

**Appendix A—[Amended]**

■ 2. Appendix A to Part 70 is amended by adding paragraph (c) under Kansas to read as follows:

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

\* \* \* \* \*

Kansas

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(c) The Kansas Department of Health and Environment approved this revision to the Kansas Administrative Regulations, 28–19–202, as a revision to the Kansas Title V Operating Permits Program, which became effective on January 30, 2004. This revision was submitted on April 22, 2004. We are approving this program revision effective September 27, 2004.

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[FR Doc. 04–17294 Filed 7–28–04; 8:45 am]

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**ENVIRONMENTAL PROTECTION AGENCY****40 CFR Part 70**

[R07–OAR–2004–IA–0002; FRL–7793–8]

**Approval and Promulgation of Operating Permits Program; State of Iowa**

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

**ACTION:** Direct final rule.

**SUMMARY:** EPA is announcing approval of a revision to the Iowa Operating Permits Program for the purpose of revising the definition of stationary source categories in the state rule. The revised definition will be consistent with the Federally-approved rules, including the provisions of the New Source Review Program and with EPA's major source definition.

**DATES:** This direct final rule will be effective September 27, 2004, without further notice, unless EPA receives adverse comment by August 30, 2004. If adverse comment is received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

**ADDRESSES:** Submit your comments, identified by Regional Material in EDocket (RME) ID Number R07–OAR–2004–IA–0002, by one of the following methods:

1. Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the on-line instructions for submitting comments.

2. Agency Web site: <http://docket.epa.gov/rmepub/>. RME, EPA's

electronic public docket and comment system, is EPA's preferred method for receiving comments. Once in the system, select "quick search"; then key in the appropriate RME Docket identification number. Follow the on-line instructions for submitting comments.

3. E-mail: [hamilton.heather@epa.gov](mailto:hamilton.heather@epa.gov).

4. Mail: Heather Hamilton, Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101.

5. Hand Delivery or Courier. Deliver your comments to Heather Hamilton, Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101.

**Instructions:** Direct your comments to RME ID No. R07–OAR–2004–IA–0002. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at <http://docket.epa.gov/rmepub/>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through RME, [regulations.gov](http://regulations.gov), or e-mail. The EPA RME Web site and the Federal [regulations.gov](http://regulations.gov) Web site are "anonymous access" systems, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through RME or [regulations.gov](http://regulations.gov), your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

**Docket:** All documents in the electronic docket are listed in the RME index at <http://docket.epa.gov/rmepub/>. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as

copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in RME or in hard copy at the Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101. The Regional Office's official hours of business are Monday through Friday, 8:00 to 4:30, excluding Federal holidays. The interested persons wanting to examine these documents should make an appointment with the office at least 24 hours in advance.

**FOR FURTHER INFORMATION CONTACT:** Heather Hamilton at (913) 551–7039, or by e-mail at [hamilton.heather@epa.gov](mailto:hamilton.heather@epa.gov).

**SUPPLEMENTARY INFORMATION:**

Throughout this document whenever "we," "us," or "our" is used, we mean EPA. This section provides additional information by addressing the following questions:

What is the Part 70 operating permits program?

What is being addressed in this document?

What action is EPA taking?

**What Is the Part 70 Operating Permits Program?**

The Clean Air Act (CAA) Amendments of 1990 require all states to develop operating permits programs that meet certain Federal criteria. In implementing this program, the states are to require certain sources of air pollution to obtain permits that contain all applicable requirements under the CAA. One purpose of the Part 70 operating permits program is to improve enforcement by issuing each source a single permit that consolidates all of the applicable CAA requirements into a Federally-enforceable document. By consolidating all of the applicable requirements for a facility into one document, the source, the public and the permitting authorities can more easily determine what CAA requirements apply and how compliance with those requirements is determined. Sources required to obtain an operating permit under this program include: "major" sources of air pollution and certain other sources specified in the CAA or in EPA's implementing regulations. Revisions to the state operating permits program are subject to public notice, comment, and EPA approval.

**What Is Being Addressed in This Document?**

The state of Iowa has requested a revision to the Operating Permits Program for the purpose of revising the

definition of stationary source categories in the state rule. EPA Region 7 advised the state of Iowa that the Federal definition had been revised to allow states to no longer require owners/operators of industrial facilities to count fugitive emissions of air pollutants not considered toxic in major source determinations, if the sources are in source categories subject to Federal emissions regulations promulgated after August 7, 1980. The state of Iowa acted on this revision and the amended rule (567–22.100(455B)) became effective on January 15, 2003.

The revision will make the definition consistent with the provisions of the New Source Review program and with EPA's major source definition in 40 CFR part 70.

#### What Action Is EPA Taking?

EPA is approving Iowa's revision of its definition of stationary source categories. We are processing this action as a direct final action because the revisions make routine changes to the existing rules which are noncontroversial. Therefore, we do not anticipate any adverse comments. Please note that if EPA receives adverse comment on part of this rule and if that part can be severed from the remainder of the rule, EPA may adopt as final those parts of the rule that are not the subject of an adverse comment.

#### Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the CAA. This rule also is not subject to Executive Order 13045, "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing state operating permits programs submitted pursuant to Title V of the CAA, EPA will approve state programs provided that they meet the requirements of the CAA and EPA's regulations codified at 40 CFR part 70. In this context, in the absence of a prior existing requirement for the state to use voluntary consensus standards (VCS), EPA has no authority to disapprove a state operating permits program for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews an operating permit program submission, to use VCS in place of a state program that otherwise satisfies the provisions of the CAA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate,

the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 27, 2004. 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 70

Environmental Protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Operating permits, Reporting and recordkeeping requirements.

Dated: July 14, 2004.

**U. Gale Hutton,**

*Acting Regional Administrator, Region 7.*

■ Chapter I, 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 *et seq.*

#### Appendix A—[Amended]

■ 2. Appendix A to Part 70 is amended by adding paragraph (g) under Iowa to read as follows:

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

\* \* \* \* \*  
Iowa  
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(g) The Iowa Department of Natural Resources submitted for program approval rule 567–22.100(455B) on April 20, 2004. The state effective date is January 15, 2003. We are approving this program revision effective September 27, 2004.

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[FR Doc. 04–17297 Filed 7–28–04; 8:45 am]

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