

ENVIRONMENTAL PROTECTION AGENCY**40 CFR Part 70**

[FRL-5612-3]

RIN 2060-AF70

Operating Permits Program Interim Approval Extensions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The EPA is today promulgating a revision to the operating permits regulations. This regulatory revision allows the Administrator to set interim approval expiration dates for State operating permits programs beyond the maximum 2 years. Today's action also extends all operating permits program interim approvals by 10 months if those interim approvals were granted prior to June 13, 1996.

EFFECTIVE DATE: The amendments take effect on December 2, 1996.

For those programs whose interim approval dates are amended by this action, interim approval will expire on the new dates which are 10 months after the original interim approval expiration dates. For any program granted interim approval, program revisions correcting interim approval deficiencies are due to be submitted to EPA 6 months prior to expiration of the interim approval.

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 (LE-131), 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 31, 1995, EPA proposed revisions to the part 70 operating permits regulations (60 FR 45530). Primarily, the notice proposed changes to the system for revising permits. A

number of other less detailed proposed changes were included in the notice. In addition, the Agency proposed a number of revisions on August 29, 1994 (59 FR 44460). 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 early calendar 1997.

Contemporaneous with the task of revising the program 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. 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

The regulatory revisions being made today amend § 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) are being extended in today's action by 10 months. The June 1996 memorandum is in the docket for today's action.

The reason for this automatic extension is 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 being granted in today's action will offset any time lost in permitting authority efforts to develop program revisions addressing interim approval deficiencies. The Agency does not, however, feel this 10-month extension should be applied to application submittal dates for the second group of sources covered by a source-category limited interim approval.¹

¹ Several 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

As noted in the June 1996 memorandum, EPA may, where the permitting authority applies for it after part 70 is revised, grant a longer extension to an interim approval so that the program revision to correct interim approval program deficiencies can 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 § 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 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. 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

permit applications during a period beginning on the 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.

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 document.

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 program 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 rule 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 rule 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 rule will not have a significant economic impact on a substantial number of small entities. In developing the original part 70 rule, the Agency determined that it 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 today's

action). 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 this rule 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 the part 70 rule is not affected by today's action 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. Today's rule, 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, today's 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.

and:

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 today's rule 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, today's 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 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, 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: September 13, 1996.

Carol M. Browner,
Administrator.

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

PART 70—[AMENDED]

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

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

2. Paragraph (d)(2) of § 70.4 is revised to read as follows:

§ 70.4 State program submittals and transition.

(d) *Interim approval.* * * *

(2) Interim approval shall expire on a date set by the Administrator (but not later than 2 years after such approval unless a longer period of time up to 10

months is provided on an individual basis by the Administrator through rulemaking), and may not be renewed. Notwithstanding the previous sentence, the Administrator may, through rulemaking, provide for a longer period of time on an individual basis, but only once per State, as necessary to allow for a State to submit one set of program changes addressing both interim approval deficiencies and program changes necessary to comport with the next revision to § 70.7 that is made after [date of publication]. Any longer period of time provided by the Administrator shall not exceed 2 years after publication in the Federal Register of that revision. Sources shall become subject to the program according to the schedule approved in the State program. Permits granted under an interim approval shall be fully effective and expire at the end of their fixed term, unless renewed under a part 70 program.

Appendix A—Part 70 [Amended]

3. Appendix A of part 70 is amended by the following:

a. Adding a sentence to the end of paragraphs (n), (x), and (y) under California and paragraph (a) under Missouri;

b. Revising paragraph (a) under Oklahoma; and

c. Revising the end date of each paragraph as follows: Paragraphs (a) through (c) of Alabama; Paragraph (a) of Arkansas, Colorado, Delaware, District of Columbia, Florida, Georgia, Hawaii, Illinois, Indiana, Iowa, Kentucky, Massachusetts, Minnesota, Montana, New Jersey, North Carolina, North Dakota, Rhode Island, West Virginia, Wisconsin, and Wyoming; Paragraphs (a) through (m), (o) through (w), (z) through (cc), and (ee) through (hh) of California; paragraphs (a) through (c) of Nevada; paragraphs (a) and (b) of New Mexico; and paragraphs (a) through (i) of Washington.

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

Alabama

- (a) * * * October 15, 1998.
- (b) * * * October 15, 1998.
- (c) * * * October 15, 1998.

Arkansas

- (a) * * * August 8, 1998.

California * * *

- (a) * * * April 3, 1998.
- (b) * * * May 23, 1998.
- (c) * * * April 3, 1998.
- (d) * * * April 3, 1998.
- (e) * * * April 3, 1998.
- (f) * * * April 3, 1998.

- (g) * * * April 3, 1998.
- (h) * * * June 13, 1998.
- (i) * * * April 3, 1998.
- (j) * * * April 3, 1998.
- (k) * * * April 3, 1998.
- (l) * * * June 13, 1998.
- (m) * * * April 3, 1998.
- (n) * * * Interim approval expires on December 9, 1998.
- (o) * * * April 3, 1998.
- (p) * * * April 3, 1998.
- (q) * * * January 5, 1999.
- (r) * * * September 6, 1998.
- (s) * * * April 3, 1998.
- (t) * * * April 3, 1998.
- (u) * * * April 3, 1998.
- (v) * * * April 3, 1998.
- (w) * * * July 4, 1998.
- (x) * * * Interim approval expires on December 9, 1998.
- (y) * * * Interim approval expires on March 25, 1999.
- (z) * * * October 1, 1998.
- (aa) * * * October 1, 1998.
- (bb) * * * June 13, 1998.
- (cc) * * * April 3, 1998.
- * * * * *
- (ee) * * * June 13, 1998.
- (ff) * * * April 3, 1998.
- (gg) * * * October 1, 1998.
- (hh) * * * April 3, 1998.

Colorado

- (a) * * * December 24, 1997.
- * * * * *

Delaware

- (a) * * * November 5, 1998.
- * * * * *

District of Columbia

- (a) * * * July 8, 1998.
- * * * * *

Florida

- (a) * * * August 25, 1998.
- * * * * *

Georgia

- (a) * * * October 22, 1998.
- * * * * *

Hawaii

- (a) * * * October 1, 1997.
- * * * * *

Illinois

- (a) * * * January 7, 1998.
- * * * * *

Indiana

- (a) * * * October 14, 1998.
- * * * * *

Iowa

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

Kentucky

- (a) * * * October 14, 1998.
- * * * * *

Massachusetts

- (a) * * * March 15, 1999.
- * * * * *

Minnesota

- (a) * * * May 16, 1998.
- * * * * *

Missouri

- (a) * * * Interim approval expires on September 13, 1998.
- * * * * *

Montana

- (a) * * * April 11, 1998.
- * * * * *

Nevada

- (a) * * * November 12, 1998.
 - (b) * * * December 5, 1997.
 - (c) * * * June 13, 1998.
- * * * * *

New Jersey

- (a) * * * April 16, 1999.

New Mexico

- (a) * * * October 19, 1997.
 - (b) * * * June 10, 1997.
- * * * * *

North Carolina

- (a) * * * October 15, 1998.
- * * * * *

North Dakota

- (a) * * * June 7, 1998.
- * * * * *

Oklahoma

(a) The Oklahoma Department of Environmental Quality submitted its operating permits program on January 12, 1994, for approval. Source category-limited interim approval is effective on March 6, 1996. Interim approval will expire January 5, 1999.

* * * * *

Rhode Island

- (a) * * * May 6, 1999.
- * * * * *

Washington

- (a) * * * October 9, 1997.
 - (b) * * * October 9, 1997.
 - (c) * * * October 9, 1997.
 - (d) * * * October 9, 1997.
 - (e) * * * October 9, 1997.
 - (f) * * * October 9, 1997.
 - (g) * * * October 9, 1997.
 - (h) * * * October 9, 1997.
 - (i) * * * October 9, 1997.
- * * * * *

West Virginia

- (a) * * * October 15, 1998.
- * * * * *

Wisconsin

- (a) * * * February 7, 1998.
- * * * * *

Wyoming

- (a) * * * December 19, 1997.

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