

use such standards, and it would thus be inconsistent with applicable law for EPA to use voluntary consensus standards in place of a state program that otherwise satisfies the provisions of the Act. Therefore, the requirements of section 12(d) of the NTTA do not apply.

The Congressional Review Act, 5 U.S.C. 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. The 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. 804(2). This rule will be effective November 30, 2001.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by February 4, 2002. 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) of the Act.)

B. What Is the Effective Date of EPA's Full Approval of Michigan's Title V Program?

The EPA's approval of Michigan's title V program is effective on November 30, 2001. Pursuant to section 502(h) of the Act, the effective date of a permitting program approved under title V is the date of approval by the Administrator or her delegatee. Furthermore, the good cause exception under the Administrative Procedure Act (APA) allows EPA to make the full approval of the state's program immediately effective. In relevant part, the APA provides that publication of "a substantive rule shall be made not less than 30 days before its effective date, except—* * * (3) as otherwise provided by the agency for good cause found and published with the rule." 5 U.S.C. 553(d)(3). Section 553(b)(3)(B) of the APA provides that good cause may

be supported by an agency determination that a delay in the effective date is impracticable, unnecessary, or contrary to the public interest. The EPA finds that it is necessary and in the public interest to make this action effective sooner than 30 days following publication. In this case, EPA believes that it is in the public interest for the program to take effect before December 1, 2001. The EPA's interim approval of Michigan's prior program expires on December 1, 2001. In the absence of this full approval of Michigan's amended program taking effect on November 30, the federal program under 40 CFR part 71 would automatically take effect in Michigan and would remain in place until the effective date of the fully-approved state program. The EPA believes it is in the public interest for sources, the public and Michigan to avoid any gap in coverage of the state program, as such a gap could cause confusion regarding permitting obligations. Furthermore, a delay in the effective date is unnecessary because MDEQ has been administering the title V permit program for nearly five years under an interim approval. Through this action, EPA is approving a few revisions to the existing and currently operational program. The change from the interim approved program which substantially met the part 70 requirements, to the fully approved program is relatively minor, in particular if compared to the changes between a state-established and administered program and the federal program.

C. What Is the Scope of EPA's Full Approval?

In Michigan's final interim approval (62 FR 1387, January 10, 1997), EPA did not approve the state's program in Indian country. Similarly, this final full approval, which only addresses the state's interim approval corrections, also does not approve Michigan's operating permit program in Indian country. To date, no tribal government in Michigan has applied to EPA for approval to administer a title V program in Indian country within the state. The EPA regulations at 40 CFR part 49 govern how eligible Indian tribes may seek approval from EPA to implement a title V program on Indian reservations and in non-reservation areas over which the tribe has jurisdiction. The EPA's part 71 regulations govern the issuance of federal operating permits in Indian country. The EPA's authority to issue permits in Indian country was challenged in *Michigan v. EPA*, (D.C. Cir. No. 99-1151). On October 30, 2001, the court issued its decision in the case,

vacating a provision that would have allowed EPA to treat areas over which EPA determines there is a question regarding the area's status as if it is Indian country, and remanding to EPA for further proceedings. The EPA will respond to the court's remand and explain EPA's approach for further implementation of part 71 in Indian country in a future action.

List of Subjects in Part 70

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

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

Dated: November 27, 2001.

Thomas V. Skinner,

Regional Administrator, Region V.

40 CFR part 70 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 paragraph (a)(3) to the entry for Michigan to read as follows:

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

* * * * *

Michigan

(a) * * *

(3) Department of Environmental Quality: interim approval corrections submitted on June 1, 2001 and September 20, 2001; submittals adequately address the conditions of the interim approval which expires on December 1, 2001. Based on these corrections, Michigan is hereby granted final full approval effective on November 30, 2001.

* * * * *

[FR Doc. 01-29965 Filed 12-3-01; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 70

[**WI**; FRL-7111-8]

Clean Air Act Final Full Approval of Operating Permit Program; Wisconsin

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final Rule.

SUMMARY: The EPA is taking final action to fully approve the operating permit program submitted by the state of Wisconsin. Wisconsin submitted its operating permit program pursuant to subchapter V of the Clean Air Act (Act), which requires that permitting authorities develop, and submit to EPA, programs for issuing operating permits to all major stationary sources and to certain other sources within the permitting authority's jurisdiction.

EFFECTIVE DATE: November 30, 2001.

ADDRESSES: Copies of the state's submittal and other supporting information used in developing the final full approval are available for inspection during normal business hours at the following location: EPA Region 5, 77 West Jackson Boulevard, AR-18J, Chicago, Illinois, 60604. Please contact Beth Valenziano at (312) 886-2703, or Susan Siepkowski at (312) 353-2654 to arrange a time to inspect the submittal.

FOR FURTHER INFORMATION CONTACT: Beth Valenziano or Susan Siepkowski, AR-18J, 77 West Jackson Boulevard, Chicago, Illinois, 60604, Telephone Numbers: (312) 886-2703, and (312) 353-2654, respectively, E-Mail Addresses: valenziano.beth@epa.gov, and siepkowski.susan@epa.gov.

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

- What is being addressed in this document?
- What is involved in this final action?

I. What Is Being Addressed in This Document?

As required under Subchapter V of the Act, EPA has promulgated regulations that define the minimum elements of an approvable state operating permit program and the corresponding standards and procedures by which the EPA will approve, oversee, and withdraw approval of state operating permit programs (see 57 FR 32250 (July 21, 1992)). These regulations are codified at 40 Code of Federal Regulations (CFR) part 70. Pursuant to Subchapter V, generally known as title V, states and local permitting authorities developed, and submitted to EPA, programs for issuing operating permits to all major stationary sources and to certain other sources.

The EPA's program review occurs under 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, met the requirements of part 70, EPA granted the program interim approval. If EPA has not fully approved a program by the

expiration of its interim approval period, EPA must establish and implement a federal Operating permit program under 40 CFR part 71.

The state of Wisconsin submitted its title V operating permits program for approval on January 27, 1994. The EPA promulgated interim approval of the Wisconsin title V program on March 6, 1995 (60 FR 12128), finding that Wisconsin's program substantially, but not fully, met the requirements of title V and part 70 and identifying certain deficiencies that Wisconsin would need to correct. The interim approved program became effective on April 5, 1995. Subsequently, EPA extended Wisconsin's title V interim approval period on several occasions, most recently to December 1, 2001 (65 FR 32036).

Wisconsin submitted revisions to its title V program for EPA approval on March 28, 2001, and submitted supplemental packages on September 5, 2001 and September 17, 2001. The submittals included corrections to the deficiencies identified in the March 6, 1995 interim approval action and also included additional program revisions and updates. Based on the interim approval corrections contained in the submittals, EPA proposed full approval for the Wisconsin title V program on October 30, 2001 (66 FR 54734). The EPA received no public comments on the proposal. The EPA is taking final action to grant full approval to the Wisconsin title V program.

What Is Involved in This Final Action?

The EPA is granting full approval of the operating permit program submitted by Wisconsin based on the interim approval corrections submitted on March 28, 2001, and supplemental packages submitted September 5, 2001 and September 17, 2001. These revisions satisfactorily address the program deficiencies identified in EPA's March 6, 1995 interim approval rulemaking.

On May 22, 2000, EPA promulgated a rulemaking that extended the interim approval period of 86 operating permit programs until December 1, 2001 (65 FR 32035). The action was subsequently challenged by the Sierra Club and the New York Public Interest Research Group. In settling the litigation, EPA agreed to publish a notice in the **Federal Register** that would alert the public that they may identify and bring to EPA's attention alleged programmatic and/or implementation deficiencies in title V programs. In turn, EPA would respond to the public's allegations within specified time periods, if the comments were made within 90 days of

publication of the **Federal Register** notice.

The EPA received one timely comment letter pertaining to the Wisconsin title V program. As stated in the **Federal Register** notice published on October 30, 2001 proposing to fully approve Wisconsin's operating permit program, EPA takes no action on those comments in today's action. Rather, EPA expects to respond by December 1, 2001 to timely public comments on Wisconsin's program and other programs that have obtained interim approval, and by April 1, 2002 to timely comments on fully approved programs. Consistent with these time frames, EPA also will publish a notice of deficiency (NOD) if EPA determines that a deficiency exists, or will notify the commenter in writing to explain the reasons for not making a finding of deficiency. An NOD will not necessarily be limited to deficiencies identified by citizens and may include any deficiencies that EPA has identified through its program oversight. Furthermore, in the future, EPA may issue an additional NOD if EPA or a citizen identifies other deficiencies. EPA Region 5 will post its response letters on the Internet at <http://yosemite.epa.gov/r5/ardcorre.nsf/Title+V+Program+Comments>. EPA Region 5 includes the states of Michigan, Minnesota, Illinois, Indiana, Ohio, and Wisconsin. EPA will also publish a national notice of availability in the **Federal Register** notifying the public that EPA has responded in writing to the commenters and explaining how the public may obtain a copy of EPA's responses.

Administrative Requirements

A. What Are the Administrative Requirements for This Action?

Under Executive Order 12866, "Regulatory Planning and Review" (58 FR 51735, October 4, 1993), this final approval is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves state law as meeting federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this final approval will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601

et seq.). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain an unfunded mandate nor does it significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4).

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). This 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 Act.

This final approval also is not subject to Executive Order 13045, "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), 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 currently valid OMB control number.

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTA), 15 U.S.C. 272 note, requires federal agencies to use technical standards that are developed or adopted by voluntary consensus to carry out policy objectives, so long as such standards are not inconsistent with applicable law or otherwise impracticable. In reviewing state

operating permit programs submitted pursuant to title V of the Act, EPA will approve state programs provided that they meet the requirements of the Act and EPA's regulations codified at 40 CFR part 70. Absent a prior existing requirement for the state to use voluntary consensus standards, EPA has no authority to disapprove a state operating permit program for failure to use such standards, and it would thus be inconsistent with applicable law for EPA to use voluntary consensus standards in place of a state program that otherwise satisfies the provisions of the Act. Therefore, the requirements of section 12(d) of the NTTA do not apply.

The Congressional Review Act, 5 U.S.C. 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. 804(2). This rule will be effective November 30, 2001.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by February 4, 2002. 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) of the Act.)

B. What Is the Effective Date of EPA's Full Approval of Wisconsin's Title V Program?

The EPA's approval of Wisconsin's title V program is effective on November 30, 2001. Pursuant to section 502(h) of the Act, the effective date of a permitting program approved under title V is the date of approval by the Administrator or her delegatee. Furthermore, the good cause exception under the Administrative Procedure Act (APA) allows EPA to make the full approval of the state's program

immediately effective. In relevant part, the APA provides that publication of "a substantive rule shall be made not less than 30 days before its effective date, except— * * * (3) as otherwise provided by the agency for good cause found and published with the rule." 5 U.S.C. § 553(d)(3). Section 553(b)(3)(B) of the APA provides that good cause may be supported by an agency determination that a delay in the effective date is impracticable, unnecessary, or contrary to the public interest. The EPA finds that it is necessary and in the public interest to make this action effective sooner than 30 days following publication. In this case, EPA believes that it is in the public interest for the program to take effect before December 1, 2001. The EPA's interim approval of Wisconsin's prior program expires on December 1, 2001. In the absence of this full approval of Wisconsin's amended program taking effect on November 30, the federal program under 40 CFR part 71 would automatically take effect in Wisconsin and would remain in place until the effective date of the fully-approved state program. The EPA believes it is in the public interest for sources, the public and Wisconsin to avoid any gap in coverage of the state program, as such a gap could cause confusion regarding permitting obligations. Furthermore, a delay in the effective date is unnecessary because WDNR has been administering the title V permit program for over five years under an interim approval. Through this action, EPA is approving a few revisions to the existing and currently operational program. The change from the interim approved program which substantially met the part 70 requirements, to the fully approved program is relatively minor, in particular if compared to the changes between a state-established and administered program and the federal program.

C. What Is the Scope of EPA's Full Approval?

In Wisconsin's final interim approval (60 FR 12128, March 6, 1995), EPA did not approve the state's program in Indian country. Similarly, this final full approval, which only addresses the state's interim approval corrections, also does not approve Wisconsin's operating permit program in Indian country. To date, no tribal government in Wisconsin has applied to EPA for approval to administer a title V program in Indian country within the state. The EPA regulations at 40 CFR part 49 govern how eligible Indian tribes may seek approval from EPA to implement a title V program on Indian reservations and in

non-reservation areas over which the tribe has jurisdiction. The EPA's part 71 regulations govern the issuance of federal operating permits in Indian country. The EPA's authority to issue permits in Indian country was challenged in *Michigan v. EPA*, (D.C. Cir. No. 99-1151). On October 30, 2001, the court issued its decision in the case, vacating a provision that would have allowed EPA to treat areas over which EPA determines there is a question regarding the area's status as if it is Indian country, and remanding to EPA for further proceedings. The EPA will respond to the court's remand and explain EPA's approach for further implementation of part 71 in Indian country in a future action.

List of Subjects in Part 70

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

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

Dated: November 27, 2001.

Thomas V. Skinner,
Regional Administrator, Region V.

40 CFR part 70 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 Wisconsin to read as follows:

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

* * * * *

Wisconsin

(a)(1) Department of Natural Resources: Submitted on January 27, 1994; interim approval effective on April 5, 1995; interim approval expires December 1, 2001.

(2) Department of Natural Resources: Interim approval corrections submitted on March 28, 2001, September 5, 2001, and September 17, 2001; submittals adequately address the conditions of the interim approval which expires on December 1, 2001. Based on these corrections, Wisconsin is hereby granted final full approval effective on November 30, 2001.

(b) [Reserved]

* * * * *

[FR Doc. 01-29964 Filed 12-3-01; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 70

[DC-T5-2001-01a; FRL-7112-3]

Clean Air Act Full Approval of Operating Permit Program; District of Columbia

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; final full approval.

SUMMARY: EPA is taking final action to grant full approval of the District of Columbia's (the District's) operating permit program. The District's operating permit program was submitted in response to the Clean Air Act (CAA) Amendments of 1990 that required each State to develop, and submit to EPA, a program for issuing operating permits to all major stationary sources and to certain other sources within the State's jurisdiction. The EPA granted final interim approval of the District of Columbia's operating permit program on August 7, 1995. The District amended its operating permit program to address deficiencies identified in the interim approval action and this final rule approves those amendments. The EPA proposed full approval of the District of Columbia's operating permit program in the **Federal Register** on October 16, 2001. This final rulemaking action summarizes the adverse comments submitted on the October 16, 2001 proposal, provides EPA's responses, and promulgates final full approval of the District of Columbia's operating permit program.

DATES: This rule is effective on November 30, 2001.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103 and the District of Columbia Department of Public Health, Air Quality Division, 51 N Street, NE., Washington, DC 20002.

FOR FURTHER INFORMATION CONTACT: Pares R. Pandya, Permits and Technical Assessment Branch at (215) 814-2167 or by e-mail at pandya.perry@epa.gov.

SUPPLEMENTARY INFORMATION: On May 21, 2001, August 30, 2001, and September 26, 2001, the District of Columbia submitted amendments to its operating permit program. These amendments are the subject of this document and this section provides additional information on the

amendments by addressing the following questions:

- What is the District's operating permit program?
- Why is EPA taking this action?
- What were the concerns raised by the commenters?
- What action is being taken by EPA?
- What is the effective date of EPA's full approval of the District's operating permit program?
- What is the scope of EPA's full approval?

What Is the District's Operating Permit Program?

The Clean Air Act (CAA or the Act) Amendments of 1990 required all States (including the District) to develop operating permit programs that meet certain federal criteria. When implementing the operating permit programs, the States require certain sources of air pollution to obtain permits that contain all of their applicable requirements under the CAA. The focus of the operating permit program is to improve enforcement by issuing each source a permit that consolidates all of its applicable CAA requirements into a Federally enforceable document. By consolidating all of the applicable requirements for a given air pollution source into an operating permit, the source, the public, and the State environmental agency can more easily understand what CAA requirements apply and how compliance with those requirements is determined.

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 the EPA's implementing regulations. 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 (PM10); those that emit 10 tons per year of any single hazardous air pollutant (HAP) specifically listed under the CAA; 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 (NAAQS) for ozone, carbon monoxide, or particulate matter, major sources are defined by the gravity of the nonattainment classification.

Why Is EPA Taking This Action?

Where a title V operating permit program substantially, but not fully, met the criteria outlined in the implementing regulations codified at 40