

orders, would be sufficient to attain the PM-10 NAAQS in the Follansbee area; and other supporting information. EPA took final limited approval and final limited disapproval action on West Virginia's 1991 submittal on July 25, 1994 (59 FR 37696). EPA's disapproval action started an 18-month clock for the application of one sanction (followed by a second sanction 6 months later) under section 179 of the Clean Air Act (Act) and a 24-month clock for promulgation of a Federal implementation plan under section 110(c)(1) of the Act. The State submitted revisions to its attainment demonstration and emissions inventory on November 22, 1995 that correct the deficiencies in the original submittal. In a separate notice in the Proposed Rules today's Federal Register, EPA proposed full approval of this submittal.

## II. EPA Action

Based on the proposed full approval set forth in today's Federal Register, EPA believes that it is more likely than not that the State has corrected the original disapproval deficiencies that started the sanction clock. Therefore, EPA is taking this interim final action that finds that the State has corrected the disapproval deficiencies. This determination is effective on publication. This action does not stop the sanction clock that started under section 179 for this area on August 24, 1994. However, this action will defer the application of the offset sanction and will defer the application of the highway sanction. See 59 FR 39832 (Aug. 4, 1994) to be codified at 40 CFR 52.31. If EPA's proposal to fully approve the State's submittal becomes effective, such action will permanently stop the sanction clock and will permanently lift any applied, stayed or deferred sanctions.

Today, EPA is also providing the public with an opportunity to comment on this interim final action. If, based on any comments on this action and any comments on EPA's proposed full approval of the State's submittal, EPA determines that the State's submittal is not fully approvable and this final action was inappropriate, EPA will take further action to disapprove the State's submittal and to find that the State has not corrected the original disapproval deficiency. As appropriate, EPA will also issue an interim final determination or a final determination that the deficiency has not been corrected. In addition, the sanctions consequences described in the sanctions rule will also apply. See 59 FR 39832.

## III. Administrative Requirements

Because EPA has preliminarily determined that the State has an approvable plan, relief from sanctions should be provided as quickly as possible. Therefore, EPA is invoking the good cause exception under the Administrative Procedure Act (APA) in not providing an opportunity for comment before this action takes effect.<sup>1</sup> See 5 U.S.C. 553(b)(B). EPA believes that notice-and-comment rulemaking before the effective date of this action is impracticable and contrary to the public interest. EPA has reviewed the State's submittal and, through its proposed action, is indicating that it is more likely than not that the State has corrected the deficiency that started the sanctions clock. Therefore, it is not in the public interest to initially apply sanctions or to keep applied sanctions in place when the State has most likely done all that it can to correct the deficiency that triggered the sanctions clock. Moreover, it would be impracticable to go through notice-and-comment rulemaking on a finding that the State has corrected the deficiency prior to the rulemaking approving the State's submittal. Therefore, EPA believes that it is necessary to use the interim final rulemaking process to temporarily stay or defer sanctions while EPA completes its rulemaking process on the approvability of the State's submittal. In addition, EPA is invoking the good cause exception to the 30-day notice requirement of the APA because the purpose of this notice is to relieve a restriction. See 5 U.S.C. 553(d)(1).

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

Under the Regulatory Flexibility Act, 5 U.S.C. 600 et seq., EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. See 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

This action, pertaining to the interim final determination for approval of corrections to the West Virginia's PM-10 attainment demonstration and emissions inventory for the Follansbee area, temporarily relieves sources of an

<sup>1</sup> As previously noted, however, by this action EPA is providing the public with a chance to comment on EPA's determination after the effective date and EPA will consider any comments received in determining whether to reverse such action.

additional burden potentially placed on them by the sanction provisions of the Act. Therefore, I certify that it does not have an impact on any small entities.

## List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental regulations, Particulate matter.

Authority: 42 U.S.C. 7401-7671q.

Dated: January 25, 1996.

W. Michael McCabe,

*Regional Administrator.*

[FR Doc. 96-2251 Filed 2-2-96; 8:45 am]

BILLING CODE 6560-50-P

## 40 CFR Parts 52 and 70

[CA 147-2-7201; AD-FRL-5330-3]

### **Clean Air Act Final Interim Approval of the Operating Permits Program; Approval of State Implementation Plan Revision for the Issuance of Federally Enforceable State Operating Permits; Mojave Desert Air Quality Management District, California**

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

**ACTION:** Final interim approval.

**SUMMARY:** The EPA is promulgating interim approval of the Operating Permits Program submitted by the California Air Resources Board on behalf of the Mojave Desert Air Quality Management District (AQMD), California (district) for the purpose of complying with Federal requirements for an approvable State program to issue operating permits to all major stationary sources, and to certain other sources. In addition, EPA is promulgating final approval of a revision to Mojave Desert's portion of the California State Implementation Plan (SIP) regarding synthetic minor regulations for the issuance of federally enforceable state operating permits (FESOP). In order to extend the federal enforceability of state operating permits to hazardous air pollutants (HAP), EPA is also finalizing approval of Mojave Desert's synthetic minor regulations pursuant to section 112(l) of the Clean Air Act (CAA or Act). Finally, today's action grants final approval to Mojave Desert's mechanism for receiving delegation of section 112 standards as promulgated.

**EFFECTIVE DATE:** March 6, 1996.

**ADDRESSES:** Copies of the district's submittal and other supporting information used in developing the final interim approval are available for inspection during normal business hours at the following location: Operating Permits Section, A-5-2, Air

and Toxics Division, U.S. EPA-Region IX, 75 Hawthorne Street, San Francisco, California 94105.

**FOR FURTHER INFORMATION CONTACT:** Sara Bartholomew (telephone 415/744-1170), Mail Code A-5-2, U.S. Environmental Protection Agency, Region IX, Air & Toxics Division, 75 Hawthorne Street, San Francisco, CA 94105.

**SUPPLEMENTARY INFORMATION:**

**I. Background and Purpose**

**A. Introduction**

Title V of the 1990 Clean Air Act Amendments (sections 501-507 of 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 1 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. Where a program substantially, but not fully, meets the requirements of Part 70, EPA may grant the program interim approval for a period of up to 2 years. If EPA has not fully approved a program by 2 years after the November 15, 1993 date, or by the end of an interim program, it must establish and implement a Federal program.

On July 3, 1995, EPA proposed interim approval of the operating permits program for Mojave Desert AQMD, California. See 54 FR 34488. The Federal Register document also proposed approval of the district's interim mechanism for implementing section 112(g) and program for delegation of section 112 standards as promulgated. Public comment was solicited on these proposed actions. EPA received no public comment on the proposal. In this notice, EPA is promulgating interim approval of Mojave Desert's operating permits program and approving the section 112(g) and section 112(l) mechanisms noted above.

On June 28, 1989 (54 FR 27274), EPA published criteria for approving and incorporating into the SIP regulatory programs for the issuance of federally enforceable state operating permits. Permits issued pursuant to a program meeting the June 28, 1989 criteria and approved into the SIP are considered federally enforceable for criteria pollutants. The synthetic minor mechanism may also be used to create federally enforceable limits for

emissions of HAP if it is approved pursuant to section 112(l) of the Act.

In the July 3, 1995 Federal Register document, EPA also proposed approval of Mojave Desert's synthetic minor program for creating federally enforceable limits in District operating permits. In this document, EPA is promulgating approval of the synthetic minor program for Mojave Desert as a revision to the district's SIP and pursuant to section 112(l) of the Act.

**II. Final Action and Implications**

**A. Analysis of State Submission**

**Comments**

On July 3, 1995, EPA proposed interim approval of Mojave Desert's title V operating permits program as it was submitted on March 10, 1995. Since the time that EPA proposed interim approval, Mojave Desert adopted regulations to implement title IV of the Act. On June 28, 1995, Mojave Desert incorporated part 72 by reference into District Rule 1210. Rule 1210 was submitted to EPA on August 3, 1995, and it corrects the third program deficiency identified in the proposed interim approval notice by adopting regulations to implement title IV of the Act.

EPA received no adverse public comment on Mojave Desert's title V operating permits program, the proposed approval of Mojave Desert's synthetic minor program, or program for receiving section 112(l) standards as promulgated.

**B. Final Action**

**1. Title V Operating Permits Program**

The EPA is promulgating interim approval of Mojave Desert's title V operating permits program as submitted on March 10, 1995. EPA did not receive any comments on the changes that were outlined as necessary for full approval. Therefore, the program deficiencies described in the proposed rulemaking, under II.B.1.(a), *Proposed Interim Approval*, and the legislative deficiency outlined under II.B.1.(b), *Legislative Source Category-Limited Interim Approval Issue*, must be corrected in order for the district to be granted full approval.

The scope of the Mojave Desert's part 70 program approved in this notice applies to all part 70 sources (as defined in the approved program) within the district, except any sources of air pollution over which an Indian Tribe has jurisdiction. See, e.g., 59 FR 55813, 55815-18 (Nov. 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; see also 59 FR 43956, 43962 (Aug. 25, 1994); 58 FR 54364 (Oct. 21, 1993).

This interim approval, which may not be renewed, extends until March 5, 1998. During this interim approval period, Mojave Desert is protected from sanctions, and EPA is not obligated to promulgate, administer and enforce a Federal operating permits program in this district. Permits issued under a program with interim approval have full standing with respect to part 70, and the 1-year time period for submittal of permit applications by subject sources begins upon the effective date of this interim approval, as does the 3-year time period for processing the initial permit applications.

If Mojave Desert fails to submit a complete corrective program for full approval by September 5, 1997, EPA will start an 18-month clock for mandatory sanctions. If the district then fails to submit a corrective program that EPA finds complete before the expiration of that 18-month period, EPA will be required to apply one of the sanctions in section 179(b) of the Act, which will remain in effect until EPA determines that the district has corrected the deficiency by submitting a complete corrective program. Moreover, if the Administrator finds a lack of good faith on the part of Mojave Desert, both sanctions under section 179(b) will apply after the expiration of the 18-month period until the Administrator determines that the district has come into compliance. In any case, if, six months after application of the first sanction, Mojave Desert still has not submitted a corrective program that EPA has found complete, a second sanction will be required.

If EPA disapproves Mojave Desert's complete corrective program, EPA will be required to apply one of the section 179(b) sanctions on the date 18 months after the effective date of the disapproval, unless prior to that date the district has submitted a revised program and EPA has determined that it corrected the deficiencies that prompted the disapproval. Moreover, if the Administrator finds a lack of good faith on the part of Mojave Desert, both sanctions under section 179(b) shall apply after the expiration of the 18-month period until the Administrator determines that the district has come into compliance. In all cases, if, six months after EPA applies the first

sanction, Mojave Desert has not submitted a revised program that EPA has determined corrects the deficiencies, a second sanction is required.

In addition, discretionary sanctions may be applied where warranted any time after the expiration of an interim approval period if Mojave Desert has not submitted a timely and complete corrective program or EPA has disapproved its submitted corrective program. Moreover, if EPA has not granted full approval to the district's program by the expiration of this interim approval and that expiration occurs after November 15, 1995, EPA must promulgate, administer and enforce a federal permits program for Mojave Desert upon interim approval expiration.

## 2. District Preconstruction Permit Program Implementing Section 112(g)

EPA is approving the use of Mojave Desert's preconstruction review program found in Regulation XIII (New Source Review) as a mechanism to implement section 112(g) during the transition period between promulgation of EPA's section 112(g) rule and adoption by Mojave Desert of rules specifically designed to implement section 112(g). EPA is limiting the duration of this approval to 18 months following promulgation by EPA of the section 112(g) rule.

## 3. Program for Delegation of Section 112 Standards as Promulgated

Requirements for part 70 program approval, specified in 40 CFR section 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 District's program contain adequate authorities, adequate resources for implementation, and an expeditious compliance schedule, which are also requirements under part 70. Therefore, EPA is also promulgating approval under section 112(l)(5) and 40 CFR section 63.91 of Mojave Desert's program for receiving delegation of section 112 standards that are unchanged from the federal standards as promulgated. This program for delegations applies to both existing and future standards but is limited to sources covered by the part 70 program.

## 4. State Operating Permit Program for Synthetic Minors

EPA is promulgating full approval of Mojave Desert's synthetic minor operating permit program, adopted by the district on December 21, 1994, and

submitted to EPA by the California Air Resources Board, on behalf of the Mojave Desert, on March 31, 1995. The synthetic minor operating permit program is being approved into Mojave Desert's SIP pursuant to part 52 and the five approval criteria set out in the June 28, 1989 Federal Register document (54 FR 27282). EPA is also promulgating full approval pursuant to section 112(l)(5) of the Act so that HAP emission limits in synthetic minor operating permits may be deemed federally enforceable.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

## III. Administrative Requirements

### A. Docket

Copies of Mojave Desert's submittal and other information relied upon for the final interim approval are contained in docket number CA-MJ-95-01-OPS, 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 interim 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 sections 502, 110, and 112 of the Act do not create any new requirements, but simply address operating permit programs submitted to satisfy the requirements of 40 CFR part 70. Because these actions do not impose any new requirements, they do not have a significant impact on a substantial number of small entities.

### D. Unfunded Mandates

Under Section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a federal mandate that may result in estimated costs to state, local, or tribal governments in the aggregate; or to the private sector, of \$100 million or more. Under Section

205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated today does not include a federal mandate that may result in estimated costs of \$100 million or more to either state, local, or tribal governments in the aggregate, or to the private sector. This federal action approves pre-existing requirements under state or local law, and imposes no new federal requirements. Accordingly, no additional costs to state, local, or tribal governments, or to the private sector, result from this action.

## List of Subjects

### 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Sulfur oxides, Volatile organic compounds.

### 40 CFR Part 70

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

Note: Incorporation by reference of the State Implementation Plan for the State of California was approved by the Director of the Federal Register on July 1, 1982.

Dated: October 31, 1995.

Felicia Marcus,  
Regional Administrator.

Chapter I, title 40 of the Code of Federal Regulations is amended as follows:

## PART 52—[AMENDED]

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

Authority: 42 U.S.C. 7401-7671q.

## Subpart F—California

2. Section 52.220 is amended by adding paragraph (c)(216)(i)(A)(2) to read as follows:

### § 52.220 Identification of plan.

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*      *      *      *      *
(c)    *      *      *
(216)  *      *      *
(i)    *      *      *
(A)    *      *      *
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(2) Rule 221, adopted December 21, 1994.

\* \* \* \* \*

## PART 70—[AMENDED]

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

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

2. Appendix A to part 70 is amended by adding paragraph (q) to the entry for California to read as follows:

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

\* \* \* \* \*

(q) *Mojave Desert AQMD* (complete submittal received on March 10, 1995); interim approval effective on March 6, 1996; interim approval expires March 5, 1998.

\* \* \* \* \*

[FR Doc. 96-2247 Filed 2-2-96; 8:45 am]

BILLING CODE 6560-50-P

## 40 CFR Part 70

[OK-FRL-5407-9]

### Clean Air Act Final Interim Approval of Operating Permits Program; the State of Oklahoma

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

**ACTION:** Final source category-limited interim approval.

**SUMMARY:** The EPA is promulgating source category-limited interim approval of the Operating Permits Program submitted by the Oklahoma Department of Environmental Quality (ODEQ) for the State of Oklahoma for the purpose of complying with Federal requirements for an approvable State program to issue operating permits to all major stationary sources, except any sources of air pollution over which an Indian Tribe has jurisdiction, and to certain other sources.

**EFFECTIVE DATE:** March 6, 1996.

**ADDRESSES:** Copies of the State's submittal and other supporting information used in developing this source category-limited interim approval are available for inspection during normal business hours at the following location:

U. S. Environmental Protection Agency, Region 6, Air Programs Branch (6T-AN), 1445 Ross Avenue, Suite 700, Dallas, Texas 75202-2733.

Oklahoma Department of Environmental Quality, Air Quality Program, 4545 North Lincoln Blvd, Suite 250,

Oklahoma City, Oklahoma 73105-3483.

Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

**FOR FURTHER INFORMATION CONTACT:** Wm. Nicholas Stone, New Source Review Section (6T-AN), Environmental Protection Agency, Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202-2733, telephone (214) 665-7226.

#### SUPPLEMENTARY INFORMATION:

##### I. Background and Purpose

###### A. Introduction

Title V of the 1990 Clean Air Act Amendments (sections 501-507 of the Clean Air Act (CAA or "the Act")), and implementing regulations at 40 Code of Federal Regulations (CFR) part 70 require that States develop and submit operating permits programs to the EPA by November 15, 1993, and that the 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. Where a program substantially, but not fully, meets the requirements of part 70, the EPA may grant the program interim approval for a period of up to two years. If the EPA has not fully approved a program by two years after November 15, 1993, or by the end of an interim program, it must establish and implement a Federal program.

On March 10, 1995, the EPA proposed source category-limited interim approval of the operating permits program for the State of Oklahoma. See 60 Federal Register (FR) 13088 (March 10, 1995). The EPA received comments on the proposal and compiled a Technical Support Document which describes the operating permits program in greater detail. In this document, the EPA is taking final action to promulgate source category-limited interim approval of the operating permits program for the State of Oklahoma.

##### II. Final Action and Implications

###### A. Analysis of State Submission

The State of Oklahoma submitted to the EPA, under a cover letter from the Governor dated January 7, 1994, the State's operating permits program. The submittal has adequately addressed all sixteen elements required for full approval as discussed in part 70, with the exception of seven interim issues listed in the proposal: (1) Revision of

Subchapter 8 to incorporate the new transition schedule included in the Governor's request for source category-limited interim approval, (2) regulation revision to make the definition of "major source" consistent with part 70, (3) revision of the regulation to make the provisions for insignificant activities consistent with part 70, (4) revision of the regulation to make the permit content provisions consistent with part 70, (5) revision of the regulation to make the provisions regarding standing for judicial review consistent with part 70, (6) revision of the regulation to make the administrative amendments provisions consistent with part 70, and (7) submission of a State Implementation Plan (SIP) revision for Subchapter 7 consistent with Subchapter 8 and 40 CFR part 70.

The proposal noted three conditions that had to be met before the EPA could complete the approval process. The State of Oklahoma has adequately addressed each of these issues as shown below:

##### 1. Acid Rain Incorporation by Reference

The State had not completed the rulemaking process for the acid rain rules when the proposal was sent to publication. The State of Oklahoma incorporated the acid rain rules by reference as an emergency rule signed January 5, 1995. This provision appears at Oklahoma Administrative Code (OAC) 252:100-8-6(i)(8) and became a permanent rule, due to inaction by the Legislature, on March 29, 1995.

##### 2. Request for Source Category-Limited Interim Approval

The Governor of Oklahoma, in a letter dated May 26, 1995, requested source category-limited approval for the operating permits program. The Executive Director of the ODEQ submitted a detailed transition schedule in a letter dated January 23, 1995, for the source category-limited interim approval.

##### 3. Supplemental Attorney General's Opinion

The State of Oklahoma provided the EPA with a supplemental Attorney General Opinion, dated June 23, 1995, which clarified the State's interpretation of the criminal liability statute. The EPA required this clarification to ensure that the criminal liability provision in the State statute would not preclude daily fines up to \$10,000 for on-going violations.

The State of Oklahoma appropriately addressed all requirements necessary to receive source category-limited interim approval of the State operating permits