

**§ 52.1919 Identification of plan-conditional approval.**

(a) The plan commitments listed below were submitted on the dates specified.

(1) [Reserved]

(2) On April 20, 1994, Ohio submitted Rule 3745-35-07, entitled "Federally Enforceable Limitations on Potential to Emit," and requested authority to issue such limitations as conditions in State operating permits. On June 16, 1994, Ohio submitted a commitment to revise Rule 3745-35-07 to clarify that the rule provides for USEPA objection to permits after issuance. The revisions are approved provided Ohio fulfills this commitment by October 25, 1995.

(i) Incorporation by reference.

(A) Rule 3745-35-07, adopted April 4, 1994, effective April 20, 1994.

(b) (Reserved)

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**40 CFR Part 70**

[AD-FRL-5461-6]

**Clean Air Act Interim Approval of Operating Permits Program; Delegation of Section 112 Standards; State of Massachusetts**

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

**ACTION:** Final rule.

**SUMMARY:** On February 2, 1996, the Environmental Protection Agency published a proposed and direct final rule promulgating interim approval of the Operating Permits Program submitted by the Commonwealth of Massachusetts for the purpose of complying with the Federal requirements of an approved program to issue operating permits to all major stationary sources, and to certain other sources, with the exception of Indian Lands. This submittal for the operating permits program was made by the Commonwealth of Massachusetts on April 28, 1995. The 30-day comment period for these documents concluded on March 4, 1996. Also in this document, EPA is correcting the date for the interim approval of the Operating Permits Program for the Commonwealth of Massachusetts.

**EFFECTIVE DATE:** This final rule is effective on May 15, 1996.

**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:** On February 2, 1996, EPA published a

direct final rule (61 FR 3827) which announced that this rule would take effect in 60 days, or April 2, 1996, unless EPA received adverse comment on the rule within 30 days of publication in response to a notice of proposed rulemaking published on the same day (61 FR 3893). EPA also committed to withdraw the direct final rule in the event it received adverse comment, and to respond to any adverse comments in a subsequent final rulemaking action. EPA did receive a timely adverse comment on this rule. EPA failed, however, to withdraw the final rule within the 60 days given in the direct final rule, and the rule took effect on April 2, 1996.

In this document, EPA is responding to the comment it received, but for the reasons stated below, EPA is not changing the final rule in response to that comment. For reasons unrelated to the comment, EPA is correcting a clerical error in the effective date of the rule, as explained below. Had EPA withdrawn the direct final rule prior to its going into effect, EPA would have taken final action based on the proposal to promulgate a rule identical to the direct final rule that went into effect. Rather than now take the action of withdrawing the direct final rule only to repromulgate simultaneously an identical rule, however, EPA in this action is deciding to maintain the rule unchanged. EPA believes that withdrawal and repromulgation are unnecessary since the results would be identical to that obtained simply by leaving the rule unchanged and responding to the comments in this document. This document provides interested parties an opportunity to review how EPA addressed the comment, and to petition for review of EPA's action in this final rulemaking within 60 days of publication of this document, as provided in section 307(b)(1) of the Act.

**I. Summary of Comments and Responses**

EPA received two comments from the National Environmental Development Association's Clean Air Regulatory Project (NEDA/CARP). First, NEDA/CARP disagrees with EPA's statement that "prompt reporting [of deviations] must be more frequent than the semi-annual reporting requirement, given this is a distinct reporting obligation under Section 70.6(a)(3)(iii)(A)." NEDA/CARP believes there is no legal basis for such a statement. Therefore, NEDA/CARP asserts EPA has no basis for expecting deviations to be reported more often than every 6 months.

EPA disagrees that there is no legal basis for this statement. Section 503(b)(2) of the Act requires a permittee "to promptly report any deviations from permit requirements to the permitting authority." This requirement to report deviations promptly is distinct from section 504(a) of the Act which requires the results of all monitoring to be submitted no less often than every six months. The Act clearly distinguishes between the routine semi-annual reporting of all monitoring, whether or not deviations have occurred, from the requirements to report deviations that may be violations of the Act and that at least provide an indication of potential compliance problems. It makes sense that Congress would expect permittees to report potential Act violations more quickly than routine monitoring that confirms compliance. Additionally, the statute has a clear requirement for prompt reporting of deviations and EPA believes that six months is not prompt when dealing with information that may document a violation of the Clean Air Act.

Second, in the February 2, 1996 rulemaking, EPA proposes interim approval of the program regulation unless the Commonwealth changes its rule to ensure that all "significant" monitoring changes, not just "relaxations" are processed as significant changes. NEDA/CARP points out that this change may not be required when the proposed changes to Part 70 are finalized and requests EPA take this issue into consideration before the state revises its procedures.

EPA understands the concerns of NEDA/CARP, but EPA is obligated to evaluate the Commonwealth's program based on Part 70 rules promulgated on July 21, 1992. Once the proposed changes to Part 70 are finalized, EPA and the Commonwealth will revisit this matter and address it consistent with the program transition provisions of the revised Part 70 regulations.

**II. Final Rulemaking Action**

Except for the effective date, as explained below, EPA is not modifying the interim approval to the operating permits program associated with the February 2, 1996 direct final rulemaking in response to the comments EPA received. The State must make the changes specified in the proposed rulemaking, under II.A.2., Regulations and Program Implementation, in order to be granted full approval.

This interim approval, which may not be renewed, extends for a period of up to 2 years. During the interim approval period, the Commonwealth is protected from sanctions for failure to have a

program, and EPA is not obligated to promulgate a Federal permits program in the Commonwealth. Permits issued under a program with interim approval have full standing with respect to Part 70, and the 1-year time period under the Act for submittal of permit applications by subject sources begins upon interim approval, as does the 3-year time period for processing the initial permit applications.

The scope of the Commonwealth of Massachusetts' part 70 program applies to all part 70 sources (as defined in the approved program) within the Commonwealth of Massachusetts, 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).

EPA is also not modifying its approval of DEP's authority to implement and enforce section 112 standards at Part 70 sources. Requirements for operating permit program 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. Therefore, the EPA has also granted 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 only applies to sources covered by the Part 70 program.

EPA is hereby correcting a mistaken effective date for our interim approval. The prior document indicated an effective date of March 4, 1996, 30 days from the date of publication of the document rather than the correct date of April 2, 1996, 60 days from the date of publication of the document. In light of the Small Business Regulatory Enforcement Act (SBREFA) which became effective on March 29, 1996 prior to the April 2, 1996 corrected date, the rule will take effect on the latter of

the rule's submission to Congress or the date of publication. The rule has been submitted to Congress, therefore, this final rulemaking will be effective May 15, 1996.

### III. Administrative Requirements

#### A. Docket

Copies of the Commonwealth's submittal and other information relied upon for the final interim approval, including public comments received and reviewed by EPA on the proposal, are maintained in a docket 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 under the ADDRESSES section of this document.

#### B. Opportunity 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 July 15, 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 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 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 preexisting 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 in 40 CFR Part 70

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

Dated: April 2, 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 revising the entry for Massachusetts to reflect the dates of the final rulemaking to read as follows:

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

\* \* \* \* \*

Massachusetts

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

(b) (Reserved)  
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