Chapter I

[CC Docket No. 96-98; DA 97-557]

#### Petition of MCI for Declaratory Ruling That New Entrants Need Not Obtain Separate License or Right-to-Use Agreements Before Purchasing Unbundled Elements

**AGENCY:** Federal Communications Commission.

**ACTION:** Petition for declaratory ruling; request for comments.

**SUMMARY:** The Commission has released a Public Notice which establishes a pleading cycle for comments on a petition for declaratory ruling filed by MCI requesting the Commission to issue a declaratory ruling that new entrants need not obtain separate license or right-to-use agreements before purchasing unbundled network elements, and that the Communications Act of 1934, as amended, requires an incumbent LEC to provide requesting telecommunications carriers the same rights to intellectual property that the incumbent LEC enjoys. The Commission wishes to build a complete record on this issue.

**DATES:** Comments are due on or before April 15, 1997, and reply comments are due on or before May 6, 1997.

**ADDRESSES:** Comments and reply comments should be sent to Office of the Secretary, Federal Communications Commission, 1919 M Street, NW., Room 222, Washington, DC 20554, with a copy to Janice Myles of the Common Carrier Bureau, 1919 M Street, NW., Room 544, Washington, DC 20554. Parties should also file one copy of any documents filed in this docket with the Commission's copy contractor, International Transcription Services, Inc., 2100 M Street, NW., Suite 140, Washington, DC 20037.

**FOR FURTHER INFORMATION CONTACT:** Kalpak Gude, Common Carrier Bureau, Policy and Program Planning Division, (202) 418-1580.

### SUPPLEMENTARY INFORMATION:

#### Synopsis of Public Notice

On March 11, 1997, MCI filed a petition for declaratory ruling requesting the Commission to issue a declaratory ruling that any requirement imposed by an incumbent local exchange carrier (LEC) or by a state or local government that a requesting telecommunications carrier obtain separate license or right-to-use agreements before the requesting carrier may purchase access to unbundled network elements violates sections 251 and 253 of the Communications Act of 1934, as amended (the Act). MCI also asks the Commission to issue a declaratory ruling that the Act's nondiscrimination requirement requires an incumbent LEC to provide requesting telecommunications carriers the same rights to intellectual property that the incumbent LEC enjoys.

We are assigning file number CCBPol 97-4 to this proceeding. This issue MCI raises was also raised in a Petition for Reconsideration of the *First Report and Order* in CC Docket No. 96-98 (61 FR 45476 (August 29, 1996)) that was filed by Local Exchange Carrier Coalition. Therefore, commenters must include both the docket number and the file number on all pleadings, and should file copies in both proceedings.

In order to build as complete a record as possible, we encourage parties to comment on the following questions: (1) Does providing access to unbundled network elements implicate the intellectual property rights of equipment vendors or other third parties? Why or why not? We urge parties to provide specific supporting information, including descriptions of the types of provisions included in existing contracts between incumbent