

aforementioned requirements of the Act. Submission of this rule revision fulfills this requirement. This revision provides that any credible evidence may be used for the purpose of establishing whether a violation has occurred at the source.

K.A.R. 28-19-300 through 304. These regulations establish the procedures applicable to the issuance of permits and approvals to construct or modify new air sources. Major portions of these provisions were formerly contained in K.A.R. 28-19-8 and K.A.R. 28-19-14. The threshold criteria pollutant emission levels for obtaining a construction permit (K.A.R. 28-19-300(a)(1)) have been increased to make them consistent with prevention of significant deterioration (PSD) levels. Changing these threshold emission levels will not threaten maintenance of the ambient air quality standards in the state. Air quality modeling for criteria pollutants has been performed in connection with new and modified source permit applications over the past 10 years. The modeling results demonstrate that sources with a potential-to-emit of less than the PSD significance levels have not threatened the maintenance of air quality in Kansas.

K.A.R. 28-19-300(b)(1) establishes the emissions thresholds for a construction approval. These thresholds are unchanged from K.A.R. 28-19-8 with the exception of particulate matter for nonagricultural operations. That threshold has been changed from one or more pounds of particulate matter, including but not limited to PM_{10} , during any one hour of operation, to the potential-to-emit either five pounds per hour of particulate matter or two pounds per hour of PM_{10} . Based on prior modeling of sources of this size, Kansas has determined that this change does not threaten maintenance of the National Ambient Air Quality Standards.

K.A.R. 28-19-302 provides for a construction permit to include a Federally enforceable operational restriction or permit conditions regarding air pollution control equipment in order to reduce the potential-to-emit. This allows sources to take Federally enforceable permit restrictions to reduce their potential-to-emit at the construction stage. The restrictions must meet the state's requirements for Federally enforceable operating permits in K.A.R. 28-19-501(b), discussed below.

K.A.R. 28-19-400 through 404. These regulations establish procedures and conditions for the state to develop and issue general construction permits and class II general operating permits

covering numerous similar sources. Sources that qualify for a general permit would then apply for coverage under the terms of the general permit. Under the Kansas regulations, general construction permits must be approved by EPA as SIP revisions before any source may construct under the permit.

K.A.R. 28-19-500 through 502. These rules establish the general framework for eligibility of a source for a class I or class II operating permit.

K.A.R. 28-19-540 through 546. These rules establish the class II operating permit procedures available for sources that would otherwise be required to obtain a class I permit.

K.A.R. 28-19-561 through 563. These rules establish the conditions for issuance of a permit-by-rule to specific source categories. These source categories may limit their potential-to-emit to a level that removes them from the class I program, provided that the source meets the criteria established in these regulations and complies with the recordkeeping and reporting provisions, if applicable. The three source categories for which permit-by-rule are available are: reciprocating engines, organic solvent evaporative sources, and hot mix asphalt facilities.

B. Class II Operating Permit Program

For many years, Kansas has been issuing permits for major new sources and for major modifications of existing sources. Throughout this time, Kansas has also been issuing permits establishing limitations on the potential emissions from new sources so as to avoid major source permitting requirements. This latter type of permitting has been the subject of various guidance from EPA, most notably the memorandum entitled "Guidance on Limiting Potential to Emit in New Source Permitting" dated June 13, 1989.

The operating permit provisions in Title V of the Clean Air Act Amendments of 1990 have created interest in mechanisms for limiting sources' potential-to-emit, thereby allowing the sources to avoid being defined as "major" with respect to Title V operating permit programs. A key mechanism for such limitations is the use of Federally enforceable state operating permits (FESOP). EPA issued guidance on FESOPs in the **Federal Register** of June 28, 1989 (54 FR 27274). On February 17, 1995, Kansas submitted its newly adopted class II permitting rules to provide for FESOPs in Kansas. This rule would supplement the preexisting mechanism for establishing Federally enforceable limitations on potential-to-emit (i.e., new source

permits). This rulemaking evaluates whether Kansas has satisfied the requirements for this type of Federally enforceable limitation on potential-to-emit.

As specified in the **Federal Register** of June 28, 1989, there are five criteria that a state must meet in order to achieve a Federally enforceable operating permit program which is approved into the SIP. These criteria apply to both the class II program and to the request for approval under section 112(l), discussed below. The state of Kansas has met this criteria by: (1) Submitting this program for approval; (2) imposing a legal obligation that operating permit holders adhere to the terms and limitations of their permits (K.A.R. 28-19-501); (3) requiring that all emissions limitations, controls, and other requirements imposed by permits will be at least as stringent as any other applicable limitations and requirements contained in or enforceable under the SIP (K.A.R. 28-19-501(b)(1) and (2)); (4) further requiring the limitations, controls, and requirements of the permits to be permanent, quantifiable, and otherwise enforceable as a practical matter (K.A.R. 28-19-501(b)(3)); and (5) providing that the permits issued are subject to public participation and EPA review (K.A.R. 28-19-501(e)).

The June 28, 1989, **Federal Register** document also states that EPA may deem permit restrictions not to be Federally enforceable if the criteria are not met. Although the Kansas regulation does not expressly provide for this, EPA is including a provision in the rulemaking portion of this document clarifying that nonconforming permit requirements may be deemed not Federally enforceable.

The reader may consult the TSD for a fuller description of how the state has met these criteria.

C. Section 112(l) Authority

Kansas has also requested that EPA authorize Federally enforceable limitations on potential-to-emit both pollutants regulated under section 110 of the Act ("criteria pollutants") and pollutants regulated under section 112 (HAPs). As discussed above, the June 28, 1989, **Federal Register** document provided five specific criteria for approval of state operating permit programs for the purpose of establishing Federally enforceable limits on a source's potential-to-emit. This 1989 document, because it was written prior to the 1990 Amendments, addressed only SIP programs to control criteria pollutants. Federally enforceable limits on criteria pollutants (especially volatile organic compounds (VOC) and