

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 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Lead, Ozone, Particulate matter, Reporting and recordkeeping requirements.

Dated: August 2, 1996.

William Rice,

Acting Regional Administrator.

Part 52, 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 CC—Kansas

2. Section 52.870 is amended by adding paragraph (c)(32) to read as follows:

§ 52.870 Identification of plan.

* * * * *

(c) * * *

(32) A Plan revision was submitted by the Kansas Department of Health and Environment (KDHE) on June 6, 1996, which incorporates by reference the EPA's regulations relating to determining conformity of general Federal actions to State or Federal Implementation Plans, and which revokes old and adopts new open burning regulations.

(i) Incorporation by reference.

(A) Regulation K.A.R. 28–19–800, adopted by the Secretary of the KDHE on February 21, 1996, effective March 15, 1996.

(B) Regulations K.A.R. 28–19–645 to K.A.R. 28–19–648, adopted by the Secretary of KDHE on February 6, 1996, effective March 1, 1996.

(C) Regulations K.A.R. 28–19–45 to K.A.R. 28–19–47, revoked by the Secretary of KDHE on February 6, 1996, effective March 1, 1996.

[FR Doc. 96–24528 Filed 10–1–96; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 70

[AD–FRL–5612–6]

Clean Air Act Final Interim Approval of Operating Permits Program; Delegation of Section 112 Standards; State of Vermont

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final interim approval.

SUMMARY: The EPA is promulgating interim approval of the Operating Permits Program submitted by the State of Vermont 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.

EFFECTIVE DATE: November 1, 1996.

ADDRESSES: Copies of the State'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: Office of Ecosystem Protection, U.S. Environmental Protection Agency, Region I, One Congress Street, 11th floor, Boston, MA.

FOR FURTHER INFORMATION CONTACT: Ida Gagnon, (617) 565–3500.

SUPPLEMENTARY INFORMATION:

I. Background

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 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 May 24, 1996, EPA proposed interim approval of the operating permits program for the State of Vermont. See 61 FR 26145. The EPA received comments from the State of Vermont on the proposal. In this document EPA is taking final action to promulgate interim approval of the

operating permits program for the State of Vermont.

II. Response to Comments

The comments received on the May 24, 1996 proposed rulemaking in the Federal Register proposing interim approval of the Vermont Program and EPA's response to those comments are as follows:

Comment: Vermont believes that EPA should grant Vermont "full approval until, at a minimum, all relevant litigation pertaining to Part 70 is finalized and a static set of requirements to judge the approvability of Vermont's program is in place." Specifically, Vermont comments that "EPA's interpretation of Section 502(b)(10) is currently the subject of litigation and is likely to change." In addition, Vermont asserts that its emissions trading requirements are more stringent than the requirements of the Act and therefore, are not preempted by federal law.

Response: Vermont's rule currently provides the State with the authority to prohibit emissions trades under an emissions cap and does not require that emissions be quantifiable as a precondition to allowing such trades when a permit does contain an emissions cap. In addition, Vermont's rule does not provide for "Section 502(b)(10) changes."

To address the emissions trading issue, EPA is requiring Vermont to adopt regulatory language *requiring* the State to include, upon request by a source, emission trading provisions in a title V permit for the purpose of complying with an emissions cap established in the permit, provided that the emissions involved in such trades are quantifiable. Vermont retains the option to include language in its regulation that would require all such trades to be consistent with State requirements as well as applicable requirements, and therefore EPA is not attempting to supersede more stringent State law. EPA is also requiring Vermont to adopt regulatory provisions to implement "Section 502(b)(10) changes" as defined in Part 70 so that both aspects of Part 70's operational flexibility requirement are met.

EPA understands Vermont's concerns about the pending litigation, but EPA is obligated to evaluate the State's program based on the Part 70 rules promulgated on July 21, 1992. Specifically, Part 70 currently requires both "Section 502(b)(10) changes" and emissions trading under emission caps established in a title V permit as mechanisms to implement operational flexibility. In an August 29, 1994 (FR 44572) rulemaking

proposal, EPA proposed to eliminate Section 502(b)(10) changes as a mechanism for implementing operational flexibility. When the proposed changes to Part 70 are finalized, EPA and the State will revisit this matter and address it consistent with the program transition provisions of the revised Part 70 regulations.

Comment: Vermont does not agree that it must include language in its regulations *requiring* it to reopen and reissue operating permits "for cause" as defined by Part 70. Vermont feels that by mandating such actions in its regulations, it imposes a regulatory burden on itself that could be interpreted to limit its ability to reopen a permit for reasons not specifically enumerated in its regulation.

Response: It is not EPA's intent to limit Vermont's ability to reopen a permit for any reason the State believes is appropriate. EPA's interim approval condition is intended to ensure that Vermont's regulation requires permit reopening under the conditions required by 40 CFR 70.7(f)(1). Vermont is free to add to the list of conditions in 40 CFR 70.7(f)(1) requiring reopening, or to provide the Commissioner with the discretion to reopen permits for reasons in addition to those specified in 40 CFR 70.7(f)(1).

Comment: Vermont objects to EPA's position that Vermont's regulations must list the terms and conditions that must appear in every permit. Vermont believes the intent of the Act is for Vermont to demonstrate that it has legal authority to include the necessary terms and conditions, "not to unnecessarily clutter its regulations with a detailed list of all permit terms and conditions." Furthermore, Vermont objects to promulgating regulations which it claims impose requirements upon itself rather than the regulated community.

Response: Forty CFR 70.6 requires that a permitting authority commit in the program regulations to incorporate critical permit elements including prompt reporting of deviations, recordkeeping of different operating scenarios, and separating permit terms which are enforceable only by the State from those that are enforceable by both the State and EPA. The State must also indicate the origin and authority of all permit terms and conditions as well as identify any difference in form as compared to the applicable requirement. It is this regulatory commitment that makes the permitting authority accountable not only to EPA but also to citizens and the regulated community.

III. Final Action

The EPA is promulgating interim approval of the operating permits program submitted by the State of Vermont on April 28, 1995. The State must make the changes specified in the proposed rulemaking, under II.B., Proposed Action, in order to be granted full approval.

The scope of the State of Vermont's Part 70 program approved in this document applies to all Part 70 sources (as defined in the approved program) within the State of Vermont, 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 extends until November 2, 1998. During this interim approval period, the State of Vermont is protected from sanctions, and EPA is not obligated to promulgate, administer and enforce a Federal operating permits program in the State of Vermont. 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 the State of Vermont fails to submit a complete corrective program for full approval by May 4, 1998, EPA will start an 18-month clock for mandatory sanctions. If the State of Vermont 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 State of Vermont has corrected the deficiency by submitting a complete corrective program. If, six months after application of the first sanction, the State of Vermont still has not submitted a corrective program that EPA has found complete, a second sanction will be required.

If EPA disapproves the State of Vermont'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 State of Vermont has submitted a revised program and EPA has determined that it corrected the deficiencies that prompted the disapproval. If, six months after EPA applies the first sanction, the State of Vermont 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 the State of Vermont has not timely submitted a complete corrective program or EPA has disapproved its submitted corrective program. Moreover, if EPA has not granted full approval to the State of Vermont program by the expiration of this interim approval, since the expiration would occur after November 15, 1995, EPA would be required to promulgate, administer and enforce a Federal permits program for the State of Vermont upon interim approval expiration.

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. Vermont submitted a supplemental letter dated March 6, 1996 addressing the 112(l)(5) requirements for area/minor sources. Therefore, the EPA is also promulgating approval under section 112(l)(5) and 40 CFR 63.91 of the State's program for receiving delegation of section 112 standards that are unchanged from Federal standards as promulgated. This program for delegations applies to sources covered by the Part 70 program as well as area/minor sources. *See* 61 FR 26145 for a fuller discussion of Section 112(l)(5) delegations.

IV. Administrative Requirements

A. Docket

Copies of the State's submittal and other information relied upon for the final interim approval, including comments received by the State of Vermont and reviewed by EPA on the proposal, are contained in the 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 interim approval. The docket is available for public inspection at the location listed under the **ADDRESSES** section of this document.

B. Petitions for Judicial Review

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 December 2, 1996. 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).)

C. Executive Order 12866

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

D. 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.

E. Unfunded Mandates

Under Sections 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 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.

F. Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A) as added 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 today's Federal Register. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 70

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

Dated: September 8, 1996.

John P. DeVillars,

Regional Administrator, Region I.

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, *et seq.*

2. Appendix A to Part 70 is amended by adding the entry for Vermont in alphabetical order to read as follows:

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

* * * * *

Vermont

(a) *Department of Environmental Conservation*: submitted on April 28, 1995; interim approval effective on November 1, 1996; interim approval expires November 2, 1998.

(b) (Reserved)

* * * * *

[FR Doc. 96-25233 Filed 10-1-96; 8:45 am]

BILLING CODE 6560-50-P

40 CFR Part 70

[AD-FRL-5619-4]

Clean Air Act Interim Approval of Operating Permits Program; Delegation of Section 112 Standards; State of New Hampshire

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final interim approval.

SUMMARY: The EPA is promulgating interim approval of the Operating Permits Program submitted by the State of New Hampshire 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.

EFFECTIVE DATE: November 1, 1996.

ADDRESSES: Copies of the State'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: U.S. Environmental Protection Agency, Region 1, One Congress Street, 11th floor, Boston, MA 02203.

FOR FURTHER INFORMATION CONTACT: Ida E. Gagnon, Air Permits Program, CAP, U.S. Environmental Protection Agency, Region 1, JFK Federal Building, Boston, MA 02203-2211, (617) 565-3500.

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 ("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 August 14, 1996, EPA proposed interim approval of the operating permits program for the State of New Hampshire. See 61 FR 42222. The