

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 70

[FRL-6128-9]

Extension of Operating Permits Program

Interim Approval Expiration Dates

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: This action revises Appendix A of the operating permits regulations codified in part 70 of chapter I of title 40 of the Code of Federal Regulations. Those regulations were originally promulgated on July 21, 1992. These revisions to Appendix A extend up to June 1, 2000 all operating permits program interim approvals. This action will allow the program revisions necessary to correct interim approval deficiencies to be combined with program revisions necessary to implement the revisions to part 70 that are anticipated to be promulgated in December 1999.

DATES: The direct final revisions to Appendix A will become effective on [insert date 45 days from publication]. The direct final revisions will become effective without further notice unless EPA receives relevant adverse comments on or before [30 days from publication]. Should the Agency receive such comments, it will publish a timely withdrawal informing the public that this rule will not take effect.

For those programs whose interim approval dates are amended by this action, interim approval will expire on June 1, 2000.

ADDRESSES: Comments. Comments should be submitted (in duplicate, if possible) to: Air and Radiation Docket and Information Center (6102), Attention Docket Number A-93-50 (see docket section below), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460. The EPA requests that a separate copy also be sent to the contact person listed below.

Docket. 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 5:30 p.m., Monday through Friday, at the address listed above, or by calling (202) 260-7548. The Docket is located at the above address in Room M-1500, Waterside Mall (ground floor). A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Roger Powell, 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 (telephone 919-541-5331, e-mail: powell.roger@epa.gov).

SUPPLEMENTARY INFORMATION:

A companion proposal to this direct final rule is being published in today's Federal Register and is identical to this direct final rule. Any comments on the revisions to Appendix A of part 70 should address that proposal. If relevant adverse comments are timely received by the date specified in this action, EPA will publish a document informing the public that this rule will not take effect and the comments will be addressed in a subsequent final rule based on the proposed rule. If no relevant adverse comments on any provision of this direct final rule are timely filed, then the entire direct final rule will become effective on [insert date 45 days from date of publication], and no further action will be taken on the companion proposal published today.

I. Background

On August 29, 1994 (59 FR 44460) and August 31, 1995 (60 FR 45530), EPA proposed revisions to the part 70 operating permits regulations. Primarily, the proposals addressed changes to the system for revising permits. A number of other less detailed proposed changes were also included. 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 in December 1999.

Contemporaneous with permitting authorities revising their programs 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 action. 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). The Agency also proposed ". . . to exercise its discretion under proposed § 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).

II. Discussion

A. Purpose of Interim Approval Extensions. On October 31, 1996 (61 FR 56368), EPA amended §70.4(d)(2) to allow the Administrator to grant extensions to interim approvals so permitting authorities could take advantage of

the opportunity to combine program revisions as proposed August 31, 1995. 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.

Due to controversial issues yet to be resolved, the revisions to part 70 have been delayed beyond the date contemplated by the August 31, 1995 proposal. For permitting authorities to be able to combine program revisions, an agency's program interim approval cannot expire. The Agency must therefore extend any interim approval that may expire before the part 70 revisions are promulgated.

B. Original Action. In the original October 31, 1996 action addressing this subject, 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) were extended by 10 months. This action was to encourage permitting authorities to proceed with program revisions within their interim approval timeframes, rather than wait for the revised part 70. The June 1996 memorandum is in the docket for this action.

The reason for this automatic extension was 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 the June 1996 memorandum was issued. The additional 10-month extension to all interim approvals offset any time lost in permitting authority efforts to develop program revisions addressing interim approval deficiencies. This 10-month extension was not applicable to

application submittal dates for the second group of sources covered by a source-category limited interim approval.¹

C. Process for Combining Program Revisions. As noted in the June 1996 memorandum, where the permitting authority applies for it after part 70 is revised, EPA may grant a longer extension to an interim approval so that the program revision to correct interim approval program deficiencies may be combined with the program revision to meet the revised 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 to adopt new interim approval deadlines for all programs for which such an application has been made.

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 both the revised part 70 and the interim approval deficiencies will

¹Several 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 permit applications during a period beginning on the original expiration date of a State's interim approval as opposed to any extension of that date.

be 6 months prior to the interim approval expiration dates which will be set through a future rulemaking.

The longer extension allowing combining of program revisions to meet both the revised part 70 and interim approval deficiencies 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. Interim Approval Extensions

The June 13, 1996 memorandum and the October 31, 1996 action anticipated promulgation of the part 70 revisions no later than early 1997. As a result of not being able to promulgate the revisions to part 70 by early 1997, on August 29, 1997, EPA extended interim approvals a second time (62 FR 45732). In that action, EPA anticipated the part 70 revisions would be promulgated by mid-summer 1998 and thus extended all interim approvals that would have expired before October 1, 1998 up until that date. This would have provided the necessary time for agencies to apply to combine their program revisions and EPA to take action on

those requests.

It now appears that resolution of issues will not take place until late 1998. Promulgation is now anticipated for December 1999.

The EPA believes that the action to extend interim approvals in this rulemaking is necessary because of further delays in promulgation of the part 70 revisions. Due to these delays, all interim approvals will expire before part 70 is revised, thus denying these agencies the opportunity to combine program revisions. The EPA is aware that many States have been expecting to be able to combine the program revision correcting their interim approval deficiencies with the program revision to address the revised part 70. The Agency estimates that it may take until June 1, 2000 to receive all State requests for combining program revisions and to take the necessary rulemaking action to grant the final extension to those interim approvals. This action, therefore, moves all interim approval expiration dates up to June 1, 2000.

IV. 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 rulemaking. The principal purposes of the docket are: (1) to allow

interested parties a means to identify and locate documents so that the parties 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 notice.

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 programs 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 action 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 action 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 action will not have a significant economic impact on a substantial number of small entities. In developing the original part 70 regulations, the Agency determined that they 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 the action in this rulemaking notice). 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 part 70 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 part 70 is not affected by the action in this rulemaking notice 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. The action in this rulemaking notice, 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, this action does not impose any additional requirements which would add to the information collection requirements for sources or permitting authorities.

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 the action in this rulemaking notice 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, this 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. 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. This rule is not a "major rule" as defined by 5 U.S.C. §804(2).

G. Applicability of Executive Order 13045. Executive Order 13045 applies to any rule that EPA determines (1) is "economically significant" as defined under Executive Order 12866, and (2) the environmental health or safety risk addressed by the rule has a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This final rule is not subject to E.O. 13045, entitled "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not an economically significant regulatory action as defined by Executive Order 12866, and it does not address an environmental health or safety risk that would have a disproportionate effect on children.

List of Subjects in 40 CFR Part 70

Environmental protection, Administrative practice and procedure, Air pollution control, Carbon monoxide, Fugitive emissions, Hydrocarbons, Lead, Nitrogen dioxide, Particulate

matter, Volatile organic compounds.

Dated: July 17, 1998

Signed: _____

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.

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

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

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

a. Adding a sentence to the end of paragraph (dd) under *California*;

b. Replacing the end date of the third sentence with "June 1, 2000" in paragraph (a) under *Texas*; and

c. Replacing the end date of each paragraph with "June 1, 2000" as follows: Paragraph (a) under *Alaska, Arkansas, Colorado, Connecticut, Delaware, District of Columbia, Florida, Georgia, Hawaii, Idaho, Illinois, Indiana, Kentucky, Maine, Maryland, Massachusetts, Michigan, Minnesota, Montana, New Hampshire, New Jersey, New York, North Carolina, North Dakota, Oklahoma, Rhode Island, Vermont, Virgin Islands, Virginia, West Virginia, Wisconsin,* and *Wyoming*; Paragraphs (a), (b), and (c) under *Alabama* and *Nevada*; Paragraphs (a), (b), (c), (d)(1), and (d)(2) under *Arizona*, Paragraphs (a) through (cc) and (ee) through (hh) under *California*; paragraphs (a) and (e) under *Tennessee*; and paragraphs (a) through (i) under *Washington*.

Alabama

- (a) * * * June 1, 2000.
- (b) * * * June 1, 2000.
- (c) * * * June 1, 2000.

Alaska

- (a) * * * June 1, 2000.
- * * * * *

Arizona

- (a) * * * June 1, 2000.
- (b) * * * June 1, 2000.
- (c) * * * June 1, 2000.
- (d)(1) * * * June 1, 2000.
- (d)(2) * * * June 1, 2000.

Arkansas

- (a) * * * June 1, 2000.
- * * * * *

California * * *

- (a) * * * June 1, 2000.
- (b) * * * June 1, 2000.
- (c) * * * June 1, 2000.
- (d) * * * June 1, 2000.
- (e) * * * June 1, 2000.
- (f) * * * June 1, 2000.
- (g) * * * June 1, 2000.

- (h) * * * June 1, 2000.
- (i) * * * June 1, 2000.
- (j) * * * June 1, 2000.
- (k) * * * June 1, 2000.
- (l) * * * June 1, 2000.
- (m) * * * June 1, 2000.
- (n) * * * June 1, 2000.
- (o) * * * June 1, 2000.
- (p) * * * June 1, 2000.
- (q) * * * June 1, 2000.
- (r) * * * June 1, 2000.
- (s) * * * June 1, 2000.
- (t) * * * June 1, 2000.
- (u) * * * June 1, 2000.
- (v) * * * June 1, 2000.
- (w) * * * June 1, 2000.
- (x) * * * June 1, 2000.
- (y) * * * June 1, 2000.
- (z) * * * June 1, 2000.
- (aa) * * * June 1, 2000.
- (bb) * * * June 1, 2000.
- (cc) * * * June 1, 2000.
- (dd) * * * Interim approval expires on June 1, 2000.
- (ee) * * * June 1, 2000.
- (ff) * * * June 1, 2000.

(gg) * * * June 1, 2000.

(hh) * * * June 1, 2000.

Colorado

(a) * * * June 1, 2000.

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Connecticut

(a) * * * June 1, 2000.

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Delaware

(a) * * * June 1, 2000.

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District of Columbia

(a) * * * June 1, 2000.

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Florida

(a) * * * June 1, 2000.

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Georgia

(a) * * * June 1, 2000.

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Hawaii

(a) * * * June 1, 2000.

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Idaho

(a) * * * June 1, 2000.

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Illinois

(a) * * * June 1, 2000.

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Indiana

(a) * * * June 1, 2000.

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Kentucky

(a) * * * June 1, 2000.

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Maine

(a) * * * June 1, 2000.

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Maryland

(a) * * * June 1, 2000.

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Massachusetts

(a) * * * June 1, 2000.

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Michigan

(a) * * * June 1, 2000.

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Minnesota

(a) * * * June 1, 2000.

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Montana

(a) * * * June 1, 2000.

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Nevada

(a) * * * June 1, 2000.

(b) * * * June 1, 2000.

(c) * * * June 1, 2000.

New Hampshire

(a) * * * June 1, 2000.

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New Jersey

(a) * * * June 1, 2000.

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New York

(a) * * * June 1, 2000.

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North Carolina

(a) * * * June 1, 2000.

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North Dakota

(a) * * * June 1, 2000.

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Oklahoma

(a) * * * June 1, 2000.

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Rhode Island

(a) * * * June 1, 2000.

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Tennessee

(a) * * * June 1, 2000.

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(e) * * * June 1, 2000.

Texas

(a) * * * Interim approval will expire June 1, 2000.

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Vermont

(a) * * * June 1, 2000.

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Virgin Islands

(a) * * * June 1, 2000.

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Virginia

(a) * * * June 1, 2000.

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Washington

- (a) * * * June 1, 2000.
- (b) * * * June 1, 2000.
- (c) * * * June 1, 2000.
- (d) * * * June 1, 2000.
- (e) * * * June 1, 2000.
- (f) * * * June 1, 2000.
- (g) * * * June 1, 2000.
- (h) * * * June 1, 2000.
- (i) * * * June 1, 2000.

West Virginia

- (a) * * * June 1, 2000.

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Wisconsin

- (a) * * * June 1, 2000.

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Wyoming

- (a) * * * June 1, 2000.