Note: Incorporation by reference of the SIP for the State of Oklahoma was approved by the Director of the Federal Register on July 1, 1982.

Dated: January 12, 1996.

A. Stanley Meiburg,

Acting Regional Administrator (6A).

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 LL—Oklahoma

2. Section 52.1920 is amended by adding paragraph (c)(46) to read as follows:

§ 52.1920 Identification of plan.

* * * * *

(c) * * *

(46) A revision to the Oklahoma SIP to include revisions to Oklahoma Department of Public Safety regulation Title 595, Chapter 20, Subchapter 3—Emission and Mechanical Inspection of Vehicles, Subchapter 7—Inspection Stickers and Monthly Tab Inserts for Windshield and Trailer/Motorcycle, Subchapter 9—Class AE Inspection Station, Vehicle Emission Anti-tampering Inspection and Subchapter 11—Annual Motor Vehicle Inspection and Emission Anti-Tampering Inspection Records and Reports, adopted by the State on April 6, 1994, effective May 26, 1994 and submitted by the Governor on May 16, 1994.

(i) Incorporation by reference.

(A) Revisions to Oklahoma Department of Public Safety regulation Title 595, Chapter 20: 3–1(2); 3–3; 3–5; 3–6; 3–12; 3–25; 3–26; 3–27; 3–41(o); 3–42; 3–46(a) and (b); 3–61(a),(b),(e) and (f); 3–63(b) and (g); 7–1(c) and (f); 7–2(a); 7–3; 7–4(a); 7–5(a); 7–6(a); 7–7(a); 9–1(a); 9–3(l) and (m); 9–7; 9–10(a),(b) and (c); 9–11(a); 9–12(a); 9–13(a); 9–14(a) and (b); 9–15(a); 11–1; 11–2(a); 11–3(a); 11–4 effective May 26, 1994.

(ii) Additional material.

(A) State SIP revision entitled, ''Oklahoma Vehicle Anti-Tampering Program SIP Revision,'' which includes a completeness determination, SIP narrative, hearing records and other documentation relevant to the development of this SIP.

[FR Doc. 96–4567 Filed 2–28–96; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 52

[MO–29–1–7151a; FRL–5425–2]

Approval and Promulgation of Implementation Plans; State of Missouri

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: This document takes final action to approve the State Implementation Plans (SIP) submitted by the state of Missouri for the purpose of fulfilling the requirements set forth in EPA's Transportation Conformity rule. The SIPs were submitted by the state to satisfy the Federal requirements in 40 CFR 51.396.

DATES: This action is effective April 29, 1996 unless by April 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 Branch, 726 Minnesota Avenue, Kansas City, Kansas 66101; and EPA Air & Radiation Docket and Information Center, 401 M Street, SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Lisa V. Haugen at (913) 551–7877.

SUPPLEMENTARY INFORMATION:

I. Background

Section 176(c)(4) of the Clean Air Act, as amended (CAA), 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 CAA. Conformity to an implementation plan is defined by the CAA as conformity to an implementation plan'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. On November 23, 1993, the EPA promulgated the final rule (hereafter referred to as the Transportation Conformity rule), which established the process by which the Federal Highway Administration (FHWA), the Federal Transit Administration (FTA), and metropolitan planning organizations (MPO) determine conformity of highway and transit projects.

The Transportation Conformity rule also establishes the criteria for EPA approval of SIPs. See 40 CFR § 51.396. These criteria provide that the state provisions must be at least as stringent as the requirements specified in EPA's Transportation Conformity rule, and that they can be more stringent only if they apply equally to nonfederally funded transportation projects as well as those using Federal funds (section 51.396(a)).

The St. Louis area was designated nonattainment for ozone and carbon monoxide (CO) in 1978. On November 6, 1991, EPA promulgated a rule which classified the St. Louis area as a moderate ozone nonattainment area, and as an unclassified nonattainment area for CO. Kansas City was redesignated to attainment for ozone, and a maintenance plan was approved, in a June 23, 1992, Federal Register notice. Section 51.396 of the Transportation Conformity rule requires that states with areas subject to the rule submit an SIP revision containing the criteria and procedures for FHWA, FTA, MPOs, and other state or local agencies to assess the conformity of transportation plans, Transportation Improvement Programs (TIP), and projects to the applicable SIP, within 12 months after November 23, 1993. As the rule applies to all ozone and CO nonattainment and maintenance areas, SIP revisions for the St. Louis and Kansas City areas, addressing the requirements of the Transportation Conformity rule, became due on November 24, 1994.

II. Review of State Submittal

On February 14, 1995, the state of Missouri submitted Transportation Conformity SIP revisions for Kansas City and St. Louis. The submission included an SIP revision for Kansas City along with Missouri rule 10 CSR 10–2.390 (10–2.390), and an SIP revision, including Missouri rule 10 CSR 10–5.480 (10–5.480), which applies to St. Louis. Section 51.396 requires that, for the SIP revision to be approvable by EPA, certain sections of the Transportation Conformity rule be incorporated verbatim.

The state of Missouri chose to use the model Transportation Conformity rule developed by the State and Territorial Air Pollution Program Administrators (STAPPA)/Association of Local Air Pollution Control Officials (ALAPCO). The STAPPA/ALAPCO model rule added clarifying changes consistent with the intent of the Federal rule. For instance, 10–5.480(10)(B) and 10–2.390(10)(B) include examples of the types of planning assumptions which must be considered in making conformity determinations. The examples are added to the language in section 51.412 of the Federal rule, but do not change the section's intent. The

STAPPA/ALAPCO rule also contains ''more stringent'' and ''lateral'' options which change the substance of the Federal rule. Provisions in the STAPPA/ALAPCO rule which are more stringent than the Federal rule are identified as ''Optional More Stringent Version,'' ''Optional More Stringent Additional Provision,'' or ''Optional More Stringent and Potentially Discriminatory Versions.'' Options which address subjects not covered by the Federal Conformity rule, or which expand the coverage of the Federal rule's requirements, are identified as ''Lateral Expansion Option'' in the STAPPA/ALAPCO rule. Missouri did not adopt any of these options from the model rule. Therefore, except as noted below, EPA finds that the Missouri submissions meet the criteria set forth in section 51.396 of the Transportation Conformity rule.

On February 8, 1995, EPA published an interim final rule entitled, ''Transportation Conformity Rule Amendments: Transition to the Control Strategy Period.'' This interim final rule, which modified the language in sections 51.448 and 93.128 of the Federal rule, was effective immediately and applied until August 8, 1995. A proposed rule for these language modifications was also published February 8, 1995, and a final rule was published on August 7, 1995. Missouri rules 10 CSR 10–5.480(22) and 10–2.390(20) reflect the Federal rule requirements before the publication of the interim final rule. Specifically, the Missouri rule provides that conformity will lapse 12 months from the date of an EPA finding of specific SIP deficiencies. Therefore, EPA is approving the state's Transportation Conformity SIP revisions *with the exception of the aforementioned portions of the Missouri rules.* Section 93.128 of the Federal Transportation Conformity rule, as amended on August 7, 1995, will remain in effect until the state of Missouri submits an SIP revision which incorporates the changes in the Federal rule. Section 93.128, as amended, states that a conformity lapse resulting from a finding of certain SIP deficiencies is delayed until CAA section 179(b) highway sanctions for these deficiencies are applied.

On August 29, 1995, EPA published an interim final rulemaking amending the November 24, 1993, final Transportation Conformity rule to remove the statutory reference relating to exempting certain areas from certain NO_X provisions of the Transportation Conformity rule. Specifically, the interim final rule removed the reference to NO_X waivers under § 182(f) to ensure that the waivers had to be approved as part of the implementation plan revision process discussed in § 182(b) of the CAA, in order to exempt areas from the requirement to make conformity determinations for NO_X. Missouri rules 10 CSR 10–2.390 and 10 CSR 10–5.480 specifically reference waivers approved under § 182(f) as the statutory authority which would relieve areas from the NO_X conformity requirements. In a letter dated December 7, 1995, from David Shorr, Director, Missouri Department of Natural Resources to Dennis Grams, Regional Administrator, EPA, the state of Missouri confirms its understanding that, should EPA approve an NO_X waiver under § 182(f), this waiver does not relieve the state from the NO_X conformity requirements in the Transportation Conformity rule. The letter further states that Missouri intends to implement its rule in a manner consistent with EPA's interim final rule, so that the conformity requirements will continue to apply until any NO_X waiver request has undergone a public hearing, has been submitted to EPA, and has been subsequently approved as an SIP revision.

On November 14, 1995, the EPA promulgated a final rule which amended certain provisions of the Federal Transportation Conformity rule. These changes include allowing any transportation control measure from an approved SIP to proceed during a conformity lapse; aligning the date of conformity lapses with the date of application of the CAA highway sanctions for any failure to submit or submission of an incomplete control strategy SIP; extension of the grace period before which areas must determine conformity to a submitted control strategy SIP; establishment of a grace period before which transportation plan and program conformity must be determined in newly designated nonattainment areas; and a correction of the nitrogen oxides provisions of the Transportation Conformity rule so they are consistent with the CAA and previous commitments made by EPA. As the state adopted and submitted its Transportation Conformity rules prior to the publication of the November 14, 1995, rule amendments, and a Transportation Conformity SIP revision consistent with these amendments must be submitted to EPA by 12 months from November 14, 1995, EPA believes it is reasonable to approve the state's submittal. EPA expects Missouri to amend its conformity rules consistent with the November 1995 rule amendments and submit the amendments to EPA for approval by November 1996.

The Missouri SIP revisions, including 10–2.390 and 10–5.480, were adopted by the Missouri Air Conservation Commission, after proper notice and public hearing, on January 12, 1995, and became effective on May 28, 1995. These rules apply in all nonattainment and maintenance areas for transportation-related criteria pollutants for which the area is designated nonattainment, or has a maintenance plan as required by sections 51.394 and 93.102 of the Transportation Conformity rule.

Because the Missouri rules meet the substantive requirements of EPA's Transportation Conformity rule, EPA has determined that these submissions meet the requirements for an approvable Transportation Conformity SIP.

III. Specific Language Changes

The Missouri Transportation Conformity rules include changes which clarify the text of the Federal rule, as explained below. Other changes reflect guidance issued by EPA in the Preamble of the final Transportation Conformity rule.

A. The preamble to the November 1993 Transportation Conformity rule states that there must be consistency between the SIP and the conformity analysis regarding modeling parameters such as temperature, season, etc. This regulatory requirement is incorrectly stated only in sections 51.452(b)(5) and 93.130(b)(5), which apply to serious, severe, and extreme ozone nonattainment areas and serious carbon monoxide areas after January 1, 1995. In an October 14, 1994, EPA memorandum, it is indicated that it was EPA's intent for this requirement to apply to all areas. This memorandum also cited an incorrect reference in sections 51.452(c)(1) and 93.130(c)(1) to paragraph (a) of the same section. The reference should have been to paragraph (b). The corrections are made in 10–2.390(24)(A)6., 10–2.390(24)(C)1., 10–5.480(26)(A)6., and 10–5.480(26)(C)1. of the Missouri rules.

B. Sections 51.458 and 93.133 require the Transportation Conformity SIP revisions to provide that written commitments to mitigation measures must be obtained prior to a positive conformity determination, and that project sponsors must comply with such commitments. The Missouri rules modify this language to make it appropriate for the state rules in 10–2.390(26)(C) and 10–5.480(29)(C).

C. In part IV(L)(1) of the Preamble to the final Transportation Conformity

rule, EPA stated that Transportation Conformity SIPs should specify what action by an affected recipient of funds designated under Title 23 U.S.C. or the Federal Transit Act, constitutes adoption or approval of a nonfederal transportation project for inclusion in a regional emissions analysis. ''Adoption and approval'' are defined in 10–2.390(5)(C)4.C. and 10–5.480(5)(C)3.D.

D. Part IV(F)(1) of the Preamble to the final Transportation Conformity rule discusses the ''timely implementation'' of transportation control measures as being a criteria for a conformity determination. Specifically, EPA uses the term ''maximum priority.'' 10–2.390(13)(C) and 10–5.480(13)(C) add language which clarifies the term ''maximum priority.''

IV. Consultation

Section 51.402 (93.105) requires the state to include procedures for interagency consultation and resolution of conflicts in the Transportation Conformity SIPs. The SIPs are to provide ''well-defined consultation procedures whereby representatives of the MPOs, state and local air quality planning agencies, state and local transportation agencies * * * must consult with each other and with local or regional offices of EPA, FHWA, and FTA on the development of the implementation plan, the TIP, and associated conformity determinations.'' Both 10–2.390(5) and 10–5.480(5) establish consultation procedures which meet EPA's consultation criteria.

Both St. Louis and Kansas City are bistate areas. 10–2.390(5) and 10–5.480(5) establish the consultation, conflict resolution and public participation procedures for conformity determinations, SIPs, transportation plans, and TIPs, and clearly state the agencies that will be involved in the consultation process in Kansas and Missouri for the Kansas City area, and in Illinois and Missouri for the St. Louis area. The roles and responsibilities of each agency are outlined in detail.

The consultation process established in 10–2.390(5) and 10–5.480(5) incorporate the basic principle behind sections 51.402 and 93.105 in the Federal Transportation Conformity rule. Missouri has established a mechanism by which every agency with any responsibility for any key transportation or air quality decision must consult with every other agency with an interest in that decision. Each interested party is provided with all the necessary information needed for meaningful input and, prior to taking any action, the views of the party are considered and responded to in a substantive manner. The reader is referred to the Technical Support Document for information on specific processes within the interagency consultation procedures, including conflict resolution procedures and the public participation process. EPA has determined that sections 10–2.390(5) and 10–5.480(5) meet the requirements of 52.402 and 93.105 of the Federal Transportation Conformity rule.

EPA Action: The effect of this action is that EPA grants full approval of Missouri's February 14, 1995, submittals. These SIP revisions meet the requirements set forth in 40 CFR § 51.396. As explained above, Missouri will be required to revise its rules consistent with revisions promulgated by EPA subsequent to Missouri's adoption of its rules.

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., 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, 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, 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 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 (OMB) 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, 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 state implementation plan, 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. 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. EPA has determined that these rules result in no additional costs to tribal government.

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 April 29, 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, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and record keeping requirements, Volatile organic compounds.

Dated: February 6, 1996.

Dennis Grams,

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 AA—Missouri

2. Section 52.1320 is amended by adding paragraph (c)(92) to read as follows:

§ 52.1320 Identification of plan.

* * * * *

(c) * * *

(92) On February 14, 1995, the Missouri Department of Natural Resources submitted two new rules which pertain to transportation conformity in Kansas City and St. Louis.

(i) Incorporation by reference.

(A) New rule 10 CSR 10–2.390 (except section (20) Criteria and Procedures: Interim Period Reductions in Ozone Areas (TIP)) and 10 CSR 10–5.480 (except section (22) Criteria and Procedures: Interim Period Reductions in Ozone Areas (TIP)), both entitled Conformity to State Implementation Plans of Transportation Plans, Programs, and Projects Developed, Funded, or Approved Under Title 23 U.S.C. or the Federal Transit Act, effective May 28, 1995.

(ii) Additional material.

(A) Missouri's Air Pollution Control Plan, St. Louis Metropolitan Area Ozone and Carbon Monoxide Transportation Conformity, January 12, 1995.

(B) Missouri's Air Pollution Control Plan, Kansas City Metropolitan Area Ozone Transportation Conformity, January 12, 1995.

(C) Policy agreement, entered into between the Missouri Department of Natural Resources, the Mid-America Regional Council, and the Highway and Transportation Commission of the state of Missouri, dated August 31, 1993.

(D) Letter from the state of Missouri to EPA, dated December 7, 1995, in which the state commits to implementing its state rule consistent with the Federal Transportation Conformity rule, as amended on August 29, 1995, with regards to the granting of an NO_x waiver and the NO_x conformity requirements.

[FR Doc. 96–4565 Filed 2–28–96; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Part 52

[OAQPS 6542; FRL–5426–8]

Approval and Promulgation of Implementation Plans; State of Missouri

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The purpose of this revision to the Missouri State Implementation Plan (SIP) is to revise the Missouri Part D new source review (NSR) rules, update and add numerous definitions, revise the maximum allowable increase for particulate matter under the requirements for prevention of significant deterioration (PSD) of air quality, address emission statements under Title I of the Clean Air Act Amendments (CAAA), and generally enhance the SIP.

The objective of this final rule is to approve into the Missouri SIP rules adopted by the state which meet the requirements of the Clean Air Act (CAA) as amended in 1990 with regard to NSR in areas that have not attained the national ambient air quality standard. This implementation plan revision was submitted by the state pursuant to Federal requirements for an approvable NSR SIP for Missouri.

EFFECTIVE DATE: This rule will be effective on April 1, 1996.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal business hours at the EPA Air, RCRA, and Toxics Division, 726 Minnesota Avenue, Kansas City, Kansas 66101; and at the EPA Air and Radiation docket and Information Center, 401 M Street, S.W., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Josh Tapp at (913) 551–7606.

SUPPLEMENTARY INFORMATION:

I. Background

On April 3, 1995, at 60 FR 16824 the EPA proposed to approve the SIP revision by the state of Missouri that revises the Missouri Part D NSR rules, updates and adds numerous definitions, revises the maximum allowable increase for particulate matter under the requirements for PSD of air quality, addresses emission statements under Title I of the CAAA, and generally enhances the SIP.

The Federal Register proposal provided that the final rule was contingent upon Missouri modifying the language in its definition of the term ''construction'' to prohibit major sources from commencing construction before a permit had been issued. The proposal also required the construction permit rule be modified to prohibit the taking of offset credits for emission reductions required under either Federal law or a Federally enforceable permit.

The EPA is currently developing a proposed rule to assist the implementation of the changes under the amended Act in the NSR provisions in Parts C and D of Title I of the Act. EPA will refer to the proposed rule as the most authoritative guidance available regarding the approvability of submittals. Upon promulgation of the final regulations, EPA will review the NSR SIPs of all states to determine whether additional SIP revisions are necessary.

II. Construction Permits Required—10 CSR 10–6.060

A. General Nonattainment NSR Nonattainment Permit Requirements

In the April 3, 1995, proposal to approve the SIP revision by the state of Missouri that revises the Missouri Part D NSR rules, 11 CAA requirements were addressed in detail. These requirements consist of the following and are discussed at 60 FR 16825–6: (1) Offset ratios, (2) geographical location of offsets, (3) timing of offsets, (4) actual emissions reductions, (5) NO_X requirements, (6) creditable reductions, (7) prohibition on old growth allowances, (8) analysis of alternatives, (9) reasonable further progress, (10) reasonably available control technology/best available control technology/lowest achievable emission rate clearinghouse information, and (11) stationary source definition. Each of these requirements has been thoroughly addressed in the proposal and the reader is referred to that document for further discussion. Missouri has satisfied each of these Federal requirements.