ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[PA–4146a; FRL–7061–6]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; NO_X RACT Determinations for the Koppel Steel Corporation in the Pittsburgh-Beaver Valley Area; Withdrawal of Direct Final Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Withdrawal of Direct final rule.

SUMMARY: Due to receipt of a letter of adverse comment, EPA is withdrawing the direct final rule to approve a revision which establishes reasonably available control technology (RACT) requirements for Koppel Steel Corporation, a major source of nitrogen oxides (NO_X) located in the Pittsburgh-Beaver Valley ozone nonattainment area. In the direct final rule published on August 24, 2001 (66 FR 44544), EPA stated that if it received adverse comment by September 24, 2001, the rule would be withdrawn and not take effect. EPA subsequently received adverse comments from the Citizens for Pennsylvania's Future (PennFuture). EPA will address the comments received in a subsequent final action based upon the proposed action also published on August 24, 2001 (66 FR 44581). EPA will not institute a second comment period on this action.

EFFECTIVE DATE: The Direct final rule is withdrawn as of September 28, 2001.

FOR FURTHER INFORMATION CONTACT: Harold A. Frankford at (215) 814–2108.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

Dated: September 14, 2001.

James W. Newson,

Acting Regional Administrator, Region III.

PART 52—[AMENDED]

§ 52.2020 [Amended]

Accordingly, the addition of § 52.2020(c)(180) is withdrawn as of September 28, 2001.

[FR Doc. 01–23637 Filed 9–27–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[PA–4147a; FRL –7061–7]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; NO_X RACT Determinations for Four Individual Sources Located in the Pittsburgh-Beaver Valley Area; Withdrawal of Direct Final Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Withdrawal of Direct final rule.

SUMMARY: Due to receipt of a letter of adverse comment, EPA is withdrawing the direct final rule to approve revisions which establish reasonably available control technology (RACT) requirements for four major sources of nitrogen oxides (NO_X) located in the Pittsburgh-Beaver Valley ozone nonattainment area. In the direct final rule published on August 22, 2001 (66 FR 44057), EPA stated that if it received adverse comment by September 21, 2001, the rule would be withdrawn and not take effect. EPA subsequently received adverse comments from the Citizens for Pennsylvania's Future (PennFuture). EPA will address the comments received in a subsequent final action based upon the proposed action also published on August 22, 2001 (66 FR 44096). EPA will not institute a second comment period on this action.

EFFECTIVE DATE: The Direct final rule is withdrawn as of September 28, 2001.

FOR FURTHER INFORMATION CONTACT: Harold A. Frankford at (215) 814–2108.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

Dated: September 14, 2001.

James W. Newson,

Acting Regional Administrator, Region III.

PART 52—[AMENDED]

§ 52.2020 [Amended]

Accordingly, the addition of § 52.2020 (c)(181) is withdrawn as of September 28, 2001.

[FR Doc. 01–23638 Filed 9–27–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 70

[AD–FRL–7065–9]

Clean Air Act Final Approval of Operating Permits Program; Commonwealth of Massachusetts

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The EPA is taking final action to fully approve the Clean Air Act Operating Permits Program of the Commonwealth of Massachusetts. Massachusetts submitted its program for the purpose of complying with federal Clean Air Act requirements for a State to develop a program to issue operating permits to all major stationary and certain other sources of air pollution. EPA granted interim approval to Massachusetts' operating permit program on February 2, 1996.

DATES: This direct final rule is effective on November 27, 2001 without further notice, unless EPA receives relevant adverse comment by October 29, 2001. If EPA receives relevant adverse comments, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Comments may be mailed to Steven Rapp, Unit Manager, Air Permit Program Unit, Office of Ecosystem Protection (mail code CAP) U.S. Environmental Protection Agency, EPA—New England, One Congress Street, Suite 1100, Boston, MA 02114–2023. Copies of the State submittal, and other supporting documentation relevant to this action, are available for public inspection during normal business hours, by appointment at the Office of Ecosystem Protection, U.S. Environmental Protection Agency, EPA—New England, One Congress Street, 11th floor, Boston, MA.

FOR FURTHER INFORMATION CONTACT: Ida E. Gagnon, (617) 918–1653.

SUPPLEMENTARY INFORMATION: This section provides additional information by addressing the following questions:

What is the operating permit program?
How has Massachusetts addressed EPA's interim approval issues?
What additional changes to Massachusetts' program is EPA approving?
What is involved in this final action?

What Is the Operating Permits Program?

The Clean Air Act Amendments (CAA) of 1990 required all state and

local permitting authorities to develop operating permit programs that meet certain federal criteria. 42 U.S.C. 7661–7661e. In implementing the operating permit programs, the permitting authorities require certain sources of air pollution to obtain permits that contain all applicable requirements under the CAA. The focus of the operating permit program is to improve compliance and enforcement by issuing each source a permit that consolidates all of the applicable CAA requirements into a federally enforceable document. By consolidating all of the applicable requirements, the source, the public, and the permitting authorities can more easily determine what CAA requirements apply and how to determine compliance with those requirements.

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. See 40 CFR 70.3. For example, all sources regulated under the acid rain program, regardless of size, must obtain operating permits. Examples of major sources include: those that have the potential to emit 100 tons per year or more of volatile organic compounds, carbon monoxide, lead, sulfur dioxide, nitrogen oxides, or particulate matter (PM 10); those that emit 10 tons per year of any single hazardous air pollutant specifically listed under the CAA (HAP); or those that emit 25 tons per year or more of a combination of HAPs. In areas that are not meeting the National Ambient Air Quality Standards for ozone, carbon monoxide, or particulate matter, major sources are defined by the gravity of the nonattainment classification. For example, in ozone nonattainment areas classified as ''serious,'' such as Massachusetts, major sources include those with the potential of emitting 50 tons per year or more of volatile organic compounds or nitrogen oxides.

What Is Being Addressed in This Document?

Where an operating permit program substantially, but not fully, meets the criteria outlined in the implementing regulations codified at 40 Code of Federal Regulations part 70, EPA may grant the program interim approval. Because Massachusetts' operating permit program substantially, but not fully, met the requirements of part 70, EPA granted interim approval to the program in a rulemaking published on February 2, 1996 (61 FR 3827). The interim approval document described the corrections that had to be made in order for Massachusetts' program to receive full approval. Massachusetts submitted two revisions to its operating permit program; these revisions were dated November 19, 1996 and May 11, 2001. This document describes changes made to the Massachusetts operating permit program since interim approval was granted.

How Has Massachusetts Addressed EPA's Interim Approval Issues?

EPA's February 2, 1996 rulemaking explained that Massachusetts must make the following rule changes to receive full approval of its operating permit program.

(1) Revise Appendix C(8)(b)(4) to eliminate the applicability of the permit shield for administrative amendments. Massachusetts changed Appendix C(8)(b)(4) to state the permit shield provisions shall not apply to changes made to the operating permit using the modification procedures of Appendix C(8).

(2) In Appendix C(7)(b)(3)(e), the program regulation provided that a notice of an operational flexibility change made pursuant to an intra-facility emissions trading plan may include notice of ''[a]ny permit term or condition that is no longer applicable as a result of the change.'' Changes made pursuant to an intra-facility emissions trading plan must be provided for in the permit, and such plans provide no authority to render permit conditions inapplicable through a simple notice. 40 CFR 70.4(b)(12)(iii)(A). Massachusetts has removed this section of its regulation.

(3) Appendix C(4)(a)(5) did not clearly require a facility to apply for an operating permit if it became Subject to Appendix C without any new construction, for example, by relaxing an emissions cap in a restricted emission status plan approval. Appendix C(4)(a)(6) and Appendix C(4)(a)(7) have been added to clarify when an application must be submitted for facilities that exceed the major source threshold of a regulated pollutant.

(4) Appendix C(8)(a)(2)(b) prohibited any *relaxation* of monitoring, reporting, or recordkeeping from qualifying as a minor permit modification. EPA's rule prohibits all *significant changes* to monitoring, reporting or recordkeeping, whether or not they are classified as a relaxation, from being processed as a minor permit modification. Massachusetts has revised Appendix C(8)(a)(2)(b) by replacing *relaxation* with *significant change*.

EPA has concluded that these changes address all of EPA's interim approval issues.

What Additional Changes to Massachusetts Program Is EPA Approving?

Massachusetts made other substantive changes after EPA granted interim approval to its operating permit program on February 2, 1996. On November 19, 1996 and May 11, 2001, Massachusetts submitted revisions to 310 CMR 7.00: Appendix C: Operating Permit and Compliance Program. In addition to certain changes in formatting and non-substantive revisions, Massachusetts made the following substantive program changes.

(1) Massachusetts amended the definition of ''volatile organic compound'' (VOC) to be consistent with revisions EPA has made to its definition.

(2) Massachusetts clarified the applicability of Appendix C by adding the definition of *facility* which is more inclusive than the federal definition of *major source.* Unlike *major source,* a *facility* is not subdivided by Major Group as described in the Standard Industrial Classification Manual (SIC). The term facility aggregates all emissions of a pollutant located on the same, adjacent, or contiguous property, regardless of the SIC grouping of the emission units.

(3) Massachusetts amended Appendix C(2) to ensure that the time frame for submitting an operating permit application by a non-major source does not conflict with EPA requirements. As previously promulgated, Massachusetts' rule allowed facilities to submit applications subsequent to the date established by EPA at 40 CFR part 63.

(4) Massachusetts amended the definition of major source to include a provision to sum all HAPs regardless of SIC code classification. This is consistent with EPA's definition of a major source as defined under Section 112 of the CAA. 42 U.S.C. 7412.

(5) In Appendix C(2)(f), Massachusetts provides two additional mechanisms for a source to establish that its emissions are below major source thresholds, and, therefore, the source is not required to apply for an operating permit. Pursuant to section (2)(f)(3), a source may take a limit on its potential to emit in a construction permit, or ''plan approval.'' Pursuant to section (2)(f)(4), a facility with actual emissions below 50 or 25 percent of the major source thresholds may document those very low emissions to maintain its exemption from the operating permit program.

(6) Massachusetts adopted and incorporated by reference the provisions of the acid rain program as amended on October 24, 1997, and 40 CFR part 76 as in effect on September 1, 1998. Both provisions were promulgated after EPA granted interim approval to Massachusetts' operating permit program on February 2, 1996.

(7) Massachusetts added a provision reducing the 45-day period for EPA objection to a proposed operating permit if EPA notifies Massachusetts before the end of 45 days that the Agency does not intend to object to the operating permit. This provision has no effect on the time frame for citizen petitions. The 60-day filing period for a citizen's petition runs from the expiration of EPA's full 45-day objection period.

What Is Involved in This Final Action?

EPA is taking final action to fully approve Massachusetts' operating permit program. EPA is also taking action to approve the additional program changes Massachusetts submitted on November, 19, 1996 and May 11, 2001. EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to grant full approval should relevant adverse comments be filed. This action will be effective November 27, 2001 unless the Agency receives adverse comments by October 29, 2001.

If EPA receives such comments, then EPA will publish a document withdrawing the final rule and informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period. Parties interested in commenting should do so at this time. If EPA receives no such comments, the public is advised that this action will be effective on November 27, 2001.

Administrative Requirements

Under Executive Order 12866, ''Regulatory Planning and Review'' (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. Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities because it merely approves state law as meeting federal requirements and imposes no additional requirements beyond those imposed by state law. This rule does not contain any unfunded mandates and does not significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4) because it approves pre-existing requirements under state law and does not impose any additional enforceable duties beyond that required by state law. 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, ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000). This rule also does not have Federalism implications because it will 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, ''Federalism'' (64 FR 43255, August 10, 1999). The rule merely approves existing requirements under state law, and does not alter the relationship or the distribution of power and responsibilities between the State and the Federal government established in the Clean Air Act. 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) or Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355 (May 22, 2001)), because it is not a significant regulatory action under Executive Order 12866. This action will not impose any collection of information subject to the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, other than those previously approved and assigned OMB control number 2060–0243. For additional information concerning these requirements, see 40 CFR part 70. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a current valid OMB control number.

In reviewing State operating permit programs submitted pursuant to Title V of the Clean Air Act, EPA will approve State programs provided that they meet the requirements of the Clean Air Act 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 permit program for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews an operating permit program, to use VCS in place of a State program that otherwise satisfies the provisions of the Clean Air Act. 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. section 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. section 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 November 27, 2001. Interested parties should comment in response to the rule rather than petition for judicial review, unless the objection arises after the comment period allowed for in the rule. 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

Administrative practice and procedure, Air pollution control, Environmental Protection Agency, Intergovernmental relations, Operating

permits, and Reporting and recordkeeping requirements.

Dated: September 19, 2001.

Robert W. Varney,

Regional Administrator, EPA New England.

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 revising paragraph (b) in the entry for Massachusetts to read as follows:

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

* * * * *

Massachusetts

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(b) The Massachusetts Department of Environmental Services submitted program revisions on November, 19, 1996 and May 11, 2001. EPA is hereby granting Massachusetts full approval effective on November 27, 2001.

* * * * *

[FR Doc. 01–24064 Filed 9–27–01; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare and Medicaid Services

42 CFR Parts 402 and 405

CMS–6145–FC

RIN 0938–AK49

Medicare Program; Civil Money Penalties, Assessments, and Revised Sanction Authorities

AGENCY: Centers for Medicare and Medicaid Services (CMS), HHS.

ACTION: Final rule with comment period.

SUMMARY: This final rule with comment period is a technical rule that updates our civil money penalty (CMP) regulations to add CMP authorities already enacted as part of the Balanced Budget Act of 1997 (BBA) and delegated to us. The rule delineates our authority to assess penalties for: failure to bill outpatient therapy services or comprehensive outpatient rehabilitation services (CORS) on an assignment-related basis, failure to bill ambulance services on an assignment-related basis, failure to provide an itemized statement for Medicare items and services to a Medicare beneficiary upon his/her request, and failure of physicians or nonphysician practitioners to provide diagnostic codes for items or services they furnish or failure to provide this information to the entity furnishing the item or service ordered by the practitioner. The rule also contains technical changes to further conform our current CMP rules to changes in the statute enacted by the BBA.

DATES: These regulations are effective on October 29, 2001. We will consider comments if we receive them at the appropriate address, as provided below, no later than 5 p.m. on November 27, 2001.

ADDRESSES: Mail written comments (one original and three copies) to the following address only: Centers for Medicare and Medicaid Services, Department of Health and Human Services, Attention: CMS–6145–FC, P.O. Box 8013, Baltimore, MD 21244–8013.

Since comments must be *received* by the date specified above, please allow sufficient time for mailed comments to be received timely in the event of delivery delays. If you prefer, you may deliver your written comments (one original and three copies) by courier to one of the following addresses: Room 443–G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201, or Room C5–16–03, Central Building, 7500 Security Boulevard, Baltimore, MD 21244–1850.

Comments mailed to the two above addresses may be delayed and received too late to be considered. Because of staffing and resource limitations, we cannot accept comments by facsimile (FAX) transmission. In commenting, please refer to file code CMS–6145–FC.

Comments received timely will be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, in Room 443–G of the Department's offices at 200 Independence Avenue, SW., Washington, DC 20201, on Monday through Friday of each week from 8:30 a.m. to 5 p.m. (phone: (202) 690–7890).

FOR FURTHER INFORMATION CONTACT: Joel Cohen, (410) 786–3349.

SUPPLEMENTARY INFORMATION:

I. Background

On December 14, 1998, we published a final rule in the **Federal Register** (63 FR 68687), the procedures for pursuing civil money penalties (CMPs) and assessments now set forth at 42 CFR part 402. We are now amending part 402, subpart B, to incorporate additional CMPs authorized by sections 4541(a)(2), 4531(b)(2), 4311(b), and 4317 of the Balanced Budget Act of 1997 (BBA), Public Law 105–33. This final rule with comment period incorporates the statutory revisions of the BBA concerning CMPs and assessments into our existing CMP and assessment regulations at 42 CFR part 402, subparts A and B, as well as makes technical changes to existing delegated authority. BBA statutory revisions that would affect subpart C, which addresses our exclusion authority, are not addressed in this final rule, but will be addressed in a separate rulemaking.

II. Provisions of the Final Rule

This final rule amends 42 CFR part 402, to incorporate changes resulting from the enactment of the BBA. Specifically, we are revising §§ 402.1(c), 402.1(d), 402.105(d), and 402.107 and adding § 402.105(g) with regard to the following statutory authorities that are delegated to us:

A. Payment for Outpatient Therapy Services and Comprehensive Outpatient Rehabilitation Services

Section 4541(a)(2) of the BBA adds subsection (k) to section 1834 of the Social Security Act (the Act), Payment for Outpatient Therapy Services and Comprehensive Outpatient Rehabilitation Services. Subsection (k)(6), through its cross-reference to section 1842(b)(18) of the Act, requires that billing for therapy services be subject to the mandatory assignment requirements of the Medicare statute. Failure to bill on an assignment-related basis may subject the violator to certain sanctions, including assessments and CMPs, as provided by section 1842(j)(2) of the Act. (See § 402.105(d)(3).)

B. Fee Schedule for Ambulance Services

Section 4531(b)(2) of the BBA adds paragraph (l) to section 1834 of the Act, Establishment of Fee Schedule for Ambulance Services. This provision requires the establishment of a fee schedule for ambulance services furnished and requires, in section 1834(l)(6) of the Act, suppliers of ambulance services to accept assignment (that is, to accept Medicare's approved payment amount as payment in full). Failure to bill on an assignment-related basis may subject the violator to sanctions, including assessments and CMPs, as provided by section 1842(j)(2) of the Act. (See § 402.105(d)(4).)

C. Request for Itemized Statement for Medicare Items and Services

Section 4311(b) of the BBA adds section 1806 to the Act. Section 1806(b), Request For Itemized Statement For Medicare Items and Services, provides that a Medicare beneficiary has the right