

§ 52.2431 [Removed and reserved]

73. Section 52.2431 is removed and reserved.

§ 52.2435 [Removed and reserved]

74. Section 52.2435 is removed and reserved.

§ 52.2436 [Amended]

75. In § 52.2436, paragraph (a) is removed and reserved.

§ 52.2438 [Removed and reserved]

76. Section 52.2438 is removed and reserved.

§ 52.2440 [Removed and reserved]

77. Section 52.2440 is removed and reserved.

§ 52.2483 [Removed and reserved]

78. Section 52.2483 is removed and reserved.

79. Section 52.2523 is revised to read as follows:

§ 52.2523 Attainment dates for national standards.

The New Manchester and Grant Magisterial Districts in Hancock County are expected to attain and maintain the secondary sulfur dioxide (SO₂) standards as soon as the Sammis Power Plant meets the SO₂ limitations in the Ohio State Implementation Plan.

§ 52.2623 [Removed and reserved]

80. Section 52.2623 is removed and reserved.

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BILLING CODE 6560-50-P

40 CFR Part 70

[AD-FRL-5454-2]

Clean Air Act (CAA) Final Interim Approval of Operating Permits Program and Delegation of 112(l) Authority; State of Missouri

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final interim approval.

SUMMARY: The EPA is granting final interim approval of an operating permit program submitted by the state of Missouri for the purpose of complying with federal requirements for an approvable state program to issue operating permits to all major stationary sources and to certain other sources. The EPA is also giving interim approval, under section 112(l) of the Act, to the state program for accepting delegation of the section 112 standards to enforce air toxics regulations.

EFFECTIVE DATE: This rule will become effective on May 13, 1996.

ADDRESSES: Copies of the state submittal and other supporting information used in developing the final interim approval are available for inspection during normal business hours at the following location: U.S. Environmental Protection Agency, Region VII, Air Branch, 726 Minnesota Avenue, Kansas City, Kansas 66101.

FOR FURTHER INFORMATION CONTACT: Joshua Tapp at (913) 551-7606.

SUPPLEMENTARY INFORMATION:**I. Background and Purpose****A. Introduction**

Title V of the 1990 Clean Air Act Amendments (sections 501-507 of the Clean Air Act ("the Act")), and implementing regulations at 40 Code of Federal Regulations (CFR) Part 70, require that states develop and submit operating permits programs to EPA by November 15, 1993, and that the EPA act to approve or disapprove each program within one year after receiving the submittal. The EPA's program review occurs pursuant to section 502 of the Act and the Part 70 regulations, which together outline criteria for approval or disapproval. Additionally, section 502(g) of the Act and the Part 70 regulations outline criteria for granting interim approval where a program substantially, but not fully, meets the requirements of the Act and Part 70. The EPA may grant interim approval to such a program for a period of up to two years.

On January 13, 1995, the state of Missouri submitted an operating permits program to the EPA. Supplemental submissions were made by the state on August 14, 1995; September 19, 1995; and October 16, 1995. The state of Missouri has demonstrated that its program meets the minimum elements required for interim approval as specified in 40 CFR 70.4(d). The rationale for the EPA's determination that interim approval is appropriate is contained in the December 15, 1995, Federal Register document (60 FR 64404) which proposed interim approval of the program. In order to receive full approval, the state must adopt and submit to the EPA within 18 months of the effective date of this document certain rule revisions which were identified in the proposed interim approval and which are discussed later in this document.

B. Response to Comments

On January 16, 1996, the EPA received a request to extend the comment period for its proposed interim approval of Missouri's program,

due to the unavailability of the docket during federal furloughs which overlapped the comment period. The EPA granted a 30-day extension of the comment period in a February 5, 1996, Federal Register document. On February 13, 1996, the EPA received two comments regarding its proposed action from one commentator. The first comment requested clarification of the status of the permit application forms which Missouri submitted with its operating permit program. Specifically, the commentator feels that the state should be able to modify the forms as necessary to collect the information required for developing operating permits. The EPA agrees with the commentator that it is important for the state to have the ability to modify the permit application forms in order to collect the appropriate information. The EPA wishes to clarify that although 40 CFR 70.4(b)(4) requires the submission of such forms with the initial operating permit package, as a part of the program documentation, the EPA is not taking formal action on the forms themselves. The state can modify the forms to the extent that the modification is appropriate and sufficient to collect the required information.

The second comment pertains to Missouri's exemption from application requirements for "insignificant activities." The commentator has requested that the EPA provide the state of Missouri with the same flexibility in establishing thresholds for insignificant activities which the EPA has extended to other states which were given interim approval. In response, the EPA notes that the levels which Missouri has established for insignificant activities in its January 13, 1995, submission are fully approvable by the EPA and are a specific element, among other elements, which must be present in order for the EPA to take an approval action. The state of Missouri may modify this or any other element of its operating permit program to the extent that those modifications are consistent with the Clean Air Act, 40 CFR Part 70 regulations, and applicable EPA guidance. However, the EPA supports Missouri's choice to establish insignificant activity levels which are fully approvable.

C. Federal Oversight and Sanctions

This interim approval will extend for 18 months following the effective date of final interim approval and cannot be renewed. During the interim approval period, the state of Missouri is protected from sanctions for failure to have an approved program, and the EPA is not obligated to promulgate, administer, and

enforce a federal permits program for Missouri. Permits issued under a program with interim approval have full standing with respect to Part 70, and the one-year time period for submittal of permit applications by subject sources begins upon the effective date of interim approval, as does the three-year time period for processing the initial permit applications.

If Missouri fails to submit a complete corrective program for full approval by the date six months before expiration of the interim approval, an 18-month clock for mandatory sanctions will commence. If Missouri then fails to submit a corrective program that the EPA finds complete before the expiration of that 18-month period, the EPA will apply sanctions as required by section 502(d)(2) of the Act, which will remain in effect until the EPA determines that the state of Missouri has corrected the deficiency by submitting a complete corrective program.

If the EPA disapproves Missouri's complete corrective program, the EPA will be required under section 502(d)(2) to apply sanctions on the date 18 months after the effective date of the disapproval, unless prior to that date Missouri had submitted a revised program and the EPA had determined that it corrected the deficiencies that prompted the disapproval.

If the EPA has not granted full approval to Missouri's program by the expiration of this interim approval, the EPA must promulgate, administer, and enforce a federal permits program for Missouri upon interim approval expiration.

II. Final Interim Action and Implications

A. Missouri's Submission and EPA-Requested Modifications

The December 15, 1995, Federal Register document proposing interim approval of the Missouri program discussed two rules which are a part of the operating permit program that require revisions in order for the program to qualify for full approval. These rules are 10 CSR 10-6.020, "Definitions and Common Reference Tables", and 10 CSR 10-6.065, "Operating Permits." Specifically, Missouri must make the following program revisions for full approval: (1) for rule 10 CSR 10-6.020: (a) revise (2)(I)7 to update a reference to the Standard Industrial Classification Manual, and (b) revise (3)(B), Table 2—List of Named Installations, to make it consistent with the list in the definition of major source in § 70.2; and (2) for rule 10 CSR 10-6.065: (a) revise (1)(D)2 to

clarify the meaning of "fugitive air pollutant" as it relates to Part 70 installations; (b) revise (3)(D) to clarify Part 70 applicability with respect to emissions from exempt installations and emission units; (c) revise (6)(C)1.C.(II)(b) to clarify the retention of records requirements in permits, consistent with § 70.6(a)(3); (d) revise (6)(C)1.G.(I) to clarify the general requirements for permit compliance and noncompliance, consistent with § 70.6(a)(6); (e) revise (6)(C)4.A. to correct a citation error and to clarify that the requirement for the EPA and affected state review applies to general permits, consistent with § 70.6(d)(1); (f) revise (6)(C)7.B.(IV) to make the emergency provision notice consistent with § 70.6(g)(3); (g) revise (6)(C)8, operational flexibility provisions, to clarify the term "emissions allowable under the permit"; (h) revise (6)(E)5.B.(I), minor permit modification criteria, to be consistent with § 70.7(e)(2)(i)(A)(3); (i) revise (6)(E)5.B.(I) to add a paragraph (b) to incorporate the economic incentive provisions consistent with § 70.7(e)(2)(i)(B); (j) revise (6)(E)5.C.(I)(b) to correct the threshold for group processing of minor permit modifications to be consistent with § 70.7(e)(2)(i)(B); and (k) revise (6)(E)5.D.(II)(a), significant permit modification procedures, to be consistent with §§ 70.4(b)(2) and 70.5(c), and make minor citation corrections to (6)(B)3.I.(IV), (6)(E)5.B.(II)(a), (6)(E)5.C.(V), and (6)(E)6.C.

Additionally, Missouri has the authority to issue a variance from state requirements under § 643.110 of the state statutes. This provision was not included by the state in its operating permit program submittal, and the EPA regards this provision as wholly external to the program submitted for approval under Part 70, and consequently is not taking action on this provision of state law. The EPA has no authority to approve provisions of state law, such as the variance provision referred to, which are inconsistent with the Act. The EPA does not recognize the ability of a permitting authority to grant relief from the duty to obtain or comply with a federally enforceable Part 70 permit, except where such relief is granted through the procedures allowed by Part 70. A Part 70 permit may be issued or revised (consistent with Part 70 permitting procedures) to incorporate those terms of a variance that are consistent with applicable requirements. A Part 70 permit may also incorporate, via Part 70 permit issuance or modification procedures, the schedule of compliance set forth in a

variance. However, the EPA reserves the right to pursue enforcement of applicable requirements, notwithstanding the existence of a compliance schedule in a permit to operate. This is consistent with § 70.5(c)(8)(iii)(C), which states that a schedule of compliance "shall be supplemental to, and shall not sanction noncompliance with, the applicable requirements on which it is based."

The Technical Support Document describes in detail the revisions to these rules which are required for full approval of the program. The reader should refer to this document which is located in the public docket for further information.

B. Final Interim Action

The EPA is granting interim approval for 18 months to the operating permits program submitted by the state of Missouri on January 13, 1995, with supplemental information submitted on August 14, 1995; September 19, 1995; and October 16, 1995. The state of Missouri has demonstrated that its program meets the minimum elements required for interim approval as specified in 40 CFR Part 70. In order to receive full approval, the state must adopt and submit to the EPA certain rule changes within 12 months of receiving final interim approval. Specifically, the state must amend rules 10 CSR 10-6.020, Definitions, and 10 CSR 10-6.065, Operating permits, for consistency with Part 70, as described above.

1. Regulations. This interim approval of the Missouri operating permits program includes the following regulations, solely as they relate to the Missouri Part 70 operating permit program: 10 CSR 10-6.065, Operating Permits; 10 CSR 10-6.110, Submission of Emission Data, Emission Fees and Process Information; and 10 CSR 10-6.020, Definitions and Common Reference Tables.

2. Jurisdiction. The scope of the Part 70 program approved in this document applies to all Part 70 sources (as defined in the approved program), within the state of Missouri, except sources of air pollution, if any, over which an Indian Tribe has jurisdiction. See 59 FR 55813, 55815-18 (November 9, 1994). The term "Indian Tribe" is defined under the Act as "any Indian Tribe, Band, Nation, or other organized group or community, including any Alaska Native village, which is federally recognized as eligible for the special programs and services provided by the United States to Indians, because of their status as Indians." See section 302(r) of the CAA;

59 FR 43956, 43962 (August 25, 1994); 58 FR 54364 (October 21, 1993).

3. CAA section 112(l). Requirements for approval, specified in 40 CFR 70.4(b), encompass section 112(l)(5) requirements for approval of a program for delegation of section 112 standards as promulgated by the EPA as they apply to Part 70 sources. Section 112(l)(5) requires that the state's program contain adequate authorities, adequate resources for implementation, and an expeditious compliance schedule, which are also requirements under Part 70. Therefore, the EPA is also approving under section 112(l)(5) and 40 CFR 63.91 the state's program for receiving delegation of section 112 standards for both Part 70 and non-Part 70 sources that are unchanged from federal standards as promulgated.

4. CAA section 112(g). The EPA issued an interpretive notice on February 14, 1995 (60 FR 8333), which outlines the EPA's revised interpretation of 112(g) applicability. The notice postpones the effective date of 112(g) until after the EPA has promulgated a rule addressing that provision. The notice sets forth in detail the rationale for the revised interpretation.

The section 112(g) interpretive notice explains that the EPA is still considering whether the effective date of section 112(g) should be delayed beyond the date of promulgation of the federal rule so as to allow states time to adopt rules implementing the federal rule, and that the EPA will provide for any such additional delay in the final section 112(g) rulemaking. Unless and until the EPA provides for such an additional postponement of section 112(g), Missouri must have a federally enforceable mechanism for implementing section 112(g) during the period between promulgation of the federal section 112(g) rule and adoption of implementing federal regulations.

The EPA is aware that Missouri lacks a program designed specifically to implement section 112(g). However, Missouri does have a program for review of new and modified hazardous air pollutant sources that can serve as an adequate implementation vehicle during the transition period, because it would allow Missouri to select control measures that would meet the maximum achievable control technology, as defined in section 112, and incorporate these measures into a federally enforceable preconstruction permit.

The EPA is proposing to approve Missouri's preconstruction permitting program under the authority of Title V and Part 70, solely for the purpose of implementing section 112(g) to the

extent necessary during the transition period between 112(g) promulgation and adoption of a state rule implementing the EPA's section 112(g) regulations. Although section 112(l) generally provides authority for approval of state air programs to implement section 112(g), Title V and section 112(g) provide for this limited approval because of the direct linkage between the implementation of section 112(g) and Title V. The scope of this approval is narrowly limited to section 112(g) and does not confer or imply approval for purposes of any other provision under the Act (e.g., section 110). This approval will be without effect if the EPA decides in the final section 112(g) rule that sources are not subject to the requirements of the rule until state regulations are adopted. The duration of this approval is limited to 18 months following promulgation by the EPA of the 112(g) rule to provide adequate time for the state to adopt regulations consistent with the federal requirements.

III. Administrative Requirements

A. Docket

Copies of the state submittal and other information relied upon for the final interim approval are contained in a docket maintained at the EPA Regional Office. The docket is an organized and complete file of all the information submitted to, or otherwise considered by, the EPA in the development of this final interim approval. The docket is available for public inspection at the location listed under the ADDRESSES section of this document.

B. Executive Order 12866

The Office of Management and Budget has exempted this regulatory action from Executive Order 12866 review.

C. Regulatory Flexibility Act

The EPA's actions under section 502 of the Act do not create any new requirements, but simply address operating permits programs submitted to satisfy the requirements of 40 CFR Part 70. Because this action does not impose any new requirements, it does not have a significant impact on a substantial number of small entities.

D. Unfunded Mandates

Under sections 202, 203, and 205 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, the EPA must undertake various actions in association with proposed or final rules that include a federal mandate that may result in estimated costs of \$100 million or more to the private sector, or to state,

local, or tribal governments in the aggregate.

Through submission of this state operating permit program the state has elected to adopt the program provided for under Title V of the CAA. These rules may bind the state government to perform certain actions and also require the private sector to perform certain duties.

To the extent that the program approved by this action will impose new requirements, sources are already subject to these regulations under state law. Accordingly, no additional costs to state, local, or tribal governments, or to the private sector, result from this action. The EPA has also determined that this proposed action does not include a mandate that may result in estimated costs of \$100 million or more to state, local, or tribal governments in the aggregate or to the private sector.

List of Subjects in 40 CFR Part 70

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

Dated: March 27, 1996.

William Rice,

Acting Regional Administrator.

Part 70, 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—7671q.

2. Appendix A to Part 70 is amended by adding the entry for Missouri in alphabetical order to read as follows:

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

* * * * *

Missouri

(a) The Missouri Department of Natural Resources program submitted on January 13, 1995; August 14, 1995; September 19, 1995; and October 16, 1995. Interim approval effective on May 13, 1996.

(b) Reserved.

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