

VIRGINIA-CARBON MONOXIDE

Designated area	Designation		Classification	
	Date ¹	Type	Date ¹	Type
Washington area:				
Alexandria		Attainment	
Arlington County		Attainment	
* * * * *				

¹ This date is November 15, 1990, unless otherwise noted.

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 [FR Doc. 96-1592 Filed 1-29-96; 8:45 am]
 BILLING CODE 6560-50-P

40 CFR Part 70

[KS001; AD-FRL-5407-8]

Clean Air Act (CAA) Final Full Approval of Operating Permits Programs; State of Kansas, and Delegation of 112(I) Authority

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final full approval.

SUMMARY: The EPA is fully approving the operating permits program submitted by the state of Kansas for the purpose of complying with Federal requirements for an approvable state program to issue operating permits to all major stationary sources and certain other sources. EPA is also approving, under section 112(I), the state program for accepting delegation of section 112 standards to enforce air toxics regulations.

EFFECTIVE DATE: February 29, 1996.

ADDRESSES: Copies of the state's submittal and other supporting information used in developing the final full approval are available for inspection during normal business hours at the following location: EPA Region VII, 726 Minnesota Avenue, Kansas City, Kansas 66101.

FOR FURTHER INFORMATION CONTACT: Wayne A. Kaiser at (913) 551-7603.

SUPPLEMENTARY INFORMATION:

I. Background and Purpose

Title V of the 1990 Clean Air Act Amendments (sections 501-507 of the Clean Air Act ("the Act")), and implementing regulations at 40 Code of Federal Regulations (CFR) Part 70, require that states develop and submit operating permits programs to EPA by November 15, 1993, and that EPA act to approve or disapprove each program within one year after receiving the submittal. The EPA's program review

occurs pursuant to section 502 of the Act and the Part 70 regulations, which together outline criteria for approval or disapproval.

On July 3, 1995, EPA proposed full approval of the operating permits program for Kansas (60 FR 34493). No public comments were received. In this notice, EPA is taking final action to promulgate full approval of the operating permits program for the state of Kansas, including delegation of 112(I) authority.

II. Final Action and Implications

A. Fulfillment of EPA Requested Modifications

The July 3, 1995, Federal Register notice proposing approval of the Kansas program discussed three areas of the Kansas program which required additional action prior to qualifying for full approval. The state needed to: (1) modify certain regulations to ensure that they were consistent with Part 70, (2) submit an Implementation Agreement (I.A.) which describes certain provisions for state implementation of the Part 70 program, and (3) submit an insignificant activities list. The July 3, 1995, Federal Register notice and the Technical Support Document for the notice describe in detail the changes in the program required for full approval. The reader should refer to those documents for a complete description of the changes required by Kansas.

The state of Kansas has satisfied the requirements for full program approval as described in the notice proposing approval. The required revisions were made to rules K.A.R. 28-19-7, K.A.R. 28-19-511, K.A.R. 28-19-512, and K.A.R. 28-19-518. The rule revisions were adopted by the Secretary of the Kansas Department of Health and Environment (KDHE) on November 14, 1995, and were effective December 8, 1995. The state also submitted an I.A. which satisfactorily addresses the deficiencies described in the notice which were to be addressed in the I.A. The state also submitted an adequate insignificant activities list.

The I.A. includes a commitment that the permitting agency will not exercise its authority under state law to grant a variance from the duty to comply with a federally enforceable Part 70 permit, except where such relief is granted through procedures allowed by Part 70. Therefore, the state variance provision is not part of the Kansas Title V program.

B. Final Action

The EPA is promulgating full approval of the operating permits program submitted to EPA by the state of Kansas on December 12, 1994, with supplemental submissions on April 7 and 17, 1995; November 14, 1995; and December 13, 1995. Among other things, the state of Kansas has demonstrated its program meets the minimum elements of a state operating permits program as specified in 40 CFR Part 70.

1. Regulations. This approval includes the following regulations adopted by the KDHE as they relate to the Kansas Class I operating permit program: K.A.R. 28-19-7, General provisions, definitions; K.A.R. 28-19-202, Annual emissions fee; K.A.R. 28-19-204, General provisions, permit issuance and modification, public participation; K.A.R. 28-19-400 through -404, General permits; K.A.R. 28-19-500 through -502, Operating permits; and K.A.R. 28-19-510 through -518, Class I operating permits.

2. Jurisdiction. The scope of the Part 70 program approved in this notice applies to all Part 70 sources (as defined in the approved program), within the state of Kansas, except any sources of air pollution over which an Indian Tribe has jurisdiction. See 59 FR 55813, 55815-18 (November 9, 1994). The term "Indian Tribe" is defined under the Act as "any Indian Tribe, Band, Nation, or other organized group or community, including any Alaska Native village, which is Federally recognized as eligible for the special programs and services provided by the United States to Indians, because of their status as Indians." See section 302(r) of the CAA;

59 FR 43956, 43962 (August 25, 1994); 58 FR 54364 (October 21, 1993).

3. CAA section 112(l). Requirements for approval, specified in 40 CFR 70.4(b), encompass section 112(l)(5) requirements for approval of a program for delegation of section 112 standards as promulgated by EPA as they apply to Part 70 sources. Section 112(l)(5) requires that the state's program contain adequate authorities, adequate resources for implementation, and an expeditious compliance schedule, which are also requirements under Part 70. Therefore, the EPA is also approving under section 112(l)(5) and 40 CFR 63.91 the state's program for receiving delegation of section 112 standards for both Part 70 and non-Part 70 sources that are unchanged from Federal standards as promulgated.

4. CAA section 112(g). The EPA issued an interpretive notice on February 14, 1995 (60 FR 8333), which outlines EPA's revised interpretation of 112(g) applicability. The notice postpones the effective date of 112(g) until after EPA has promulgated a rule addressing that provision. The notice sets forth in detail the rationale for the revised interpretation.

The section 112(g) interpretive notice explains that EPA is still considering whether the effective date of section 112(g) should be delayed beyond the date of promulgation of the Federal rule so as to allow states time to adopt rules implementing the Federal rule, and that EPA will provide for any such additional delay in the final section 112(g) rulemaking. Unless and until EPA provides for such an additional postponement of section 112(g), Kansas must have a Federally enforceable mechanism for implementing section 112(g) during the period between promulgation of the Federal section 112(g) rule and adoption of implementing Federal regulations.

The EPA is aware that Kansas lacks a program designed specifically to implement section 112(g). However, Kansas does have a preconstruction review program that can serve as an adequate implementation vehicle during the transition period, because it would allow Kansas to select control measures that would meet Maximum Available Control Technology, as defined in section 112, and incorporate these measures into a Federally enforceable preconstruction permit.

EPA is approving Kansas' preconstruction permitting program under the authority of Title V and Part 70, solely for the purpose of implementing section 112(g) to the extent necessary, during the transition period between 112(g) promulgation

and adoption of a state rule implementing EPA's section 112(g) regulations. Although section 112(l) generally provides authority for approval of state air programs to implement section 112(g), Title V and section 112(g) provide for this limited approval because of the direct linkage between the implementation of section 112(g) and Title V.

The scope of this approval is narrowly limited to section 112(g), and does not confer or imply approval for purposes of any other provision under the Act (e.g., section 110). This approval will be without effect, if EPA decides in the final section 112(g) rule that sources are not subject to the requirements of the rule until state regulations are adopted. The duration of this approval is limited to 18 months following promulgation by EPA of the 112(g) rule to provide adequate time for the state to adopt regulations consistent with the Federal requirements.

III. Administrative Requirements

A. Docket

Copies of the state submittal and other information relied upon for the final full approval are contained in a docket maintained at the EPA Regional Office. The docket is an organized and complete file of all the information submitted to, or otherwise considered by, EPA in the development of this final full approval. The docket is available for public inspection at the location listed under the ADDRESSES section of this document.

B. Executive Order 12866

The Office of Management and Budget has exempted this action from Executive Order 12866 review.

C. Regulatory Flexibility Act

The EPA's actions under section 502 of the Act do not create any new requirements, but simply address operating permits programs submitted to satisfy the requirements of 40 CFR Part 70. Because this action does not impose any new requirements, it does not have a significant impact on a substantial number of small entities.

D. 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 these operating permit programs, the state of Kansas has elected to adopt the program provided for under Title V of the CAA. These rules bind the state to perform certain actions and also require the private sector to perform certain duties.

To the extent that the rules being proposed for approval by this action will impose new requirements, sources are already subject to these regulations under state law. EPA has determined that this proposed action does not include a mandate that may result in estimated costs of \$100 million or more to state, local, or tribal governments in the aggregate or to the private sector.

List of Subjects in 40 CFR Part 70

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Operating permits, Reporting record keeping requirements.

Dated: December 18, 1995.

Dennis Grams,
Regional Administrator.

Part 70, title 40 of the Code of Federal Regulations is amended as follows:

PART 70—[AMENDED]

1. The authority citation for part 70 continues to read as follows:

Authority: 42 U.S.C. 7401—7671q.

2. Appendix A to part 70 is amended by adding the entry for Kansas to read as follows:

Appendix A to Part 70—Approval Status of State and Local Operating Permits Programs

* * * * *

Kansas

(a) The Kansas Department of Health and Environment program submitted on December 12, 1994; April 7 and 17, 1995; November 14, 1995; and December 13, 1995. Full approval effective on February 29, 1996.

(b) [Reserved.]

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[FR Doc. 96-1722 Filed 1-29-96; 8:45 am]

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40 CFR Part 81

[Region II Docket No.147; NJ24-1-7249a, FRL-5404-8]

Air Quality Designations: Deletion of TSP Designations From New Jersey, New York, Puerto Rico and Virgin Islands

AGENCY: Environmental Protection Agency (EPA).