



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 70

[EPA-R07-OAR-2019-0532; FRL-10007-72-Region 7]

Air Plan Approval; Iowa, Kansas, Missouri, Nebraska and Approval of Operating Permit Program for Iowa and Nebraska; Definition of Chemical Process Plants under State Prevention of Significant Deterioration Regulations and Operating Permit Programs

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving revisions to the State Implementation Plans (SIPs) for Iowa, Kansas, Missouri and Nebraska and is also approving revisions to the Operating Permit Programs for Iowa and Nebraska. The SIP revisions incorporate changes to the definition of chemical process plants under the States' Prevention of Significant Deterioration (PSD) regulations and change the same definition in the approved State operating permit programs. Consistent with an EPA regulation finalized in 2007, this action approves several State rules that modify the definition of chemical process plant to exclude ethanol manufacturing facilities that produce ethanol by natural fermentation processes. Approving these modified definitions into the SIP establishes that the PSD

major source applicability threshold in the SIPs for these ethanol plants is 250 tons per year (tpy) (rather than 100 tpy) and removes the requirement to include fugitive emissions when determining if the source is major for PSD. In addition, this action approves changes to the Iowa and Nebraska Title V operating permit programs that remove the requirement to include fugitive emissions when determining if a source is major for Title V purposes. The EPA concludes that the changes to the State rules described herein are approvable because they are consistent with EPA regulations governing State PSD and Title V programs and will not interfere with any applicable requirement concerning attainment and reasonable further progress (as defined in section 171 of the Clean Air Act (CAA)), or any other applicable requirement of the CAA.

DATES: This final rule is effective on **[insert date 30 days after date of publication in the Federal Register]**.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA-R07-OAR-2019-0532. All documents in the docket are listed on the <https://www.regulations.gov> web site. 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 through <https://www.regulations.gov> or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional information.

FOR FURTHER INFORMATION CONTACT: William Stone, Environmental Protection Agency, Region 7 Office, Air Quality Planning Branch, 11201 Renner Boulevard, Lenexa, Kansas 66219; telephone number (913) 551-7714; email address stone.william@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document "we," "us," and "our" refer to EPA.

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I. What is Being Addressed in this Document?

The EPA is approving revisions to SIPs received by EPA from Iowa on November 15, 2007, Kansas on November 23, 2009, Missouri on December 7, 2009, and March 20, 2019, and Nebraska on August 28, 2007, and September 11, 2018. The EPA is also approving revisions to the Iowa and Nebraska Operating Permit Programs. These revisions conform the State rules to changes to EPA

regulations reflected in the EPA's final rule entitled "Prevention of Significant Deterioration, Nonattainment New Source Review (NA NSR), and Title V: Treatment of Certain Ethanol Production Facilities Under the 'Major Emitting Facility' Definition" (hereinafter referred to as the "2007 Ethanol Rule") as published in the *Federal Register* on May 1, 2007 (72 FR 24059). The 2007 Ethanol Rule amended the PSD definition of "major stationary source" to exclude certain ethanol facilities from the "chemical process plant" source category and clarified that the PSD major source applicability threshold for certain ethanol plants is 250 tpy (rather than 100 tpy). The 2007 Ethanol Rule also removed the requirement to include fugitive emissions when determining if the source is major for PSD and Title V permitting.

II. Have the Requirements for Approval of the SIP and Operating Permit Plan Revisions Been Met?

All of the aforementioned regulations are consistent with EPA's PSD program requirements in 40 CFR 51.166 and Title V program requirements in 40 CFR part 70, as amended in the 2007 Ethanol Rule. Further, all submissions have met the public notice requirements for SIP submissions in accordance with 40 CFR 51.102.

Iowa published a Notice of Intended Action in the Iowa Administrative Bulletin on August 1, 2007. A public hearing was held on September 5, 2007. The public comment period closed on September 6, 2007. Iowa received six sets of written comments during the public comment period. Iowa provided a response to each public comment but did not change the rule based on the comments.

Kansas published the proposed changes in the Kansas Register May 21, 2009. A public hearing was held on July 29, 2009. Kansas received three comment letters. Only one change was made to the proposed regulations based on public comments and that change was not relevant to this action.

Missouri published the proposed changes in the Missouri Register on December 31, 2008. A public hearing was held on February 3, 2009. Missouri received fifteen comments and made changes to the proposed regulations that were not relevant to this action. Missouri made additional changes to the regulations proposed to be approved by the EPA in this action that were published in the Missouri Register on August 1, 2018. Missouri received thirty-seven comments from nine sources including the EPA. Missouri made some changes to the proposed regulations that are relevant to this action based on comments received during the public comment period.

Nebraska published the proposed changes in the Omaha World-Herald on July 13, 2007. A public hearing was held on August 17, 2007. Nebraska did not receive any adverse comments for the proposed changes.

The SIP submissions also satisfied the completeness criteria of 40 CFR part 51, appendix V. In addition, these revisions meet the substantive SIP requirements of the CAA, including section 110 and implementing regulations. These revisions are also consistent with applicable EPA requirements of Title V of the CAA and 40 CFR part 70.

III. The EPA's Response to Comments

The public comment period on the EPA's proposed rule was open from November 12, 2019 through December 12, 2019 (84 FR 60968, November 12, 2019). During this period, EPA received two comments.

Comment 1: The commenter states that the proposed rule should not be approved because it will release more harmful chemicals into the air that will negatively impact climate change.

Response 1: The technical support documents (TSDs) that are available in the docket for the proposed rule explain EPA's reasoning that emissions increases associated with the proposed action are not expected to occur. The States affected by this

rulemaking have already implemented the 2007 ethanol rule, and ethanol production has increased while air quality has improved for every pollutant monitored in each of the States.

The TSDs also analyze the impact of increasing the threshold to 250 tpy on ozone and particulate matter (PM) precursors in each State. The analysis for ozone and secondary PM demonstrates that sources of this size will not cause any interference with attainment or maintenance of the standards in these States.

The EPA also describes requirements for each State's minor source NSR program because the facilities that would be below the 250 tpy PSD major source threshold under this rulemaking will still need to obtain minor source construction permits. The States are prohibited from issuing minor source NSR permits that would lead to a violation of the NAAQS. Additionally, Federal rules such as New Source Performance Standards and Maximum Achievable Control Technology regulations will control emissions of pollutants that ethanol plants could emit regardless of the major source status under PSD.

In addition, this action does not alter the regulation of greenhouse gas (GHG) emissions, which is a driver of climate change. Under the CAA, its implementing regulations, and the States' air regulations, GHG emissions from ethanol plants could

increase regardless of whether the proposed changes to the SIP and Title V Operating permit programs are approved. Thus this action does not increase the allowable emissions of GHGs or change how GHGs are regulated by EPA and each State.

Comment 2: The commenter requests that EPA make corrections to the revisions to the table in 40 CFR 52.820 in order to clarify the provisions of 567 Iowa Administrative Code rule 33.3 that are approved into the SIP, and those that have not been submitted to the EPA for approval into the SIP.

Response 2: We have made the suggested corrections to the table in this final rule document in order to correct typographical errors in previous versions of the table to 40 CFR 52.820. Specifically, in the explanation column of the table for the EPA-Approved Iowa Regulations, instead of stating that the provisions of the 2010 PM_{2.5} PSD-increments SILS and SMCs rule, published in the on October 20, 2010, relating to SILs and SMCs that were affected by the January 22, 2013, U.S. Court of Appeals decisions are not SIP approved, we have revised the table to state that these provisions are not, at the State's request, included in Iowa's SIP provisions March 14, 2014.

Also, in the same portion of that table we have removed the following sentence: "Iowa's rule incorporating EPA's 2008 'fugitive emissions rule' (published in the *Federal Register* on December 19, 2008) is not SIP-approved." That sentence was erroneous because Iowa's SIP approved rule does not include the "fugitive emissions rule".

IV. What Actions are the EPA Taking?

The EPA is approving revisions to the Iowa, Kansas, Missouri and Nebraska SIPs and the Iowa and Nebraska Operating Permit Programs. We are taking final action after consideration of the two comments received on the notice of proposed rulemaking.

The revisions to State rules that EPA is approving change the definition of "major stationary source" under the States' PSD regulations and the Operating Permit Program for Iowa and Nebraska. This action approves changes to state regulations, which make clear that the PSD applicability threshold for certain ethanol plants is 250 tpy and remove the requirement to include fugitive emissions when determining if an ethanol plant is major for PSD and, in Iowa and Nebraska, Title V permitting. The EPA has determined that these revisions are consistent with EPA's PSD and Title V regulations and that approval of these revisions is consistent with the requirements of CAA section

110(1) and will not adversely impact air quality. The EPA's analysis is available in the technical support documents that were prepared for each State SIP and are in the docket for this action. Approval of the revisions to these SIPs will ensure consistency between the State and federally-approved rules and ensure Federal enforceability of the State's revised air program rules.

V. Incorporation by Reference

In this document, the EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is finalizing the incorporation by reference of the Iowa, Kansas, Missouri, and Nebraska Regulations described in the amendments to 40 CFR part 52 set forth below. The EPA has made, and will continue to make, these materials generally available through www.regulations.gov and at the EPA Region 7 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

These materials have been approved by the EPA for inclusion in the SIPs and have been incorporated by reference by EPA into those plans. Therefore, they are fully federally enforceable under sections 110 and 113 of the CAA as of the effective date

of of the EPA's final approval (i.e. the effective date of this action). They will also will be incorporated by reference in the next update to the SIP compilation.¹

VI. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866.

¹ 62 FR 27968 (May 22, 1997).

- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and

- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

The SIP is not approved to apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control,
Incorporation by reference, Intergovernmental relations,
Particulate matter, Reporting and recordkeeping requirements,
Volatile organic compounds.

40 CFR Part 70

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

Dated: _____

April 3, 2020.

Edward Chu,
Acting Regional Administrator,
Region 7.

For the reasons stated in the preamble, the EPA amends 40 CFR parts 52 and 70 as set forth below:

PART 52--APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart Q-Iowa

2. In §52.820, the table in paragraph (c) is amended by revising the entry "567-33.3" to read as follows:

§52.820 Identification of plan.

* * * * *

(c) * * *

EPA-Approved Iowa Regulations

Iowa citation	Title	State effective date	EPA approval date	Explanation
Iowa Department of Natural Resources Environmental Protection Commission [567]				
* * * * *				
Chapter 33—Special Regulations and Construction Permit Requirements for Major Stationary Sources—Prevention of Significant Deterioration (PSD) of Air Quality				
* * * * *				
567-33.3	Special Construction Permit Requirements for Major Stationary Sources in Areas Designated Attainment or Unclassified (PSD)	4/18/2018	[insert date of publication in the Federal Register], [insert Federal Register citation]	Provisions of the 2010 PM _{2.5} PSD-Increments, SILs and SMCs rule, published in the <i>Federal Register</i> on October 20, 2010, relating to SILs and SMCs that were affected by the January 22, 2013, U.S. Court of Appeals decision are not, at the state's request, included in Iowa's SIP provisions (see <i>Federal Register</i> , March 14, 2014) (Vol. 79, No. 50).
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Subpart R-Kansas

3. In §52.870, the table in paragraph (c) is amended by revising the entry "K.A.R. 28-19-350" to read as follows:

§52.870 Identification of plan.

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(c) * * *

EPA-Approved Kansas Regulations

Kansas citation	Title	State effective date	EPA approval date	Explanation
Kansas Department of Health and Environment Ambient Air Quality Standards and Air Pollution Control				
* * * * *				
Construction Permits And Approvals				
* * * * *				
K.A.R. 28-19-350	Prevention of Significant Deterioration (PSD) of Air Quality	12/28/2012	[insert date of publication in the Federal Register], [insert Federal Register citation]	Provisions of the 2010 PM _{2.5} PSD-Increments, SILs and SMCs rule relating to SILs and SMCs that were affected by the January 22, 2013, U.S. Court of Appeals decision are not SIP approved. Provisions of the 2002 NSR reform rule relating to the Clean Unit Exemption, Pollution Control Projects, and exemption from recordkeeping provisions for certain sources using the actual-to-projected-actual emissions projections test are not SIP approved. In addition, we have not approved Kansas rule incorporating EPA's 2008 "fugitive emissions rule" (published in the <i>Federal Register</i> on December 19, 2008).
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Subpart AA-Missouri

4. In §52.1320, the table in paragraph (c) is amended by revising the entry "10-6.060" to read as follows:

§52.1320 Identification of plan.

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(c) * * *

EPA-Approved Missouri Regulations

Missouri citation	Title	State effective date	EPA approval date	Explanation
Missouri Department of Natural Resources				
* * * * *				
Chapter 6-Air Quality Standards, Definitions, Sampling and Reference Methods, and Air Pollution Control Regulations for the State of Missouri				
* * * * *				
10-6.060	Construction Permits Required	3/30/2019	[insert date of publication in the Federal Register], [insert Federal Register citation]	<p>Provisions of the 2010 PM_{2.5} PSD - Increments, SILs and SMCs rule relating to SILs and SMCs that were affected by the January 22, 2013 U.S. Court of Appeals decision are not SIP approved.</p> <p>Provisions of the 2002 NSR reform rule relating to the Clean Unit Exemption, Pollution Control Projects, and exemption from recordkeeping provisions for certain sources using the actual-to-projected-actual emissions projections test are not SIP approved.</p> <p>In addition, we have not approved Missouri's rule incorporating EPA's 2008 "fugitive emissions rule" (published in the Federal Register on December 19, 2008).</p> <p>Although exemptions previously listed in 10 CSR 10-6.060 have been transferred to 10 CSR 10-6.061, the federally-approved SIP continues to include the following exemption, "Livestock and livestock handling systems from which the only potential contaminant is odorous gas."</p> <p>Section 9, pertaining to hazardous air pollutants, is not SIP approved.</p>

Missouri citation	Title	State effective date	EPA approval date	Explanation
				EPA previously approved the 3/30/2016 state effective date version of 10 CSR 10-6.060, with the above exceptions, in a <i>Federal Register</i> document published October 11, 2016. EPA is only approving section 7, subsection 7(A) (1), and section 8 from the 3/30/2019 State effective date version of 10 CSR 10-6.060. All remaining revisions to the 3/30/2019 version of 10 CSR 10-6.060 are not SIP approved.
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Subpart CC-Nebraska

5. In §52.1420, the table in paragraph (c) is amended by revising the entry "129-2" to read as follows:

§52.1420 Identification of plan.

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(c) * * *

EPA-Approved Nebraska Regulations

Nebraska citation	Title	State effective date	EPA approval date	Explanation
STATE OF NEBRASKA				
Department of Environmental Quality				
Title 129-Nebraska Air Quality Regulations				
* * * * *				
129-2	Definition of Major Source	2/6/2008	[insert date of publication in the Federal Register], [insert Federal Register citation]	
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PART 70-STATE OPERATING PERMIT PROGRAMS

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

Authority: 42 U.S.C. 7401, *et seq.*

7. Appendix A to part 70 is amended by:

- a. Adding paragraph (u) under "Iowa".
- b. Adding paragraph (q) under "Nebraska; City of Omaha; Lincoln-Lancaster County Health Department".

The additions read as follows:

APPENDIX A TO PART 70-APPROVAL STATUS OF STATE AND LOCAL OPERATING PERMITS PROGRAMS

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Iowa

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(u) The Iowa Department of Natural Resources submitted revisions to Iowa Chapter 22.100 "Definitions for Title V

Operating Permits” on November 15, 2007. The State revised the definition of “Stationary source categories” by revising the definition of “Chemical process plants” such that fugitive emissions from certain ethanol production facilities are not considered in determining whether the facility is subject to Title V permitting. The state effective date is October 4, 2007. This revision is effective **[insert date 30 days after date of publication in the Federal Register]**.

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Nebraska; City of Omaha; Lincoln-Lancaster County Health Department

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(q) The Nebraska Department of Environmental Quality submitted revisions to the Nebraska Administrative Code, Title 129, chapter 2, section 002.20 on November 19, 2010. Chapter 2, section 002.20 was revised to exclude ethanol production facilities from the definition of “chemical process plants” such that fugitive emissions are not considered in determining whether the facility is subject to Title V permitting. The state effective date is February 6, 2008. This revision is effective **[insert date 30 days after date of publication in the Federal Register]**.

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[FR Doc. 2020-07476 Filed: 4/16/2020 8:45 am; Publication Date: 4/17/2020]