

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 70

[FRL-5882-6]

Extension of Operating Permits Program Interim Approvals

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The EPA is promulgating revisions to Appendix A of the operating permits regulations codified in part 70 of chapter I of title 40 of the Code of Federal Regulations. Those regulations were originally promulgated on July 21, 1992. These revisions to Appendix A extend up to October 1, 1998 all operating permits program interim approvals that expire before that date. This action will allow the program revisions necessary to correct interim approval deficiencies to be combined with program revisions necessary to implement the revisions to part 70 that are anticipated to promulgated mid-summer of 1998.

DATES: The regulatory amendments announced herein take effect on [30 days from publication]. For those programs whose interim approval dates are amended by today's action, interim approval will expire on October 1, 1998.

ADDRESSES: Supporting material used in developing the proposal and final regulatory revisions is contained in Docket Number A-93-50. This docket is available for public inspection and copying between 8:30 a.m. and 3:30 p.m.,

Monday through Friday, at the address listed below. A reasonable fee may be charged for copying. The address of the EPA air docket is: EPA Air Docket, Mail Code 2311, Attention: Docket Number A-93-50, Room M-1500, Waterside Mall, 401 M Street SW, Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Roger Powell (telephone 919-541-5331), Mail Drop 12, United States Environmental Protection Agency, Office of Air Quality Planning and Standards, Information Transfer and Program Integration Division, Research Triangle Park, North Carolina 27711.

SUPPLEMENTARY INFORMATION:

I. Background. On August 29, 1994 (59 FR 44460) and August 31, 1995 (60 FR 45530), EPA proposed revisions to the part 70 operating permits regulations. Primarily, the notices proposed changes to the system for revising permits. A number of other less detailed proposed changes were included in the notices. Altogether, State and local permitting authorities will have a complicated package of program revisions to prepare in response to these changes once promulgated. The part 70 revisions are anticipated to take place in mid-summer of 1998.

Contemporaneous with permitting authorities revising their programs to meet the revised part 70, many programs have been granted interim approval which will require permitting authorities to prepare program revisions to

correct those deficiencies identified in the interim approval notice. The preamble to the August 31, 1995 proposal noted the concern of many permitting authorities over having to revise their programs twice; once to correct interim approval deficiencies, and again to address the revisions to part 70. In the August 1995 preamble, the Agency proposed that States with interim approval ". . . should be allowed to delay the submittal of any program revisions to address program deficiencies previously listed in their notice of interim approval until the deadline to submit other changes required by the proposed revisions to part 70" (60 FR 45552). Comment was solicited on this action and on a legal rationale. The Agency also proposed ". . . to exercise its discretion under proposed section 70.4(i)(1)(iv) to provide States 2 years to submit program revisions in response to the proposed part 70 revisions . . ." (60 FR 45551).

In combination, these actions could extend all interim approvals such that permitting authorities would not have to submit program revisions addressing interim approval deficiencies until up to 2 years after part 70 is revised. Six comments were received on this subject during the public comment period on the August 1995 proposal. Five of these commenters supported either the extension or efforts to minimize the burden on permitting authorities, but none

provided a reasonable legal rationale. One of the commenters indicated the action is not consistent with title V.

II. Discussion. On October 31, 1996 (61 FR 56368), EPA amended section 70.4(d)(2) to allow the Administrator to grant the proposed additional extension to interim approvals. The Agency does not believe, however, that the August 31, 1995 blanket proposal to extend all interim approval program revision submittal dates until up to 2 years after part 70 is revised is appropriate. Program deficiencies that caused granting of interim approval of permitting programs vary from a few problems that can be easily corrected to complex problems that will require regulatory changes and, in some cases, legislative action. Where an undue burden will be encountered by developing two program revisions, combining program revisions and thus granting a longer time period for submission of the program revision to correct interim approval deficiencies is warranted. Where no such burden will occur, the Agency encourages permitting authorities to proceed with correcting their interim approval program deficiencies and not wait for the revised part 70.

To encourage permitting authorities to proceed with program revisions within their interim approval timeframes, rather than wait for the revised part 70, all interim approvals granted prior to the date of issuance of a memorandum announcing EPA's position on this issue (memorandum from Lydia N. Wegman to Regional Division

Directors, "Extension of Interim Approvals of Operating Permits Programs," June 13, 1996) were extended in the October 1996 notice by 10 months. The June 1996 memorandum is in the docket for this action.

The reason for this automatic extension was that permitting authorities, upon reading the August 1995 proposed action, may have delayed their efforts to develop program revisions to address interim approval deficiencies because they believed the proposed policy to extend interim approvals until revised part 70 program revisions are due would be adopted for all programs. The EPA has been informed that this was the case in many States. Approximately 10 months passed since the August 1995 proposal until issuance of the memorandum previously noted. The additional 10-month extension to all interim approvals offset any time lost in permitting authority efforts to develop program revisions addressing interim approval deficiencies. This 10-month extension was not applicable to application submittal dates for the second group of sources covered by a source-category limited interim approval.¹

¹Several States have been granted source-category limited interim approvals. Under that type approval, a subset of the part 70 source population is to submit permit applications during the first year of the program. The application submittal period for the remaining sources begins upon full approval of the program. The Agency concludes this second group of sources should still submit permit applications during a period beginning on the

As noted in the June 1996 memorandum, where the permitting authority applies for it after part 70 is revised, EPA may grant a longer extension to an interim approval so that the program revision to correct interim approval program deficiencies may be combined with the program revision to meet the revised part 70. Such extensions will only be granted once per State and will not be of a duration which exceeds 2 years after promulgation of revisions to part 70. Such a request must be made within 30 days of promulgation of the part 70 revisions. This will make it possible for EPA to take a single rulemaking action (if such action is warranted) to adopt new interim approval deadlines. All programs with interim approval are eligible for this longer extension, even if interim approval was granted after the June 1996 memorandum.

As required by section 70.4(f)(2), program revisions addressing interim approval deficiencies must be submitted to EPA no later than 6 months prior to the expiration of the interim approval. The dates for permitting authorities to submit their combined program revisions to address the revised part 70 and the interim approval deficiencies will be 6 months prior to the interim approval expiration dates

original expiration date of a State's interim approval as opposed to that date extended by 10 months. The other interim approval program deficiencies, however, will be eligible for the 10-month extension.

which will be set through a future rulemaking.

Any longer extension allowing combining of program revisions to meet both the revised part 70 and interim approval deficiencies will occur only once for a permitting authority and will be based on the promulgation date of the revisions to part 70. If only regulatory changes to a program are needed to meet the revised part 70, the extension may be for up to 18 months after the part 70 revisions. If legislative changes are needed to a program to meet the revised part 70, the extension may be for up to 2 years. As previously noted, the program revision submittal date will be 6 months prior to expiration of the extended interim approval.

III. Rulemaking Action. The June 13, 1996 memorandum and the October 31, 1996 notice anticipated promulgation of the part 70 revisions no later than early 1997. The EPA believes that the action in this rulemaking notice is necessary because of further delays in promulgation of the part 70 revisions. Due to these delays, a number of interim approvals will expire before part 70 is revised, thus denying these agencies the opportunity to combine program revisions. The EPA has been informed that States were relying on the October 31, 1996 notice, which anticipated a promulgation date of early 1997 for part 70 revisions, and expected to be able to combine their interim approval

deficiencies with the program revisions to address the revised part 70. However, now that the EPA anticipates a mid-summer 1998 promulgation date for the part 70 revisions, the Agency estimates that it may take until October 1, 1998 to receive all State requests for combining program revisions and to take the necessary rulemaking action to grant the final extension to those interim approvals. The action in this notice, therefore, moves all interim approvals that expire before October 1, 1998 up to that date. All agencies with interim approvals prior to October 1, 1998 will, therefore, be granted interim approval extensions until that date to have the opportunity to submit requests to combine program revisions.

IV. Administrative Requirements

A. Docket. The docket for this regulatory action is A-93-50. The docket is an organized and complete file of all the information submitted to, or otherwise considered by, EPA in the development of this proposed rulemaking. The principal purposes of the docket are: (1) to allow interested parties a means to identify and locate documents so that they can effectively participate in the rulemaking process, and (2) to serve as the record in case of judicial review (except for interagency review materials). The docket is available for public inspection at EPA's Air Docket, which is listed under the ADDRESSES section of this

notice.

B. Executive Order (E.O.) 12866. Under E.O. 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether each regulatory action is "significant," and therefore subject to the Office of Management and Budget (OMB) review and the requirements of the Order. The Order defines "significant" regulatory action as one that is likely to lead to a rule that may:

1. Have an annual effect on the economy of \$100 million or more, adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities.

2. Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency.

3. Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligation of recipients thereof.

4. Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in E.O. 12866.

Pursuant to the terms of E.O. 12866, it has been determined that this action is not a "significant" regulatory action because it does not substantially change the existing part 70 requirements for States or sources;

requirements which have already undergone OMB review. Rather than impose any new requirements, this action only extends an existing mechanism. As such, this action is exempted from OMB review.

C. Regulatory Flexibility Act Compliance. Pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Administrator certifies that this action will not have a significant economic impact on a substantial number of small entities. In developing the original part 70 regulations, the Agency determined that they would not have a significant economic impact on a substantial number of small entities. Similarly, the same conclusion was reached in an initial regulatory flexibility analysis performed in support of the proposed part 70 revisions (a subset of which constitutes the action in this rulemaking notice). This action does not substantially alter the part 70 regulations as they pertain to small entities and accordingly will not have a significant economic impact on a substantial number of small entities.

D. Paperwork Reduction Act. The OMB has approved the information collection requirements contained in part 70 under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 et. seq. and has assigned OMB control number 2060-0243. The Information Collection Request (ICR) prepared for part 70 is not affected by the action in this

rulemaking notice because the part 70 ICR determined burden on a nationwide basis, assuming all part 70 sources were included without regard to the approval status of individual programs. The action in this rulemaking notice, which simply provides for an extension of the interim approval of certain programs, does not alter the assumptions of the approved part 70 ICR used in determining the burden estimate. Furthermore, this action does not impose any additional requirements which would add to the information collection requirements for sources or permitting authorities.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques, to:

Director, Regulatory Information Division
Office of Policy, Planning, and Evaluation (2136)
U.S. Environmental Protection Agency
401 M Street, SW
Washington, DC 20460

Office of Information and Regulatory Affairs
Office of Management and Budget
Attention: Desk Officer for EPA
725 17th Street, NW
Washington, DC 20503

Include the ICR number in any correspondence.

E. Unfunded Mandates Reform Act. Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), P.L. 104-4,

establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with Federal mandates that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of \$100 million or more in any 1 year.

The EPA has determined that the action in this rulemaking notice does not contain a Federal mandate that may result in expenditures of \$100 million or more for State, local, and tribal governments, in the aggregate, or the private sector, in any 1 year. Although the part 70 regulations governing State operating permit programs impose significant Federal mandates, this action does not amend the part 70 regulations in a way that significantly alters the expenditures resulting from these mandates. Therefore, the Agency concludes that it is not required by section 202 of the UMRA of 1995 to provide a written statement to accompany this regulatory action.

F. Submission to Congress and the General Accounting Office. Under section 801(a)(1)(A) of the Administrative Procedures Act (APA) as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted 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 General Accounting Office prior to publication of the rule in this Federal Register. This rule is not a "major rule" as defined by section 804(2) of the APA as amended.

List of Subjects in 40 CFR Part 70

Environmental protection, air pollution control, prevention of significant deterioration, new source review, fugitive emissions, particulate matter, volatile organic compounds, nitrogen dioxide, carbon monoxide, hydrocarbons, lead, operating permits.

Dated: _____

Signed: _____

Carol M. Browner,
Administrator

Billing Code: 6560-50-P

For the reasons set out in the preamble, title 40, chapter I, of the Code of Federal Regulations is amended as set forth below.

Appendix A of part 70 is amended by the following:

a. Adding a sentence to the end of paragraphs (a) under *Virgin Islands*;

b. Revising the third sentence of paragraph (a) under *Texas*; and

c. Replacing the end date of each paragraph with "October 1, 1998" as follows: Paragraph (a) of *Arkansas, Colorado, District of Columbia, Florida, Hawaii, Illinois, Iowa, Maryland, Minnesota, Montana, North Dakota, Wisconsin, and Wyoming*; Paragraphs (a) through (m), (o), (p), (r) through (w), (bb), (cc), (ee), (ff), and (hh) of *California*; paragraphs (b) and (c) of *Nevada*; paragraphs (a) and (e) of *Tennessee*; and paragraphs (a) through (i) of *Washington*.

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

Arkansas

(a) * * * October 1, 1998.

California * * *

(a) * * * October 1, 1998.

(b) * * * October 1, 1998.

(c) * * * October 1, 1998.

(d) * * * October 1, 1998.

(e) * * * October 1, 1998.

(f) * * * October 1, 1998.

(g) * * * October 1, 1998.

(h) * * * October 1, 1998.

(i) * * * October 1, 1998.

(j) * * * October 1, 1998.

(k) * * * October 1, 1998.

(l) * * * October 1, 1998.

(m) * * * October 1, 1998.

* * * * *

(o) * * * October 1, 1998.

(p) * * * October 1, 1998.

* * * * *

(r) * * * October 1, 1998.

(s) * * * October 1, 1998.

(t) * * * October 1, 1998.

(u) * * * October 1, 1998.

(v) * * * October 1, 1998.

(w) * * * October 1, 1998.

* * * * *

(bb) * * * October 1, 1998.

(cc) * * * October 1, 1998.

* * * * *

(ee) * * * October 1, 1998.

(ff) * * * October 1, 1998.

* * * * *

(hh) * * * October 1, 1998.

Colorado

(a) * * * October 1, 1998.

* * * * *

District of Columbia

(a) * * * October 1, 1998.

* * * * *

Florida

(a) * * * October 1, 1998.

* * * * *

Hawaii

(a) * * * October 1, 1998.

* * * * *

Illinois

(a) * * * October 1, 1998.

* * * * *

Iowa

(a) * * * October 1, 1998.

* * * * *

Maryland

(a) * * * October 1, 1998.

* * * * *

Minnesota

(a) * * * October 1, 1998.

* * * * *

Montana

(a) * * * October 1, 1998.

* * * * *

Nevada

(a) * * *

(b) * * * October 1, 1998.

(c) * * * October 1, 1998.

* * * * *

North Dakota

(a) * * * October 1, 1998.

* * * * *

Tennessee

(a) * * * October 1, 1998.

* * * * *

(e) * * * October 1, 1998.

Texas

(a) * * * Interim approval will expire October 1, 1998. * * *

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Virgin Islands

(a) * * * Interim approval will expire October 1, 1998.

* * * * *

Washington

- (a) * * * October 1, 1998.
- (b) * * * October 1, 1998.
- (c) * * * October 1, 1998.
- (d) * * * October 1, 1998.
- (e) * * * October 1, 1998.
- (f) * * * October 1, 1998.
- (g) * * * October 1, 1998.
- (h) * * * October 1, 1998.
- (i) * * * October 1, 1998.

* * * * *

Wisconsin

- (a) * * * October 1, 1998.

* * * * *

Wyoming

- (a) * * * October 1, 1998.