

§ 71.1 [Amended]

The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9K dated August 30, 2002 and effective September 16, 2002, is proposed to be amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AEA MD E5 Ridgely, MD [NEW]

Ridgely Airpark

(Lat. 35°58'12" N., long. 75°51'58" W.)

That airspace extending upward from 700 feet above the surface within a 6-mile radius of Ridgely Airpark, excluding that portion that coincides with the Centerville, MD Class E airspace area.

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Issued in Jamaica, New York on December 13, 2002.

Richard J. Ducharme,

Assistant Manager, Air Traffic Division, Eastern Region.

[FR Doc. 03-68 Filed 1-2-03; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY**40 CFR Part 63**

[FRL 7429.2]

RIN 2060-AG99, 2060-AG52, 2060-AG69, 2060-AG67, 2060-AG96, 2060-AH03

National Emission Standards for Hazardous Air Pollutants: Stationary Combustion Turbines, Surface Coating of Metal Cans, and Primary Magnesium Refining

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability of proposed rules and changes to public comment periods.

SUMMARY: This document is to inform the public that the proposed national emission standards for hazardous air pollutants (NESHAP) for Stationary Combustion Turbines, Surface Coating of Metal Cans, and Primary Magnesium Refining have been signed by the Administrator and are scheduled to be published as proposed rules in the **Federal Register** within a few weeks. Copies are available on EPA's Web site. We typically allow a 60-day public comment period after publication of proposed NESHAP in the **Federal Register**; however, we are providing advance notice that when these proposed rules are published in the

Federal Register, the comment period will be 30 days after publication.

FOR FURTHER INFORMATION CONTACT: Mr. Keith W. Barnett, Minerals and Inorganic Chemicals Group, Emission Standards Division (C504-05), U.S. EPA, Research Triangle Park, North Carolina 27711, facsimile number (919) 541-5600, telephone number (919) 541-5605, electronic mail barnett.keith@epa.gov.

SUPPLEMENTARY INFORMATION: An electronic copy of today's notice is available on the Worldwide Web through the Technology Transfer Network (TTN). Following the Assistant Administrator's signature, a copy of this notice will be posted on the TTN's policy and guidance page for newly proposed or promulgated rules at <http://www.epa.gov/ttn/oarpg>. In addition, electronic versions of all these proposed NESHAP that are affected by this notice are also currently available on the TTN at <http://www.epa.gov/ttn/oarpg/new.html>. The TTN provides information and technology exchange in various areas of air pollution control. If more information regarding the TTN is needed, call the TTN HELP line at (919) 541-5384.

In accordance with section 112(e)(1) of the Clean Air Act (CAA), EPA issued a schedule for promulgation of NESHAP that specified that the NESHAP for Stationary Combustion Turbines, Surface Coating of Metal Cans, and Primary Magnesium Refining were to be promulgated as final rules by November 15, 2000. We are now considerably past that date. In addition, the requirements of section 112(j) of the CAA specify that all sources in these source categories must submit permit applications for case-by-case determinations of the maximum achievable emissions reductions of hazardous air pollutants in the absence of a final rule. It is imperative that these proposed rules be finalized as soon as possible to avoid the unnecessary expenditure of resources by affected sources and permitting authorities.

The proposed NESHAP were signed by the Administrator on November 26, 2002, and were available on the TTN on the same day. Therefore, the proposed NESHAP have been widely available to the public since that time. We do not anticipate that any of the proposed NESHAP will be published in the **Federal Register** prior to December 26, 2002. If we allow a comment period of 30 days from actual publication in the **Federal Register**, the proposed NESHAP will still have been widely available to the public for 60 days or more.

Dated: December 20, 2002.

Jeffrey R. Holmstead,

Assistant Administrator for Air and Radiation.

[FR Doc. 02-32718 Filed 12-31-02; 10:34 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY**40 CFR Part 281**

[FRL-7434-2]

Pennsylvania Approval of Underground Storage Tank Program

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule; notice of tentative determination on Pennsylvania's application for approval of its Underground Storage Tank Program, public hearing and public comment period.

SUMMARY: The Commonwealth of Pennsylvania (Commonwealth or State) has applied for approval of its underground storage tank (UST) program under subtitle I of the Resource Conservation and Recovery Act (RCRA). The Environmental Protection Agency (EPA) has reviewed the State's application and has made the tentative determination that the State's UST program satisfies all of the requirements necessary to qualify for approval. The State's application for approval is available for public review and comment. A public hearing will be held to solicit comments on the application unless insufficient public interest is expressed.

DATES: Unless insufficient public interest is expressed in holding a hearing, a public hearing will be held on February 19, 2003. However, EPA reserves the right to cancel the public hearing if sufficient public interest in a hearing is not communicated to EPA in writing by February 13, 2003. EPA will determine by February 14, 2003, whether there is sufficient interest to warrant a public hearing. The State will participate in any public hearing held by EPA on this subject. All written comments on the State's application for program approval must be received by February 13, 2003.

ADDRESSES: Copies of the State's application for program approval are available between 8:30 a.m. to 4 p.m. at the following locations for inspection and copying:

Location: Pennsylvania Department of Environmental Protection, Division of

Storage Tanks, Rachel Carson State Office Building, 400 Market Street, Harrisburg, Pennsylvania.

Contact: James C. Adair, Telephone: (717) 772-5551.

Location: Pennsylvania Department of Environmental Protection, Southwest Regional Office, Central Services, 400 Waterfront Drive, Pittsburgh, Pennsylvania.

Contact: Edward Duval, Telephone: (412) 442-4000.

Location: United State Environmental Protection Agency, Region III, Library, 1650 Arch Street, Philadelphia, Pennsylvania. Telephone: (215) 814-5254.

Written comments should be sent to Carletta Parlin, Program Manager, RCRA State Programs Branch, Waste & Chemicals Management Division (3WC21), U.S. EPA Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103-2029, telephone: (215) 814-3380. Comments may also be submitted electronically through the Internet to: parlin.carletta@epamail.epa.gov or by facsimile at (215) 814-3163.

Unless insufficient public interest is expressed, EPA will hold a public hearing on the State's application for program approval on February 19, 2003, at 7 p.m. at the United States Environmental Protection Agency, 1650 Arch Street, 2nd Floor, Joan Goodis Room, Philadelphia, Pennsylvania.

It is EPA's policy to make reasonable accommodation to persons with disabilities wishing to participate in the Agency's programs and activities, pursuant to the Rehabilitation Act of 1973, 29 U.S.C. 791, *et seq.* Any request for accommodation should be made to Carletta Parlin, preferably a minimum of two weeks in advance of the public hearing date, so that EPA will have sufficient time to process the request.

Anyone who wishes to learn whether or not the public hearing on the Commonwealth's application has been cancelled should telephone the EPA Program Manager, Carletta Parlin, at (215) 814-3380 on February 14, 2003.

FOR FURTHER INFORMATION CONTACT: Carletta Parlin, RCRA State Programs Branch (3WC21), U.S. EPA Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103-2029, telephone: (215) 814-3380. Also, a copy of a fact sheet on today's action is available on the EPA Web Site at www.epa.gov/reg3wcmd/public_notices.htm.

SUPPLEMENTARY INFORMATION:

A. Background

Section 9004 of the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. 6991c, authorizes EPA to

approve state underground storage tank programs to operate in lieu of the Federal UST program. EPA may approve a State program if the Agency finds pursuant to RCRA section 9004(b), 42 U.S.C. 6991c(b), that the state's program is "no less stringent" than the Federal program in all seven elements set forth at RCRA section 9004(a) (1) through (7), 42 U.S.C. 6991c(a) (1) through (7), meets the notification requirements of RCRA section 9004(a)(8), 42 U.S.C. 6991c(a)(8), and also provides for adequate enforcement of compliance with UST standards in accordance with RCRA section 9004(a), 42 U.S.C. 6991c(a).

B. Pennsylvania

The Pennsylvania Department of Environmental Protection (PADEP) is the implementing agency for UST activities in the State. PADEP's Underground Storage Tank Program is dedicating a substantial effort to prevent, control and remediate UST-related contamination. PADEP's Underground Storage Tank Program maintains a strong field presence and works closely with the regulated community to ensure compliance with regulatory requirements.

C. Where Are the State Rules Different From the Federal Rules?

The Commonwealth's regulations contain several requirements that are broader in scope than the Federal program which are not part of the program being authorized by today's action. EPA cannot enforce these broader in scope requirements. Although compliance with these provisions is required under Commonwealth law, they are not RCRA requirements. Such provisions include, but are not limited to, the following:

(1) Unlike the Federal program, Pennsylvania's program includes a definition of, and imposes obligations on, a "responsible party." To the extent that Pennsylvania's definition of a "responsible party" includes entities that go beyond the owner and operator of an UST, it is in this respect, broader in scope than the Federal program.

(2) Unlike the Federal program, the Commonwealth's statute establishes a certification program for installers of underground storage tanks. In this respect, the Commonwealth's program is broader in scope than the Federal program.

(3) Pennsylvania's regulations require a person to obtain a "Site Specific Installation Permit" from PADEP prior to installing a field-constructed UST. Additionally, these systems need a "General Operating Permit." Because the Federal program does not require

any type of permit for tank installations or operations, the Commonwealth's program, in this respect, is broader in scope.

(4) Under Pennsylvania's regulations, underground storage tank owners or operators must have their underground storage tank facilities inspected by a state-certified inspector at the frequency established by Pennsylvania's regulations. The Federal regulations do not require third-party inspections, nor do they provide for a certified inspector program; therefore, in this regard, the Commonwealth's program is broader in scope than the Federal program.

(5) Unlike the Federal program, section 1311 ("Presumption") of Pennsylvania's Storage Tank and Spill Prevention Act establishes a rebuttable presumption that a person who owns or operates a storage tank shall be liable, without proof of fault, for all damages, contamination or pollution within 2,500 feet of the perimeter of the site of an UST that contained a regulated substance of the type which caused the damage, contamination or pollution. This provision of Pennsylvania's program is broader in scope than the Federal program.

The Pennsylvania Department of Environmental Protection submitted to EPA a final application for approval on November 25, 2002. Prior to its submission, the State provided an opportunity for public notice and comment in the development of its underground storage tank program, as required by 40 CFR 281.50(b). EPA has reviewed the State's application, and has tentatively determined that the State's program meets all of the requirements necessary to qualify for final approval. However, EPA intends to review all timely public comments prior to making a final decision on whether to grant approval to the State to operate its program in lieu of the Federal program.

In accordance with section 9004 of RCRA, 42 U.S.C. 6991c, and 40 CFR 281.50(e), the Agency will hold a public hearing on its tentative determination on February 19, 2003, at 7 p.m. at the United States Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania, unless insufficient public interest is expressed. The public may also submit written comments on EPA's tentative determination until February 13, 2003. Copies of the State's application are available for inspection and copying at the locations indicated in the **ADDRESSES** section of this document.

EPA will consider all public comments on its tentative determination received at the public hearing, if a

hearing is held, and during the public comment period. Issues raised by those comments may be the basis for a decision to deny approval to the State. EPA will give notice of its final decision in the **Federal Register**; the notice will include a summary of the reasons for the final determination and a response to all significant comments.

Statutory and Executive Order Reviews

This proposed rule will only approve State underground storage tank requirements pursuant to RCRA section 9004 and imposes no requirements other than those imposed by State law (see **SUPPLEMENTARY INFORMATION**, section A. Background). Therefore, this proposed rule complies with applicable executive orders and statutory provisions as follows:

1. *Executive Order 12866: Regulatory Planning Review*—The Office of Management and Budget has exempted this proposed rule from its review under Executive Order 12866. 2. *Paperwork Reduction Act*—This proposed rule will not impose an information collection burden under the Paperwork Reduction Act. 3. *Regulatory Flexibility Act*—After considering the economic impacts of today's proposed rule on small entities under the Regulatory Flexibility Act, I certify that this proposed rule will not have a significant economic impact on a substantial number of small entities. 4. *Unfunded Mandates Reform Act*—Because this proposed 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 any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act. 5. *Executive Order 13132: Federalism*—Executive Order 13132 does not apply to this proposed rule because it will not have federalism implications (*i.e.*, 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). 6. *Executive Order 13175: Consultation and Coordination with Indian Tribal Governments*—Executive Order 13175 does not apply to this proposed rule because it will not have tribal implications (*i.e.*, substantial direct effects 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). 7. *Executive Order 13045: Protection of Children from Environmental Health &*

Safety Risks—This proposed rule is not subject to Executive Order 13045 because it is not economically significant and it is not based on health or safety risks. 8. *Executive Order 13211: Actions that Significantly Affect Energy Supply, Distribution, or Use*—This proposed rule is not subject to Executive Order 13211 because it is not a significant regulatory action as defined in Executive Order 12866. 9. *National Technology Transfer Advancement Act*—EPA approves State programs as long as they meet criteria required by RCRA, so it would be inconsistent with applicable law for EPA, in its review of a State program, to require the use of any particular voluntary consensus standard in place of another standard that meets the requirements of RCRA. Thus, section 12(d) of the National Technology Transfer and Advance Act does not apply to this proposed rule.

List of Subjects in 40 CFR Part 281

Environmental protection, Administrative practice and procedures, Hazardous substances, Intergovernmental relations, Reporting and recordkeeping requirements.

Authority: This document is issued under the authority of section 9004 of the Resource Conservation and Recovery Act as amended 42 U.S.C. 6991c.

Dated: December 20, 2002.

Donald S. Welsh,

Regional Administrator, Region III.

[FR Doc. 03-34 Filed 1-2-03; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018-AI51

Endangered and Threatened Wildlife and Plants; Withdrawal of the Proposed Rule To List the Flat-tailed Horned Lizard as Threatened

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; withdrawal.

SUMMARY: We, the Fish and Wildlife Service (Service), have determined that the action of listing the flat-tailed horned lizard (*Phrynosoma mcallii*) as threatened, pursuant to the Endangered Species Act (Act) of 1973, as amended, is not warranted, and we consequently withdraw our proposed rule. We have made this determination because threats to the species as identified in the proposed rule are not as significant as

earlier believed, and current available data do not indicate that the threats to the species and its habitat, as analyzed under the five listing factors described in section 4(a)(1) of the Act, are likely to endanger the species in the foreseeable future throughout all or a significant portion of its range.

ADDRESSES: Supporting documentation for this rulemaking is available for public inspection, by appointment, during normal business hours at the U.S. Fish and Wildlife Service, Carlsbad Fish and Wildlife Office, 6010 Hidden Valley Road, Carlsbad, CA 92009.

FOR FURTHER INFORMATION CONTACT: Jim Bartel, Field Supervisor, at the above address (telephone, 760-431-9440, or fax, 760-431-9618).

SUPPLEMENTARY INFORMATION:

Background

The flat-tailed horned lizard (*Phrynosoma mcallii*) is a small phrynosomatid lizard that reaches a maximum adult body length of 8.4 centimeters (cm) (3.3 inches [in]) (Muth and Fisher 1992). The flat-tailed horned lizard has a dorso-ventrally flattened body; long, broad flattened tail; and dagger-like head spines common to horned lizards. The species is cryptic in color, ranging from pale gray to light rust brown dorsally, and white or cream ventrally. It can be distinguished from the only other horned lizard known to occur within its range, the desert horned lizard (*Phrynosoma platyrhinos*), by its dark vertebral stripe, two rows of fringed scales on each side of the body, lack of external ear openings, and unmarked white ventral surface in most individuals (Foreman 1997). Apparent hybrids between the two species, exhibiting a mix of morphological characteristics, have been observed in the vicinity of Ocotillo, California (Stebbins 1985), and southeast of Yuma, Arizona (K. Young, Utah State University, pers. comm. 2002).

The flat-tailed horned lizard is endemic (restricted) to the Sonoran Desert in southern California, southwestern Arizona, and adjoining portions of Sonora and Baja California, Mexico (Turner and Medica 1982). Within California, the flat-tailed horned lizard ranges from the Coachella Valley, the northernmost extent of its range, south along both sides of the Salton Sea and Imperial Valley. On the west side of the Salton Sea and Imperial Valley, the species ranges into the Borrego Valley, Ocotillo Wells area, West Mesa, and the Yuha Desert (Yuha Basin). On the east side of Imperial Valley, the species occurs in the vicinity of the Dos Palmas Bureau of Land Management (BLM)