ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 70

[FRL–7223–5]

Clean Air Act Approval of Revisions to Operating Permits Program in Oregon

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving, as a revision to Oregon's title V air operating permits program, a 1999 statute addressing the State's requirements for judicial standing to challenge State-issued title V permits. In a Notice of Deficiency published on November 30, 1998 (63 FR 65783), EPA notified Oregon of EPA's finding that the State's requirements for judicial standing did not meet minimum Federal requirements for program approval. This program revision resolves the deficiency identified in the Notice of Deficiency. EPA is also approving, as a revision to Oregon's title V air operating permits program, changes to Oregon's title V regulations made in 1999 that reorganize and renumber the regulations and increase title V fees.

DATES: This direct final rule will be effective August 9, 2002, unless EPA receives adverse comment by July 10, 2002. If adverse comments are received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Written comments should be mailed to Denise Baker, Environmental Protection Specialist, Office of Air Quality, Mailcode OAQ–107, U.S. Environmental Protection Agency, Region 10, 1200 Sixth Avenue, Seattle, Washington 98101. Copies of Oregon's submittal, and other supporting information used in developing this action, are available for inspection during normal business hours at the U.S. Environmental Protection Agency, Region 10, 1200 Sixth Avenue, Seattle, Washington 98101. Interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the visiting day.

FOR FURTHER INFORMATION CONTACT: Denise Baker, Office of Air Quality, Mailcode, OAQ–107, U.S. Environmental Protection Agency, Region 10, 1200 Sixth Avenue, Seattle, Washington 98101, (206) 553–8087.

SUPPLEMENTARY INFORMATION:

I. Background

The Clean Air Act (CAA) Amendments of 1990 required all State and local permitting authorities to develop operating permits programs that meet the requirements of 40 CFR part 70. EPA gave full approval to Oregon's title V operating permits program in 1995. See 60 FR 50106 (September 28, 1995).

A. Representational Standing

Among the requirements that States must meet for full approval of a title V operating permits program is a requirement that the State program include procedures for ''judicial review in State court of the final permit action by the applicant, any person who participated in the public comment process, and any other person who could obtain judicial review of that action under applicable law.'' CAA section 502(b)(6). This requirement is echoed in the part 70 regulations. 40 CFR 70.4(b)(3)(x). EPA has interpreted this requirement to mean that a State must provide the same opportunity for judicial review of title V permitting actions as would be available in Federal court under Article III of the U.S. Constitution. *See Commonwealth of Virginia* v. *Browner,* 80 F.3rd 869 (4th Cir., 1996) (holding EPA's interpretation as ''both authorized by Congress and reasonable'').

Article III generally requires that, to obtain judicial review, a person must suffer an actual or threatened injury. However, an organization that does not suffer actual or threatened injury to itself may obtain judicial review on behalf of its members when: (1) the members would otherwise have standing to sue in their own right; (2) the interests the organization seeks to protect are germane to its purpose; and (3) neither the claim asserted, nor the relief requested, requires the participation of individual members in the lawsuit. In such a case, the organization itself need not show actual or threatened injury. *See Hunt* v. *Washington Apple Advertising Comm'n,* 432 U.S. 333, 341–345 (1977). This exception to the Article III requirement for actual or threatened injury is known as ''representational standing.''

At the time EPA gave Oregon full approval to Oregon's operating permits program in 1995, EPA had determined that Oregon's requirements for judicial review met the requirements of title V and part 70 with respect to representational standing. On July 18, 1996, the Oregon Supreme Court issued a decision in *Local 290, Plumbers and Pipefitters* v. *Oregon Department of Environmental Quality,* 323 Or. 559, 919 P. 2d 1168 (''Local 290''). Interpreting the language of the Oregon Administrative Procedures Act (APA), the Court held that this statute requires that the person seeking judicial review under that statute must be aggrieved (which, under Oregon law, is roughly synonymous with having suffered actual or threatened injury), and that representational standing is therefore not allowed. The Oregon APA governs judicial review for all State environmental permits, including title V permits. Based on this 1996 judicial decision restricting access to judicial review of title V permits, EPA determined that Oregon's program no longer met the program approval requirements of title V and 40 CFR part 70.

Part 70 provides that EPA may withdraw a part 70 program approval, in whole or in part, whenever the approved program no longer complies with the requirements of part 70 and the permitting authority fails to take corrective action. 40 CFR 70.10(c)(1). This section goes on to list a number of potential bases for program withdrawal, including the case where a court has struck down or limited State authorities to administer the program. 40 CFR 70.10(c)(1)(I)(B). Section 70.10(b) sets forth the procedures for program withdrawal, and requires as a prerequisite to withdrawal that the permitting authority be notified of any finding of deficiency by EPA and that the document be published in the **Federal Register**. If the permitting authority has not taken ''significant action to assure adequate administration and enforcement of the program'' within 90 days after publication of a notice of deficiency, EPA may withdraw the State program, apply any of the sanctions specified in section 179(b) of the Act, or promulgate, administer, and enforce a Federal title V program. 40 CFR 70.10(b)(2). Section 70.10(b)(3) provides that if a State has not corrected the deficiency within 18 months of the finding of deficiency, EPA will apply the sanctions under section 179(b) of the Act, in accordance with section 179(a) of the Act. Upon EPA action, the sanctions will go into effect unless the State has corrected the deficiencies identified in the notice within 18 months.[1] In addition, section 70.10(b)(4) provides that, if the State has not corrected the deficiency within 18 months after the date of notice of deficiency, EPA must promulgate,

[1] EPA is developing an Order of Sanctions rule to determine which sanction applies at the end of this 18 month period.

administer, and enforce a whole or partial program within 2 years of the date of the finding.

In a Notice of Deficiency published on November 30, 1998 (63 FR 65783), EPA notified Oregon of EPA's finding that the State's requirements for judicial standing did not meet minimum Federal requirements for program approval. In response to the Notice of Deficiency, the Oregon Legislature enacted Oregon Laws 1999, chapter 511 (HB 2180), during the 1999 legislative session. That provision, codified at Oregon Revised Statute (ORS) 468.067, states that an association or organization has standing to seek judicial review of any final order issued in a title V permit proceeding if: (a) one or more members is adversely affected or aggrieved by the order; (b) the interests that the association or organization seeks to protect are germane to the purpose of the group; and (c) the nature of the claim and requested relief do not require that the adversely affected or aggrieved members of the association or organization participate in the judicial review proceedings. Oregon submitted this statute as a revision to its title V program on March 15, 2000, less than 16 months after EPA issued the Notice of Deficiency. The qualifications in the Oregon statute parallel Federal law on representational standing. Therefore, EPA has determined that the statutory change meets the requirements of title V and part 70 and adequately addresses the deficiency identified in the Notice of Deficiency.

B. 1999 Reorganization and Renumbering of Title V Regulations

In its March 15, 2000, submittal, Oregon also transmitted to EPA revisions to Oregon's air quality regulations promulgated in 1999 relating to Oregon's title V program and asked that EPA approve these revisions as a revision to Oregon's title V program. The 1999 revisions to Oregon's regulations reorganize and renumber all of Oregon's air quality regulations in order to increase the efficiency of Oregon's air quality permitting and compliance process. These revisions are nonsubstantive in nature. EPA is therefore proposing to approve these revisions as a revision to Oregon's title V air operating permits program.

C. 1999 Changes to Title V Fee Provisions

Oregon's March 15, 2000, submittal also transmitted to EPA revisions to Oregon's air quality regulations promulgated in 1999 relating to fees for title V sources. The 1999 revisions increase Oregon's title V operating permit program fees by the Consumer Price Index. In addition, at the time EPA granted Oregon full approval, only major sources were required to obtain title V permits, and Oregon therefore required only major sources to pay title V fees. Since that time, certain non-major sources (landfills) are required to obtain title V permits. Oregon has therefore revised its fee rules to allow Oregon to assess title V fees to all sources required to obtain title V permits. EPA is approving these 1999 revisions to Oregon's rules for assessing title V fees as meeting the requirements of part 70.

D. Oregon Environmental Audit Statute

EPA did not initially take action on Oregon's March 15, 2000, submittal because of EPA's concern that Oregon's Audit Privilege Act, Oregon Revised Statute 468.963 (1993), interfered with Oregon's ability to meet federal requirements for approval of EPA programs, including title V. During the 2001 Legislative Session, Oregon Legislature passed House Bill 3536, which amended ORS 468.963 to ensure that Audit Privilege Law does not apply to criminal investigations or proceedings. These statutory amendments became effective January 1, 2002. With these amendments, the Oregon Audit Privilege law no longer interferes with the State's ability to meet the Federal requirements of title V.

II. Final Action

EPA is approving, as a revision to Oregon's title V air operating permits program, ORS 468.067, a 1999 statute addressing the State's requirements for representational standing to challenge State-issued title V permits in judicial proceedings. EPA has determined that the statutory change made by Oregon in 1999 meets the representational standing requirements of title V and part 70 and adequately addresses the deficiency identified in the Notice of Deficiency published on November 30, 1998 (63 FR 65783). EPA is also approving, as a revision to Oregon's title V air operating permits program, changes to Oregon's title V regulations made in 1999 that reorganize and renumber the regulations and increase title V fees.

Consistent with EPA's action granting Oregon full approval, 60 FR 50107, this approval does not extend to ''Indian Country'', as defined in 18 U.S.C. 151. *See* 64 FR 8247, 8250–8251 (February 19, 1999); 59 FR 42552, 42554 (August 18, 1994).

III. 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. 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 rule 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.*). 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 action 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 action 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 action, 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 significantly 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.

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.

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 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).

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 August 9, 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* CAA section 307(b)(2).

List of Subjects in 40 CFR Part 70

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

Dated: May 22, 2002.

Elbert Moore,

Acting Regional Administrator, Region 10.

40 CFR part 70, chapter I, 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. In appendix A to Part 70, the entry for Oregon is amended by revising paragraph (a) to read as follows:

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

* * * * *

Oregon

(a) Oregon Department of Environmental Quality: submitted on November 15, 1993, as amended on November 15, 1994 and June 30 1995; full approval effective on November 27, 1995; revisions submitted on March 15, 2000; approval of revisions effective on August 9, 2002.

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[FR Doc. 02–13972 Filed 6–7–02; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 15

[ET Docket No. 98–153; FCC 02–48]

Ultra-Wideband Transmission Systems

AGENCY: Federal Communications Commission.

ACTION: Final rule; correction.

SUMMARY: On May 16, 2002 (67 FR 34852), the Commission published final rules in the *First Report and Order* which revised the Commission's rules to permit the marketing and operation of certain types of new products incorporating ultra-wideband technology. This document contains corrections to those rules.

DATES: Effective July 15, 2002.

FOR FURTHER INFORMATION CONTACT: John A. Reed, Office of Engineering and Technology, (202) 418–2455.

SUPPLEMENTARY INFORMATION: The Federal Communications Commission published a document revising part 15 in the **Federal Register** of May 16, 2002 (67 FR 34852). This document corrects the **Federal Register** as it appeared. In rule FR Doc. 02–11929 published on May 16, 2002 (67 FR 34852). The Commission is correcting a typographical error in § 15.517 resulting in the incorrect designation of paragraphs (e) through (g) and an incorrect reference in paragraph (e). We also correct a typographical error in the table in § 15.519(c) of the rules.

In rule FR Doc. No. 02–11929 published on May 16, 2002 (65 FR 34852) make the following corrections:

1. On page 34858 in the third column, and on page 34859 in the first column, in § 15.517, paragraphs (e), (f), and (g) are correctly designated as paragraphs (d), (e), and (f) and the reference in newly designated paragraph (d) introductory text is corrected to read as ''paragraph (c).''

2. On page 34859 in the second column, in § 15.519 correct the table in paragraph (c) to read as follows:

§ 15.519 [Corrected]

* * * * *

(c) * * *

Frequency in MHz	EIRP in dBm
960–1610	−75.3
1610–1990	−63.3
1990–3100	−61.3
3100–10600	−41.3
Above 10600	−61.3

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Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 02–14435 Filed 6–7–02; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 020402077–2077–01; I.D. 052802F]

Fisheries Off West Coast States and in the Western Pacific; Pacific Coast Groundfish Fishery; Whiting Closure for the Mothership Sector

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Fishing restrictions; request for comments.

SUMMARY: NMFS announces closure of the 2002 mothership fishery for Pacific